



OTTAWA, July 6, 2010

4214-28
AD1387

STATEMENT OF REASONS

Concerning the making of a preliminary determination of dumping of

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

DECISION

On June 21, 2010, pursuant to subsection 38(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made a preliminary determination of dumping respecting certain 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 « Information ».

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

TABLE OF CONTENT

SUMMARY OF EVENTS	1
PERIOD OF INVESTIGATION	2
INTERESTED PARTIES	2
COMPLAINANT	2
OTHER CANADIAN PRODUCERS	2
EXPORTERS	2
IMPORTERS	3
PRODUCT INFORMATION	3
DEFINITION	3
ADDITIONAL PRODUCT INFORMATION	3
CLASSIFICATION OF IMPORTS	4
CANADIAN INDUSTRY	4
ONTARIO GREENHOUSE VEGETABLE GROWERS	4
BRITISH COLUMBIA GREENHOUSE GROWERS’ ASSOCIATION	5
OTHER CANADIAN PRODUCERS	5
THE CANADIAN MARKET	5
IMPORTS INTO CANADA	6
INVESTIGATION PROCESS	6
IMPORTER RESPONSES	6
EXPORTER RESPONSES	6
DUMPING INVESTIGATION	7
NORMAL VALUE	7
EXPORT PRICE	7
PRELIMINARY RESULTS OF THE INVESTIGATION	8
SUMMARY OF PRELIMINARY RESULTS	8
DECISION	9
PROVISIONAL DUTY	9
REPRESENTATIONS	10
REPRESENTATIONS BY THE EUROPEAN COMMISSION (EC) WITH RESPECT TO THE INITIATION OF THE INVESTIGATION	10
REPRESENTATIONS BY EOSTA B.V. PERTAINING TO THE TREATMENT OF ORGANIC GREENHOUSE BELL PEPPERS .	11
FUTURE ACTION	11
THE CANADA BORDER SERVICES AGENCY	11
THE CANADIAN INTERNATIONAL TRADE TRIBUNAL	11
RETROACTIVE DUTY ON MASSIVE IMPORTATIONS	12
UNDERTAKINGS	12
PUBLICATION	13
INFORMATION	13
APPENDIX – SUMMARY OF MARGIN OF DUMPING AND PROVISIONAL DUTY	14

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

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

[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.

PERIOD OF INVESTIGATION

[9] 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

[10] 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

[11] 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

[12] 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.

[13] The CBSA sent a Request for Information (RFI) to each of these exporters. Three companies on the exporter list contacted the CBSA and indicated that they were not involved in the exportation of the subject goods. Two additional exporters were identified from importer responses to the RFI. The CBSA also determined that one of the parties originally identified as a possible exporter is in fact an importer. Finally, six further companies on the exporter list were removed as they represented the same entity listed under various addresses. As such, based on the information obtained in the preliminary phase of the investigation, there are now 36 companies potentially exporting the subject goods.

Importers

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

[15] 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 in the preliminary phase of the investigation, there are now 26 potential importers.

PRODUCT INFORMATION

Definition

[16] 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

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

[18] 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.

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

Production Process

[20] 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

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

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

at six weeks of age. The first harvest of fruit begins in about late March/early April and continues to the following December.

[21] 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

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

[23] 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

[24] 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 market.

Ontario Greenhouse Vegetable Growers

[25] 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.

[26] 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.

[27] 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.

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

British Columbia Greenhouse Growers' Association

[28] 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

[29] 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.

[30] 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

[31] 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

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

[33] 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.

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

[34] 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.

Imports into Canada

[35] During the preliminary 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.

[36] The following table presents the CBSA's estimates of the volume of imports of greenhouse bell peppers for purposes of the preliminary 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	6,085,038	26.9%
All Other Countries	16,540,768	73.1%
Total Imports	22,625,806	100%

INVESTIGATION PROCESS

Importer Responses

[37] The CBSA has received complete responses to the importer RFI from six importers: Star Produce, JAG Worldwide, Minnaar Canada, Krown Produce, Mastronardi Produce and Jem-D International. These importers represent approximately 54% of the total quantity of imports during the POI. The remaining importers did not provide a response to the RFI.

