



**WG 2020 IN**

OTTAWA, August 28, 2020

## **STATEMENT OF REASONS**

**Concerning the initiation of an investigation into the dumping of**

**WHEAT GLUTEN**

**FROM AUSTRALIA, AUSTRIA, BELGIUM, FRANCE, GERMANY AND LITHUANIA**

## **DECISION**

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated an investigation on August 14, 2020, respecting the alleged injurious dumping of certain wheat gluten originating in or exported from Australia, Austria, Belgium, France, Germany and Lithuania.

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

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## **SUMMARY**

[1] On June 24, 2020, the Canada Border Services Agency (CBSA) received a written complaint from ADM Agri-Industries Co. (ADM) (hereinafter, “the complainant”), alleging that imports of certain wheat gluten (wheat gluten) originating in or exported from Australia, Austria, Belgium, France, Germany and Lithuania (hereinafter, when referred to collectively, “the named countries”) are being dumped. The complainant alleged that the dumping has caused injury and is threatening to cause injury to the Canadian industry producing like goods.

[2] On July 15, 2020, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the governments of the named countries that a properly documented complaint had been filed with the CBSA.

[3] The complainant provided evidence to support the allegations that wheat gluten from the named countries has been dumped. The evidence also discloses a reasonable indication that the dumping has caused injury and is threatening to cause injury to the Canadian industry producing like goods.

[4] On August 14, 2020, pursuant to subsection 31(1) of SIMA, the CBSA initiated an investigation respecting the dumping of wheat gluten from Australia, Austria, Belgium, France, Germany and Lithuania.

## **INTERESTED PARTIES**

### **Complainant**

[5] ADM is the largest wheat gluten producer in Canada, operating a facility located in Candiac, Quebec. The Candiac facility has been in operation since 1973 and was acquired by ADM in 1992.

[6] The contact information of the complainant is as follows:

ADM Agri-Industries Co.  
155 Iberia  
Candiac, Quebec  
J5R 3H1

[7] There is only one other domestic producer of subject goods in Canada: Permolex Ltd. Contact information for this producer is as follows:

Permolex Ltd.  
8010 Edgar Industrial Crescent  
Red Deer, Alberta  
T4P 3R3

## **Trade Union**

[8] The complainant identified one trade union that represents ADM's hourly wage employees in Canada:

Teamsters Canada National Office  
400-1750, Maurice-Gauvin,  
Laval, Quebec H7S 1Z5

## **Exporters**

[9] The CBSA identified 51 potential exporters of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential exporters were asked to respond to the CBSA's Dumping Request for Information (RFI).

## **Importers**

[10] The CBSA identified 48 potential importers of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential importers were asked to respond to the CBSA's Importer RFI.

## **Governments**

[11] Upon initiation of this investigation, the governments of Austria, Belgium, France, Germany and Lithuania as well as the European Commission were sent a Government Particular Market Situation RFI.

[12] For the purposes of this investigation, the "Government" refers to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

## **PRODUCT INFORMATION**

### **Product Definition<sup>1</sup>**

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

*Wheat gluten, whether or not blended with wheat flour, salt or any other substance, with a minimum wheat protein content of 40% by weight on a dry basis calculated using a Jones factor of 5.7, originating in or exported from Australia, Austria, Belgium, France, Germany and Lithuania, but excluding:*

- (i) devitalized wheat gluten;*
- (ii) hydrolyzed wheat gluten;*
- (iii) wheat protein isolates; and*
- (iv) organic wheat gluten that is certified organic in accordance with and otherwise meets the requirements of the Food and Drugs Act, R.S.C., 1985, c. F-27, and regulations made thereunder, and the Safe Food for Canadians Act, S.C. 2012, c. 24, and regulations made thereunder including the Safe Food for Canadians Regulations, S.O.R./2018-108, all of which as may be amended or replaced from time to time.*

*For greater certainty, the subject goods include, but are not limited to vital wheat gluten as defined by the World Health Organization's Codex STAN 163-1987, Rev. 1-2001 ("Standard for Wheat Protein Products Including Wheat Gluten").*

### **Additional Product Information<sup>2</sup>**

[14] Wheat gluten is the natural protein found in wheat. "Gluten" consists of two main protein groups, gliadins and glutenins in approximately equal proportions. Wheat gluten is also sometimes referred to in the market as simply "gluten" or "wheat protein".

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<sup>1</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 4

<sup>2</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 5 to 13.

[15] Wheat gluten is generally sold as a fine powder with a cream colour. For grades used in most food (including baking) applications, wheat gluten contains between 75 – 80% protein by weight on a dry basis using a Jones factor of 5.7, with the remainder of the weight being attributable to fiber, starch, fat and ash. Wheat gluten products with a wheat protein concentration in the range of 80% or more, which also contain sodium citrate, are often used to enhance whole-grain baked goods, noodles and pastas, pizza crusts and vegetarian products. Some wheat gluten grades that are used as a filler binder for processed meat products contain a lower percentage of protein by weight on a dry basis and are usually blended with a larger amount of wheat flour to obtain a lower percentage of protein. Wheat gluten is also sold to animal feed and pet food manufacturers as a source of protein.

[16] There are different ways to measure the protein content of a substance, but the most commonly used method involves isolating the mass of nitrogen in a given sample of the substance, because nitrogen is an element contained in all proteins but not found in the other macro-nutrients, i.e. fat and carbohydrates. In this respect, the mass of nitrogen isolated from the sample of a substance represents a proxy for the weight of the protein. The weight of the nitrogen is then multiplied by a “Jones factor” that corresponds to the type of protein under consideration (because not all proteins contain the same ratio of nitrogen containing amino acids to weight ratio).

### **Production Process<sup>3</sup>**

[17] At ADM, wheat gluten is co-produced with starch from milled wheat flour. As milled, wheat flour generally contains approximately 10-15% protein by weight on a dry basis, the remainder being starch, fiber, and ash. Wheat varieties that contain more protein by weight are generally referred to as “hard” wheats, and conversely, wheat varieties that contain less protein by weight are referred to as “soft” wheat.

[18] ADM’s wheat gluten is produced by separating it from the starch in flour through a “washing” process involving water; the wheat gluten is subsequently dried, sifted and purified; and ground into a fine powder before being packaged and sold.

[19] The first step involves adding water to the flour in a dough mixer to activate the wheat gluten. The hydrated mass then rests in a maturation tank until fully hydrated before being moved to a dilution tank where additional water is added. The mixture then passes through a series of rotative screens and hydro cyclones, where the hydrophilic starch and water are effectively washed away from the viscoelastic glob of hydrated gluten.

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<sup>3</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 17-24.

[20] Hydrated globs of gluten are then dried through a screen, press, and dryer, before passing through a series of sifters, grinders, and magnets, to remove impurities and any foreign metal objects that may have been introduced through the manufacturing process. During the sifting and grinding process, the gluten is also passed through an “Entoteler” machine which uses centrifugal force to kill any insect eggs and remove other debris, which are rejected from the mill flow by aspiration.

[21] The sifted and dry wheat gluten is then packaged in bags and totes to be stored and shipped to customers. Common bag and tote sizes for wheat gluten are 25KG and 750KG bags.

### **Product Use**

[22] Generally, wheat gluten is used by a wide range of food producers to:

- provide water absorption and structure building in breads;
- enhance the structure of cereals and snacks;
- provide texture and toughening for pastas and noodles;
- provide strength and film forming in frozen foods; and
- provide binding and emulsification in processed meat and in vegetarian meat applications.

### **Classification of Imports**

[23] The allegedly dumped goods are normally classified under the following tariff classification numbers:

1109.00.10.00

1109.00.20.00

[24] The listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers include non-subject goods. Also, subject goods may fall under tariff classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

### **LIKE GOODS AND SINGLE CLASS OF GOODS**

[25] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as goods that are identical in all respects to the other goods, or in the absence of any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[26] In considering the issue of like goods, the Canadian International Trade Tribunal (CITT) typically looks at a number of factors, including the physical characteristics of the goods (such as composition and appearance) their market characteristics (such as substitutability, pricing, distribution channels and end uses), and whether the domestic goods fulfill the same customer needs as the subject goods.

[27] The complainant states that domestically produced wheat gluten is like goods and in relation to the subject goods as they are both commodity products that compete directly with each other in the Canadian market.<sup>4</sup> The complainant also alleges that subject wheat gluten constitutes a single class of good. The complainant states that the goods are fundamentally the same goods that are produced using identical or nearly identical production processes, are fully interchangeable, and are sold to the same end users or channels of distribution.

[28] After considering questions of use, characteristics and all other relevant factors, the CBSA is of the opinion that the domestically produced wheat gluten, that is of the same description as the subjects goods, is like goods to the subject goods and further, that the subject goods and like goods constitute only one class of goods.

### **THE CANADIAN INDUSTRY**

[29] The complaint includes data on domestic production and on domestic sales of wheat gluten, by the complainant and estimate of Permolex Ltd's total Canadian production.<sup>5</sup>

[30] The complaint contains a letter of support from Permolex Ltd.<sup>6</sup>

[31] The complainant and the supporting producer account for all known production of like goods.

### **Standing**

[32] Subsection 31(2) of SIMA requires that the following conditions for standing be met in order to initiate an investigation:

- a. the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- b. the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[33] As the complainant and the supporting producer represent all known production of like goods in Canada, the CBSA is satisfied that the standing requirements pursuant to subsection 31(2) of SIMA have been met.

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<sup>4</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 48

<sup>5</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 65

<sup>6</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 7-7(NC)

## **CANADIAN MARKET**

[34] The complaint includes the annual production of like goods for the complainant, as well as an estimate for the other domestic producer, Permolex, for the period of 2017 to April 2020.

[35] The complainant, using Statistics Canada data, estimated the total volume of imports of wheat gluten originating from all sources for the period of 2017 through April, 2020. The tariff classification numbers for wheat gluten include both subject and non-subject goods. As such, the complainant made adjustments in an effort to remove non-subject wheat gluten, including certain imports of certified organic wheat gluten. The complainant has also made a number of adjustments to the import data to adjust for entries they describe as anomalous.<sup>7</sup>

[36] The CBSA conducted an analysis of imports of wheat gluten based on commercial intelligence provided by the complainant and CBSA's import documentation.

[37] A review of CBSA import data demonstrated trends similar to those provided in the complaint with respect to the relative proportion of subject goods imported from each of the named countries. The CBSA notes there are discrepancies in the volumes estimated by the complainant and the CBSA. As noted above, the complainant's estimates of imports rely on information reported by Statistics Canada, which does not report import volumes specific to the product description of the subject goods.

[38] Detailed information regarding the volume and value of imports of wheat gluten and domestic production cannot be divulged for confidentiality reasons. The CBSA, however, has prepared the following table to show the import share of wheat gluten in Canada, as estimated by the CBSA.

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<sup>7</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 29,76, 130-134 and Exhibit 9-1(NC).