Exporter Responses

[38] No exporters provided a complete response to the CBSA's RFI in the course of the preliminary phase of the investigation. The CBSA received letters from 11 exporters, each stating that they would not respond to the RFI due to its extent, as well as the high cost of hiring counsel. These exporters account for approximately 87% of the value 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.

DUMPING INVESTIGATION

Normal Value

[39] For purposes of the preliminary determination, the CBSA is unable to estimate normal values on the basis of information provided by exporters given that none responded to the RFI. The limited data provided by some exporters was too incomplete to be considered for this purpose. The CBSA has also searched for public information to aid in the determination of normal values; however, no suitable sources of information have yet come to light.

[40] Other information available to the CBSA consists of more detailed cost data provided by the OGVG. This data consists of the 2009 cost of production and sale, as provided by several of its member producers.

[41] For purposes of estimating the normal values for the preliminary determination, the CBSA considers that the costing data provided by one of the Canadian producers represented by the OGVG consists of the best information available, assuming that Canadian and Dutch producers have similar cost structures. For purposes of the preliminary determination, the CBSA added an amount for profit in order to estimate the normal value using a methodology that reflects 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 profit). This was the amount of profit as provided by the OGVG in its complaint for the Canadian producers. On the basis of this methodology, the estimated normal value of subject goods imported during the POI is **CAD 3.55 per kg**. It is noted that this value is based on an average of production costs, and does not distinguish between the type/colour of greenhouse bell peppers. More detailed costing data was not available at this time.

[42] During the final phase of the investigation, the CBSA will continue to seek information to try to refine and/or validate normal values. This may include seeking more information from exporters and the Canadian industry.

Export Price

[43] 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.

[44] As mentioned above, while no exporter provided a complete response to the CBSA's RFI, the CBSA did receive complete responses from some importers. However, on the basis of its preliminary analysis of the importers' responses, the CBSA found that it could not rely on the importer responses for purposes of the preliminary determination. In particular, the CBSA has been unable to reconcile importer data with the CCS import data. In addition, while the CBSA has evidence that goods are exported at a delivered price and that their declared value for duty is inclusive of the freight charge, importer responses do not include the amount of freight charges paid by the exporter because this information is not available to the importers. This freight

charge must be deducted from the price paid by the importer 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.

[45] Accordingly, for purposes of the preliminary determination, the CBSA estimated export prices on the basis of information contained in the CCS import data. For each line in the CCS import data, the export price was estimated on the basis of the declared value for duty less an amount for air freight, as estimated by the OGVG in its complaint. As mentioned, the CBSA has documentary evidence that the declared value for duty includes air freight. Air freight was estimated at CAD 1.28 (Euro 0.81 per kg, converted at a rate of 1.5851, the average monthly exchange rate issued by the Bank of Canada in 2009), on the basis of information contained in the complaint. The average export price found for goods imported during the POI was **CAD 1.82 per kg**.

[46] During the final phase of the investigation, the CBSA will actively seek information from importers to verify the completeness, accuracy and reliability of the information regarding their imports. Further, as a related complexity, it is believed that greenhouse bell peppers are sometimes incorrectly classified as field peppers when imported. In light of the complexity of the reconciliation exercise, particularly without responses from exporters, the CBSA may need to verify the accuracy of information provided by importers during the final phase of the investigation. The CBSA will also seek more data from exporters regarding the export charges, particularly inland and air freight.

Preliminary Results of the Investigation

[47] The CBSA estimated the normal values and export prices for each entry in the CCS import data (for all goods under HS classification number 0709.60.90.10, where the country of origin or the country of export is the Netherlands) and then compared the total normal value and total export price for all imports during the POI.