**Table 1**

**CBSA'S ESTIMATE OF IMPORT SHARE**  
(based on volume)

<b>Origin or Export</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>(February 2019 - April 2020)</b>
Australia	0.1%	3.3%	3.3%	3.9%
Austria	0.0%	0.0%	0.3%	3.6%
Belgium	0.9%	3.8%	11.1%	10.8%
France	21.7%	19.3%	41.6%	38.5%
Germany	5.4%	3.7%	9.8%	12.4%
Lithuania	0.2%	8.8%	8.0%	5.1%
<b>Total Imports from Named Countries</b>	28.3%	38.9%	74.1%	74.3%
Other Countries	71.7%	61.1%	25.9%	25.7%
<b>Total Imports</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

[39] The CBSA will continue to gather and analyze information on the volume of imports during the period of investigation (POI) of January 1, 2019 to April 30, 2020 as part of the preliminary phase of the dumping investigation and will refine these estimates.

[40] Due to the COVID-19 pandemic, the CBSA has been limiting interactions with stakeholders for import compliance purposes. As a result, the CBSA did not request entries from importers, limiting the import analysis.

[41] The CBSA notes that the United States accounts for the majority of the imports from all other countries in each year. In addition, based on the CBSA's import data, the imports from the United States appear to be sold at prices similar to those of the complainant.

**EVIDENCE OF DUMPING**

[42] The complainant alleged that wheat gluten from the named countries has been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

[43] Normal values are generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist or as 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.

[44] The complainant made the allegation that particular market situations (PMS) within the meaning of paragraph 16(2)(c) of SIMA, may exist in Austria, Belgium, France, Germany and Lithuania which prevents the CBSA from making a proper comparison between the price of subject goods and like goods. As such, ADM submitted that normal values for Austria, Belgium, France, Germany and Lithuania should be calculated based on paragraph 19(b) of SIMA and subsection 11.2(2) of the *Special Import Measures Regulations* (SIMR).<sup>8</sup>

[45] The export price of goods sold to importers in Canada is generally the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges and expenses resulting from the exportation of the goods.

[46] Estimates of normal values and export prices by both the complainant and the CBSA are discussed below.

## **Normal Value**

### **Complainant's Estimates**<sup>9</sup>

[47] The complaint included estimates of normal values pursuant to section 15 of SIMA using information that ADM was able to obtain concerning domestic wheat gluten selling prices in France. However, according to the complainant, these estimated normal values should not be used for reasons that are confidential.<sup>10</sup>

[48] Consequently, the complainant provided estimated normal values using a constructed cost approach to reflect the methodology defined under paragraph 19(b) of SIMA. The complainant based these estimates on their own costs of production and/or the costs of production of a company located in Europe as well as public financial information available with respect to each of the named countries.<sup>11</sup>

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<sup>8</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 73-75, 137, Exhibit 8-30(NC).

<sup>9</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 78-129

<sup>10</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 78

<sup>11</sup> The name of the company can't be disclosed for confidential reason

[49] For the purposes of the complaint, the complainant has estimated normal values for Austria, Belgium, France, Germany and Lithuania in two ways. Under the first method, the complainant used the costs of production of a company in Europe, and made certain adjustments to reflect the costs of production in the subject countries.<sup>12</sup> However, as the complainant has alleged that a particular market situation exists, the complainant has proposed a second method for estimating costs of production which does not rely on the costs of production in Europe. Specifically, for purposes of estimating paragraph 19(b) normal values under this methodology, the complainant has used their own costs of production, adjusted to reflect conditions in the named countries.

[50] In the case of Australia, the complainant has estimated normal values using only this second approach, which relies on the complainant's own costs of production.<sup>13</sup>

[51] According to the complainant, wheat gluten producers do not maintain separate costs for the various co-products produced along with, and including, wheat gluten. As such, under both methodologies, the complainant has allocated costs to wheat gluten using a revenue-based methodology, using the average proportion of revenue represented by wheat gluten over a three year period as the basis for allocating costs.<sup>14</sup>

[52] Under each approach, one normal value was estimated per quarter for the period of Q1 2019 to Q1 2020 for wheat gluten from each of the named countries based on the aggregate of the costs of producing the goods (materials, labour, and overhead), a reasonable amount for selling, general and administrative (GS&A) costs and other costs, and a reasonable amount for profits.

[53] Material costs were estimated based on the complainant's material costs or the company located in Europe. According to the complainant, raw material costs consist of flour and other minor raw materials including salt and enzymes. The complainant states that the price of flour generally follows the price of wheat, which in Europe is driven by a futures exchange for milling wheat prices.<sup>15</sup> The complainant did not make any other adjustments to the allocated raw material costs.

[54] Labour costs were estimated based on the allocated labour costs associated with the production of wheat gluten, incurred by the complainant or a company located in Europe, adjusted to reflect labour costs in the named countries. This adjustment was applied to the costs based on publically available information reported by the International Labour Organization (ILO) or by *TradingEconomics*.<sup>16</sup>

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<sup>12</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras.80-129

<sup>13</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 80-129

<sup>14</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 84-88

<sup>15</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 90a.

<sup>16</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para 90B

[55] The labour adjustment was calculated on an annual basis. The adjustments are presented as a percentage of the Canada labour rate or the France labour rate, as follows:

Labour Rate Adjustments for Comparison to Canada Rates:<sup>17</sup>

Australia – 131% (upward adjustment)<sup>18</sup>  
Austria – 145% (upward adjustment)<sup>19</sup>  
Belgium – 169% (upward adjustment)<sup>20</sup>  
France – 150% (upward adjustment)<sup>21</sup>  
Germany – 159% (upward adjustment)<sup>22</sup>  
Lithuania – 35% (downward adjustment)<sup>23</sup>

Labour Rate Adjustments for Comparison to France Rates:<sup>24</sup>

Austria – 102% (upward adjustment)  
Belgium – 113% (upward adjustment)  
France – 100% (no adjustment)  
Germany – 106% (upward adjustment)  
Lithuania – 24% (downward adjustment)

[56] Overhead costs were based on the allocated overhead costs of the complainant or the company located in Europe with an adjustment applied to the portion of overhead relating to indirect labour, calculated on a quarterly basis for each named country.<sup>25</sup>

[57] The complainant estimated the amounts for GS&A and financial expenses, as well as the amounts for profit, based on the available financial reports of wheat gluten producers in the respective subject countries, where available.<sup>26</sup>

[58] The complainant submits that they were unable to obtain financial statements covering wheat gluten alone for any producer.<sup>27</sup>

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<sup>17</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-10B(NC)

<sup>18</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-8(NC)

<sup>19</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-22(NC)

<sup>20</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-17(NC)

<sup>21</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-16(NC)

<sup>22</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-24(NC)

<sup>23</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-26(NC)

<sup>24</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Attachments 8-10A

<sup>25</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 94C, 94, 99, 101, 104, 105, 110, 112, 118, 120, 126, 128

<sup>26</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 90C

<sup>27</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 95

[59] For Australia, the complainant used the financial statements of Nisshin Seifun Group Inc. (Nisshin) of Japan, which acquired Allied Pinnacle (a producer of wheat gluten and other products in Australia) in 2019, to estimate amounts for GS&A, financial expenses and profit. The complainant was able to obtain financial statements for the period of April to December 2019.<sup>28</sup>

[60] For Austria, the complainant used information reported by AGRANA, a producer of wheat gluten and other products in Austria, in their financial statements for the period of March 2019 to February 2020.<sup>29</sup>

[61] To estimate amounts for GS&A, financial expenses and profit for Belgium, the complainant used the publically available financial statements of CropEnergies of Germany, parent company of Belgian wheat gluten producer BioWanze, covering the period from March 2019 to February 2020.<sup>30</sup>

[62] For France, the complainant calculated the GS&A and financial expenses allocated to wheat gluten production based on confidential financial statements of a company in Europe for the period of January 2019 to March 2020. Based on the information, the complainant asserts that the best information available was the net income in 2018.<sup>31</sup>

[63] For Germany, the complainant used the GS&A, financial expense and profit ratios reported by Sudzucker AG, a German producer of wheat gluten and other products, for the period of March 2019 to February 2020.<sup>32</sup>

[64] The complainant submits that they were unable to locate any financial statements for wheat gluten producers in Lithuania.<sup>33</sup> As such, the complainant has used a weighted average amount for GS&A, financial expenses and profit based on the financial information used for the other producers in the European market.

### **CBSA's Estimates**

[65] The CBSA reviewed the section 15 normal value estimates and cost of production information provided by the complainant. The CBSA finds the complainant's claim regarding home market pricing in France to be reasonable based on the information available. The CBSA finds that the requirements for section 15 are not met and, as such, has not used the selling prices available for wheat gluten in France for purposes of estimating normal values in accordance with section 15 of SIMA.

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<sup>28</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 95, Attachment 8-11

<sup>29</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 127, Attachment 8-20

<sup>30</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 100, Attachment 8-18

<sup>31</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 104, Attachment 8-3

<sup>32</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 111, Attachment 8-19

<sup>33</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 119

[66] In the absence of other pricing information for wheat gluten in the subject countries, the CBSA is unable to estimate normal values following the methodology described in section 15 of SIMA.

[67] With respect to the complainant's allegations of a particular market situation in Austria, Belgium, France, Germany and Lithuania, the CBSA will endeavor to gather additional information from exporters, and other relevant sources in order to enable the CBSA to form an opinion as to whether a "particular market situation" exists in the domestic market for wheat gluten in these countries and whether the domestic sales permit a proper comparison with the sale to the importer in Canada. The CBSA notes that sufficient information was not provided prior to the initiation of the investigation to form an opinion as to whether a particular market situation exists in Austria, Belgium, France, Germany and/or Lithuania. For the purposes of initiation, the CBSA has estimated normal values in accordance with section 19 of SIMA, using costs of production of a company in Europe as the basis for normal values for Austria, Belgium, France, Germany and Lithuania and the costs of production in Canada as the basis for normal values for Australia.

[68] The CBSA notes that the complainant's estimated normal values lack specificity. Although the CBSA recognizes that there may be differences in the cost and/or price of the different types of wheat gluten, the CBSA also recognizes that this approach was reasonable based on the information available to the complainant. The CBSA finds that it is reasonable to assume that the subject goods shipped to Canada during the period of February 1, 2019 to April 30, 2020 would reflect a product mix similar to the complainant's production. As such, the CBSA finds that the normal values calculated for each quarter may reasonably represent the subject goods shipped to Canada during this period.

[69] As stated above, the complainant asserts that wheat gluten producers do not maintain separate costs for the various co-products produced along with wheat gluten. As such, the complainant has used a revenue-based allocation method for purposes of calculating the costs of production associated to wheat gluten for each subject country. This approach uses the average proportion of revenue represented by wheat gluten as the basis for allocating costs. In support of this approach, the complainant states that ADM does not keep costs, labour hours or processing times at the product-specific level in the ordinary course of business, an allocation of costs based on volume would not reflect the economic realities of co-production and sales and revenue based costing is supported by cost accounting principles.<sup>34</sup>

[70] Based on the information available at this time, the CBSA finds the complainant's proposed methodology to be reasonable for the purpose of estimating normal values; however, the CBSA will continue to evaluate the appropriateness of a revenue-based approach for allocating costs as part of this investigation. The CBSA has also made some modifications to the complainant's normal value estimates, as discussed below.

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<sup>34</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 84-88; Exhibit 7-4 (NC).