[48] Based on the preceding, it is estimated that 100% of greenhouse bell peppers originating in or exported from the Netherlands were dumped by an estimated margin of dumping of 95%, expressed as a percentage of the export price.

SUMMARY OF PRELIMINARY RESULTS

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

Country of Origin or Export	Estimated Dumped Goods as Percentage of Country Imports	Estimated Margin of Dumping as Percentage of Export Price	Country Imports as Percentage of Total Imports	Estimated Dumped Goods as Percentage of Total Imports
The Netherlands	100 %	95 %	26.9 %	26.9 %

[49] Under subsection 35(1) of SIMA, the President of the CBSA is required to terminate an investigation prior to the preliminary determination if he is satisfied that the margin of dumping of the goods of a country is insignificant or that the volume of dumped goods of a country is negligible. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant, whereas a volume of dumped goods from a country forming less than 3% of total imports is considered negligible.

[50] The estimated margin of dumping of greenhouse bell peppers originating in or exported from the Netherlands is above 2% and is, therefore, not insignificant. As well, the volume of dumped goods originating in or exported from the Netherlands is above 3%, and is, therefore, not negligible.

DECISION

[51] Based on the preliminary results of the investigation, on June 21, 2010, the President of the CBSA made a preliminary determination of dumping respecting greenhouse bell peppers originating in or exported from the Netherlands, pursuant to subsection 38(1) of SIMA.

PROVISIONAL DUTY

[52] Pursuant to subsection 8(1) of SIMA, provisional duties, payable by the importer in Canada, will be applied to imports of dumped greenhouse bell peppers originating in or exported from the Netherlands that are released during the provisional 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 or the day on which the Tribunal makes an order or finding, pursuant to subsection 43(1) of SIMA.

[53] Provisional duty of 95%, expressed as a percentage of the export price of the goods, will be applied to all subject goods originating in or exported from the Netherlands, released by the CBSA on and after June 21, 2010. The rate of provisional duty is based on the estimated margin of dumping, as provided in the **Appendix**.

[54] Importers are required to pay provisional duties in cash, by certified cheque, or, they may post security equal to the amount payable. Importers should contact their CBSA regional office if they require further information on the payment of provisional duty or the posting of security.

[55] If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the import documents, an administrative monetary penalty could be imposed. The imported goods are also subject to the *Customs Act*. As a result, failure to pay duties within the specified time will result in the application of the provisions of the *Customs Act* regarding interest.

REPRESENTATIONS

Representations by the European Commission (EC) with Respect to the Initiation of the Investigation

[56] On March 26, 2010, the EC submitted representations regarding the initiation of the investigation. The EC's submission was signed by the Ambassador of the Delegation of the European Union to Canada.

[57] In its submission, the EC described concerns regarding insufficient disclosure of confidential data in the complaint. The EC recalled the requirement under Article 6.5.1 of the WTO *Anti-dumping Agreement* that investigating authorities shall require interested parties to furnish non-confidential summaries of information submitted in confidence. The EC argued that certain relevant aggregate data has been blanked out with no adequate provision of a non-confidential summary of the confidential data. The EC requested that such data be made available, and that this be the case for the remainder of the investigation.

[58] The CBSA has reviewed the non-confidential version of the complaint and remains satisfied that it has complied with the requirements in SIMA relating to the treatment of confidential information and that the complaint contains an adequate non-confidential summary of the confidential data. The CBSA will continue to ensure that adequate non-confidential versions of all confidential data are placed on the record for these proceedings.

[59] Further, in its submission, the EC also expressed its doubt that criteria for initiation were met. The EC pointed to a lack of information regarding the market share of imports, an unjustified exclusion of Mexican imports from the analysis and a lack of a holistic approach with respect to the issue of cyclicity.

[60] On the issue of the exclusion of Mexican imports, the CBSA notes that imports from Mexico were not excluded from its analysis. However, the countercyclical nature of Mexican imports was a consideration in assessing whether imports from Mexico were a possible cause of injury to Canadian producers. There was no indication that Mexican imports were the cause of injury or that these imports negated the injury caused by the alleged dumping of greenhouse bell peppers from the Netherlands.