## *Australia*

[71] In analyzing the paragraph 19(b) normal values estimated for Australia by the complainant, the CBSA noted that there was a minor error in the labour rate adjustment provided by the complainant. The CBSA updated the labour adjustment accordingly.

[72] Also, upon review, the CBSA modified the complainant's allocation ratio for purposes of allocating costs of production to wheat gluten. Instead of using a 3-years average yield from 2017-2019, as calculated by the complainant, the CBSA used an annual ratio calculated for 2019 and 2020 respectively and applied this to the appropriate quarter.

[73] With respect to the GS&A, financial expenses and amounts for profit used in calculating normal values for Australia, the CBSA finds that the complainant's estimate is not well supported but may reflect the best information available as the CBSA recognizes that limited financial data is publically available. Therefore, given the information available, the CBSA accepts the use of Nisshin's financial information to determine the amounts for GS&A, financial expenses and profits used in calculating normal values for Australia as reasonable. The CBSA noted a minor error in the complainant's calculation of financial expenses, whereby expense/loss items were treated as income and income/gain items as expenses. The calculation was corrected accordingly.

[74] Based on the information available at this time, the CBSA finds the complainant's proposed constructed cost methodology to be the best information available. As such, only the adjustments mentioned above were made to the complainant's estimates of section 19 normal values for Australia.

## *Europe*

[75] In analyzing the paragraph 19(b) normal values estimated by the complainant for the named countries located in Europe, the CBSA notes that the complainant again used a 3-year average revenue yield to calculate the costs of production to be allocated to wheat gluten. Using information provided in the complaint on costs of production in Europe, the CBSA substituted the quarterly revenue allocation ratios in for the 3 year-average rate, and used this as the basis for calculating quarterly costs of production for the subject countries in Europe.

[76] Certain adjustments were also made to the GS&A, financial expenses, and amounts for profit for each subject country in Europe. Specifically, using information provided by the complainant, the CBSA has used net operating expenses in place of operating expenses in the calculation of administrative, selling and all other costs. This has allowed certain income items such as foreign exchange gains to offset expense items.

[77] In addition, the CBSA notes that based on the publically available financial statements provided by the complainant, the calculations for GS&A may include amounts for overhead costs. The CBSA acknowledges that this may have the impact of overstating GS&A; however, in the absence of information available to identify and isolate overhead costs, the CBSA has

otherwise accepted the GS&A amounts calculated by the complainant. Other adjustments made by the CBSA are discussed below.

#### *Austria*

[78] The CBSA noted an error made by the complainant in the calculation of labour costs. The complainant used the 2018 mean nominal manufacturing wage for France rather than the 2019 wage, to calculate Austria's labour adjustment. The CBSA adjusted the calculations accordingly.

#### *France*

[79] The CBSA noted an error in the complainant's calculations of labour costs in France. An incorrect labour adjustment ratio was used to adjust the indirect labour portion of overhead for Q1 2020. The calculations were adjusted accordingly.

[80] In addition, the CBSA does not find that the use of the 2018 profit amount to be reasonable. Rather, the CBSA has used the European Union (EU) weighted average ratio to calculate an amount for profit.

### **Export Price**

[81] The export price of goods sold to an importer in Canada is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's sale price for the goods and the price at which the importer has purchased or agreed to purchase the goods adjusted by deducting all costs, charges, expenses, and duties and taxes resulting from the exportation of the goods.

[82] The complainant estimated export prices based on importation data available from Statistics Canada for the period of February 1, 2019 to April 30, 2020. For each named country, the complainant estimated one export price per quarter using the total declared value for duty and total declared quantity information for the relevant tariff classification numbers for this period.

[83] The CBSA estimated quarterly export prices for wheat gluten for each named country based on the value for duty as declared on the customs entry documentation and in reports generated through the Facility for Information Retrieval Management (FIRM) of imports of the goods classified under the relevant tariff classification codes during the period of February 1, 2019 to April 30, 2020. In the CBSA's review of commercial entry information for wheat gluten entering Canada and information gathered through online research, adjustments were made to the FIRM data to correct any errors respecting the quantity and value for duty as necessary.

## Estimated Margins of Dumping

[84] The CBSA estimated the margins of dumping for the named countries by comparing the estimated weighted average normal values with the estimated weighted average export prices. Based on this analysis, it is estimated that wheat gluten imported into Canada from each of the named countries was dumped. The estimated margins of dumping are listed in the table below.

**Table 2**

### ESTIMATED MARGINS OF DUMPING

<b>Origin or Export</b>	<b>Estimated Margin of Dumping as % Export Price</b>
Australia	25.3%
Austria	2.8%
Belgium	30.3%
France	6.6%
Germany	5.4%
Lithuania	12.7%

## Particular Market Situation

[85] Paragraph 16(2)(c) is a provision of SIMA that may be applied when the CBSA is of the opinion that domestic sales of like goods in the country of export do not permit a proper comparison with the sales of the goods to the importer in Canada because a particular market situation prevails.

[86] Pursuant to subsection 16(2.1), the CBSA may form the opinion that a PMS exists in respect of any goods of a particular exporter or of a particular country.

[87] In such cases, the CBSA would not estimate normal values using the methodology of section 15 of SIMA, which relies on domestic prices. Accordingly, and where such information is available, the CBSA would look to using paragraph 19(a) or the constructed normal value methodology of paragraph 19(b).

[88] Where paragraph 19(b) is used and the CBSA is of the opinion that a PMS also distorts significant production input costs, the CBSA will use information in accordance with subsection 11.2(2) of SIMR, that best represents the actual cost of the input to permit a proper comparison.