[61] The EC also contended that the complaint contained insufficient information to corroborate claims of lost sales, price erosion, price suppression, reduction in gross margin and reduced profitability. Additionally, the EC put forward that the analysis of the causal link was deficient and that other relevant factors were not addressed. The EC urged Canadian authorities to thoroughly investigate these issues during its investigation.

[62] The CBSA is satisfied that all initiation criteria have been met. Further, the Tribunal has conducted a preliminary inquiry and determined, on May 21, 2010, that the evidence discloses a reasonable indication that the alleged dumping of the goods has caused injury to the Canadian industry. The EC made the same representations to the Tribunal in the course of its preliminary injury inquiry and, as per the Tribunal's *Statement of Reasons* for that decision, their representations were given due consideration by the Tribunal in making its preliminary decision.

Representations by Eosta B.V. Pertaining to the Treatment of Organic Greenhouse Bell Peppers

[63] Representations were made by Eosta B.V. of the Netherlands, an exporter of subject goods, stating that the company only exports organic greenhouse bell peppers, and that this produce is not dumped. Accordingly, they have requested an exclusion for organic bell peppers. Eosta B.V. did not provide a complete response to the RFI.

[64] The CBSA notes that the product definition does not distinguish between organic and non-organic bell peppers and that it considers all greenhouse bell peppers originating in or exported from the Netherlands as subject goods. Since the Tribunal has the discretion to exclude products which would otherwise be subject to a finding or an order, any requests for exclusions should be directed to the Tribunal.

FUTURE ACTION

The Canada Border Services Agency

[65] The CBSA will continue its investigation and will make a final decision by September 20, 2010.

[66] If the CBSA is satisfied that the goods were dumped, and that the margin of dumping is not insignificant, a final determination will be made. Otherwise, the CBSA will terminate the investigation and all provisional duties paid or security posted by importers will be returned.

The Canadian International Trade Tribunal

[67] The Tribunal has begun its full inquiry into the question of injury to the Canadian industry. The Tribunal is expected to issue its finding by October 19, 2010.

[68] 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.

[69] 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.

[70] If the Tribunal finds that the dumping of the goods has not caused injury, but is threatening to cause injury, provisional duties paid or security posted by importers will be returned, while 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.

[71] For purposes of the preliminary determination of dumping, the President is responsible for determining whether the actual and potential volume of dumped goods is negligible. After a preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its inquiry in respect of any goods if the Tribunal determines that the volume of dumped goods from a country is negligible.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[72] 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

[73] 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.

[74] Acceptable undertakings must account for all, or substantially all, of the exports to Canada of the dumped goods. In the event that an undertaking is accepted, the required payment of provisional duty on the goods would be suspended.

[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] SIMA allows all interested parties to make representations concerning any undertaking proposals. The CBSA will maintain a list of interested parties and will notify them should an undertaking proposal be received. Persons wishing to be notified must provide their name, address, telephone, fax, or e-mail address, to one of the officers listed below. Interested parties may also consult the CBSA Web site noted below for information on undertakings offered in this investigation. A notice will be posted on the CBSA Web site when an undertaking proposal is received. Interested parties have nine days from the date the undertaking offer is received to make representations.

PUBLICATION

[77] A notice of the preliminary determination of dumping will be published in the *Canada Gazette* pursuant to paragraph 38(3)(a) of SIMA.

INFORMATION

[78] 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

Telephone: Johnny Tong 613-954-7350
Danielle Newman 613-952-1963

Fax: 613-948-4844

Email: SIMARegistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi



Daniel Giasson
Director General
Anti-dumping and Countervailing Directorate

Attachment

APPENDIX – SUMMARY OF MARGIN OF DUMPING AND PROVISIONAL DUTY

Exporter	Estimated Margin of Dumping / Provisional Duty *
All Exporters:	95%

*As a percentage of export price.