[89] Where the CBSA finds there is sufficient reason to believe that a PMS may exist, the CBSA may solicit information from exporters and, where applicable, the government of the country of export, and independently gather other relevant information in order to form an opinion as to whether paragraph 16(2)(c) is applicable.

[90] The complainant made the allegation that a particular market situation exist in in Austria, Belgium, France, Germany and Lithuania. Further, the complainant submits that PMS exists in the EU wheat gluten market, which does not permit a proper comparison between the prices of subject goods and like goods.<sup>35</sup>

[91] The complainant submitted that the existence of the following factors indicates a PMS in the EU wheat gluten market:<sup>36</sup>

- government regulations such as blending requirements and production quotas for wheat gluten co-products;
- government income and price support targeting the agricultural sector and benefitting wheat producers;
- other government support programs promoting biofuel production and consumption; and
- tax incentives at the member-state level for biofuel and agricultural production which wheat gluten producers are eligible to benefit from.

[92] The CBSA will further examine whether a PMS exists throughout the investigation.

## **EVIDENCE OF INJURY**

[93] The complainant alleges that the subject goods have been dumped and that such dumping has caused and is threatening to cause injury to the domestic industry producing like goods in Canada.

[94] SIMA refers to material injury caused to the domestic producers of like goods in Canada. The CBSA has accepted that wheat gluten produced by the complainant are like goods to the subject goods from the named countries.

[95] In support of their injury allegations, the complainant provided evidence of an increase in the volume of subject good imports which has resulted in price depression, price undercutting and price suppression. This has allegedly caused the complainant to experience lost sales and market share, as well as adverse impacts on financial results, inventories and employment.

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<sup>35</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 137, Exhibit 8-30(NC), para. 3

<sup>36</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 8-30(NC), para. 3

### **Increase in Volume of Subject Good Imports<sup>37</sup>**

[96] The complainant states that the volume of subject good imports has increased significantly over the last three years. The complainant provided a Wheat Gluten Market Table covering the 40 month period to support this claim.<sup>38</sup> Based on the data provided, the complainant notes that imports from the named countries have increased by more than 250% between 2017 and 2019.

[97] The complainant also suggests that the drastic increase in the volume of subject imports was likely instigated when the Comprehensive Economic Trade Agreement (CETA) came into force on September 21, 2017. CETA provides year-round duty-free access to the Canadian market for a variety of imports from the EU, including wheat gluten. Similarly, the coming into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on December 30, 2018, lowered duty rates applicable to imports of wheat gluten from Australia.<sup>39</sup>

[98] The CBSA's analysis of import data supports the allegation that the import volumes of the allegedly dumped goods from the named countries have increased significantly over the 40 month period. Based on the CBSA's estimates of imports, the CBSA finds that the volume of imports increased by more 257% from 2017 to 2019.

### **Price Depression and Price Undercutting<sup>40</sup>**

[99] The complainant states that the subject goods are a commodity based product where price is very important. As such, aggressive pricing of dumped wheat gluten has caused significant material adverse effects on domestic pricing.<sup>41</sup> Based on the import data estimates provided by the complainant, it is evident that the prices for wheat gluten from the named countries have been significantly lower than Canadian domestic pricing.

[100] As a result of these significant price discrepancies, particularly from European and Australian suppliers, the complainant states that it has been forced to reduce its pricing. In support of this, the complainant provided evidence of several instances where they were forced to discount pricing in order to compete with imports of subject goods.

[101] Based on the above, and the CBSA's analysis of the information contained in the complaint, the CBSA finds the claims of price depression and price undercutting to be supported and sufficiently linked to the allegedly dumped goods.

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<sup>37</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras.141-145

<sup>38</sup> Exhibit 2 (NC) – Wheat Gluten Complaint– Exhibit 9-1(NC)

<sup>39</sup> Exhibit 2 (NC) – Wheat Gluten Complaint– Para.142

<sup>40</sup> Exhibit 2 (NC) – Wheat Gluten Complaint– Paras.146-151.

<sup>41</sup> WG Complaint (PRO) – Para.146

## **Price Suppression<sup>42</sup>**

[102] The complaint states that the complainant's average unit values of wheat gluten have decreased during the period of February 1, 2019 – April 31, 2020. In addition, the complainant alleged that the depressive effects on domestic prices have resulted in a lower price-cost ratio.

[103] While the information presented by the complainant does indicate an inability to increase average selling prices during the period of February 1, 2019 – April 31, 2020, the complainant has not demonstrated that the inability to increase prices has coincided with an increase in product costs. Based on the information presented above, as well as the CBSA's analysis of the information contained in the complaint, the CBSA does not find the claim of price suppression to be an injury factor for the complainant.

## **Lost Sales and Market Share<sup>43</sup>**

[104] The complainant submits that imports of subject goods have caused various instances of lost sales which has caused injury due to loss of market share, reduced revenues, declining profitability and a build up of inventories.<sup>44</sup>

[105] The complainant's estimates of the Canadian market for 2017 to 2019 demonstrate a decrease in the market share of the domestic industry along with an increase in the market share of the named countries. The complainant alleges that the named countries were able to increase their share of the Canadian market by dumping unfairly priced goods into Canada. Further, the complainant submits that this increase was accelerated by the coming into force of CETA for imports from Europe, and the CPTPP for imports from Australia.<sup>45</sup>

[106] To support the allegations of lost sales the complainant provided declarations detailing examples of numerous sales that were lost either entirely or in part by the complainant to imports of the allegedly dumped goods.<sup>46</sup>

[107] The CBSA's analysis of the Canadian market demonstrates an increase in the market share of the allegedly dumped good during the period of 2017 to April 2020. Further, the information before the CBSA also demonstrates a decrease in the market share of the domestic industry during this same period.

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<sup>42</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras.53,152,155,168.

<sup>43</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 142-156

<sup>44</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para.154

<sup>45</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras.142,157, 192

<sup>46</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 7.4(NC), paras.13-17; Exhibit 7.5(NC), paras.19,24,41,64-65,72

[108] As described above, the complainant has provided detailed evidence of lost sales which suggests that in the absence of the allegedly dumped goods, the complainant's sales may have increased, in turn increasing the complainant's market share.

[109] Based on the CBSA's analysis of the information contained in the complaint, as well as the CBSA's market table, the CBSA finds the allegation of lost market share to be sufficiently supported and linked to the allegedly dumped goods.

### **Negative Impact on Financial Results<sup>47</sup>**

[110] The complainant alleges that the injurious impact of the dumped goods is demonstrated by a negative impact on investment plans. To support this allegation, the complainant has provided financial performance information concerning its sales of wheat gluten for the period of 2017 until April 2020.

[111] In support of this assertion, the complaint states that several large investments are at risk of being delayed or cancelled entirely if the complainant is not able to show plant-wide revenue improvements.<sup>48</sup>

[112] Detailed information regarding the revenue and profitability cannot be divulged for confidentiality reasons. However, the CBSA has reviewed the complainant's financial information concerning wheat gluten and finds that the information in the complaint has sufficiently linked the allegedly dumped goods to the complainant's impacted financial results.

### **Accumulation of Inventories<sup>49</sup>**

[113] The complainant acknowledges that they have not experienced declining capacity utilization rates with respect to the production of wheat gluten due to the presence of the dumped goods. However, as a result of co-production process involving gluten and starch, the complainant (as well as other producers) necessarily produces gluten whenever it produces starch, regardless of demand. As a result, the increase of allegedly dumped subject goods has caused a significant accumulation of inventories of wheat gluten in 2019 and into the first four months of 2020.

[114] To support this allegation, the complainant provided data outlining the inventory volume. The complainant further explains that ultimately they have no choice but to sell the accumulation of inventories at a reduced price.

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<sup>47</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 157-158

<sup>48</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 165,166

<sup>49</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 159-161

[115] While the CBSA acknowledges that wheat gluten is manufactured using a co-production process which has the effect of necessarily pulling up production levels of respective co-products to sometimes surplus levels, a clear link to the allegations that unfairly priced goods are causing this accumulation has not been demonstrated. The CBSA finds that there is not sufficient supporting information to permit the CBSA to fully analyse how wheat gluten vs starch production volumes/ratios/capacity behave in order to properly assess the causal link for the accumulation of inventories.

[116] In summary, based on the CBSA's analysis of the information contained in the complaint, the CBSA does not find accumulation of inventories to be an injury factor.

### **Employment<sup>50</sup>**

[117] The complainant provided employment and wages data for the period of 2017 through 2019. They do acknowledge that the number of total direct and indirect employees responsible for the production of wheat gluten has remained relatively stable over 2017 to 2019, however they submit that employment levels, indicated by total number of hours worked by direct employees, decreased from 2017 to 2019 as a result of insufficient production volumes brought on by the increase of dumped subject imports. They go on to state that the total sum of wages paid to employees also declined over the same period.

[118] The CBSA considered the information provided in the complaint and finds that since employment levels have not in fact been reduced, the information submitted regarding wages is perhaps more relevant in a discussion related to other injury factors such as sales volumes as it relates to capacity utilization or company financial results.

[119] Based on the CBSA's analysis of the information, the CBSA does not find this to be a factor that has caused material injury for the complainant. However, this factor may be considered as a threat of injury if current trends continue.

### **CBSA's Conclusion – Injury**

[120] Overall, based on the evidence provided in the complaint, and supplementary data available to the CBSA through its own research and customs documentation, the CBSA finds that the evidence discloses a reasonable indication that the dumping of the subject goods from the named countries has caused injury to the wheat gluten industry in Canada. The nature of the injury is well documented with respect to increased volumes of subject good imports, price depression and price undercutting, lost sales and market share, as well as negatively impacted financial results.

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<sup>50</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 162

## **THREAT OF INJURY**

[121] The complainant states that the import of the allegedly dumped goods threatens to cause further material injury to the Canadian domestic industry. For purposes of evaluating the threat of injury, the complainant suggested an assessment period of 12-24 months.<sup>51</sup>

[122] The complainant provided the following information to support the allegation that imports of subject goods threaten to cause further injury to the Canadian industry.

### **Rate of Increase of Dumped Subject Imports<sup>52</sup>**

[123] As described in the Injury section, the complainant has noted an increase of dumped subject goods imported into Canada. The complainant alleges that this trend will continue if a finding is not put in place. Some of the factors cited to support this factor are summarized below:

#### *Impact of relatively new free trade agreements<sup>53</sup>*

[124] The complainant asserts that Australian imports will increasingly face lower over access customs duties as the CPTPP gradually reduces the over access rate of duty until 2028 when Australian imports will enjoy duty free access to the Canadian market. Similarly, they submit that imports from the EU have drastically increased since the implementation of CETA on September 21, 2017, and that these imports continue to gain market share.

#### *Impact of green initiatives that impact the co-production process<sup>54</sup>*

[125] The complainant provided significant details regarding ongoing green initiatives in the EU, as also referred to in their allegations relating to particular market situation factors. In summary, they submit that the presence of government initiatives that encourage the production of wheat gluten's co-product, bioethanol, has the necessary net effect of inventories of wheat gluten building up, often times amounting to a supply that exceeds demand in the market.

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<sup>51</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 170-200

<sup>52</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 172

<sup>53</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 173

<sup>54</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – WG Complaint (PRO) – Para. 175

### *Impact of ongoing and significant financial support to the EU agricultural sector*<sup>55</sup>

[126] The complainant submit that the EU provides substantial financial support to its agricultural sector under the Common Agricultural Policy (CAP), which contributes to an unsustainable increase in the production of cereals, including most prominently, wheat. They state that in 2018 alone, 36% of the overall EU budget was spent on subsidies in support for farmers and that France, followed by Germany, has historically been the largest beneficiary of the CAP due to having the largest agricultural area. The complainant submitted that this incentive to produce more wheat gluten than is needed causes these European countries to look for any market to offload their production, often at very low prices in order to attract demand. According to one of the top wheat gluten producers in Belgium, CropEnergies,<sup>56</sup> in 2019-2020, the EU grain harvest (320 million tonnes) exceeded EU consumption needs (290 million tonnes) by more than 9%.<sup>57</sup> This would be expected to further contribute to the EU producers being more inclined to increase their wheat gluten exports.

[127] Based on the CBSA's analysis of import data, along with the factors outlined by the complainant, the CBSA is of the view that the rate of increase of subject imports will likely not be as sharp going forward as it was shortly after the recent implementation of the free trade agreements, but that it is reasonable to expect that a continued trend of increasing volume from the named countries will be a significant factor contributing to threat of injury. The CBSA acknowledges however, that an important factor in identifying the cause of the increase will be to determine to what extent the volume increases are due to these recent trade agreements eliminating previous trade barriers, or the allegedly unfairly priced goods.

### **Subsidization of Agricultural and Biofuel Sectors in the Named Countries**<sup>58</sup>

[128] The complainant submits that publicly available evidence indicates that the named countries provide substantial subsidies to their domestic producers of wheat gluten and that these subsidies directly contribute to an increase in the production of wheat gluten. The complainant further submits that this increases the likelihood that increased volumes of subject goods will be exported to Canada in the near term.

#### *The European Union*

[129] As previously mentioned, the complainant states that the EU provides substantial financial support to wheat gluten producers as a means to increase production of cereals and wheat gluten co-products (bioethanol) both at the supra-national level and through member-states as explained in detail in Appendix I of the complaint. Most prominently, the following measures are alleged to increase production volumes:

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<sup>55</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 176

<sup>56</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-11(NC)

<sup>57</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-3(NC) at slide 7.

<sup>58</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 177

- Through the CAP, the EU provides significant direct income support to farmers based on the size of their farm in hectares. In 2018 alone, 36% of the overall EU budget was spent on subsidies in support for farmers (*i.e.* EUR 58.82 billion of EUR 162.11). France, followed by Germany, has historically been the largest beneficiary of the CAP;
- Rural development grants reinforce the production of agri-foods through income support to farmers;
- Various means of financial support are available to companies, provided in the form of tax exemptions or reductions, environmental and other grants such as property, plant, and equipment grants. Tereos, Cargill, Crespel & Deiters, and CropEnergies have in the past received such subsidies;
- Several EU Directives (*i.e.*, Renewable Energy Directive (I & II), Indirect Land Use Change Directive, Energy Taxation Directive, and Fuel Quality Directive) are targeted at increasing the production of wheat gluten co-product, bioethanol, in the EU market through incentives such as direct financial support, tax breaks, production targets.

### *Australia*

[130] The complainant asserts that the Government of Australia also provides extensive financial support to its agricultural sector through a broad range of subsidy and tax relief programs. While the complainant has not been able to confirm whether any of these programs have been specific to Australia's wheat gluten producers, they state that it is reasonable to infer that wheat gluten producers have benefited from these programs. In particular, the Government of Australia offers a number of programs the purpose of which is to assist Australian agricultural enterprises to improve their export performance. Given the alleged export orientation of Australian wheat gluten producers, to be described in more in the section below, the complainant states that it is certain that Australia's wheat gluten producers have had access to and benefited from these programs.<sup>59</sup>

[131] After consideration of the listings of incentives and subsidy programs included in the complaint, the CBSA is of the view that there is potential for these programs to have the effect of increasing production of wheat gluten in the named countries, making it more likely that these goods are exported to other markets, including Canada.

[132] The CBSA acknowledges however, that it would not be appropriate to rely on the existence of alleged subsidies as a contributing cause of material injury outside a formal subsidy investigation. For that reason, the CBSA is of the view that this factor should not hold considerable weight in this threat of injury analysis.

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<sup>59</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – A detailed list and summary description of the financial support programs said to be available to Australia's wheat gluten producers can be found at para.165.

[133] The CBSA also notes that further information regarding European subsidy programs will be sought during the dumping investigation in order to address the PMS allegations included in the complaint.

### **Named Countries are Export-Oriented<sup>60</sup>**

[134] The complainant cites various publicly available sources to illustrate that the named countries are becoming increasingly export-oriented. For example, according to online research, from 2007 to 2018, the total volume of wheat gluten exports from the EU increased at an average annual rate of 6%. More recently, and more notably, between 2015-2018, EU wheat gluten exports increased by 45.3%, amounting to \$1.2 billion in 2018. This rate of exports trend is consistent with the rate of production in the above-mentioned countries. Within the EU, the countries with the highest volumes of wheat gluten production in 2018 were France, Germany and Belgium.<sup>61</sup>

[135] The complainant believes that Canada is, and will continue to be, one of the top export destinations for wheat gluten from Belgium, France, Germany, and Lithuania in particular, which will be discussed in further detail in a following section of this report.<sup>62</sup> The EU, and in turn, the major producers of wheat gluten, are currently experiencing a surplus.<sup>63</sup> According to the United States Department of Agriculture's (USDA) April 2020 wheat market report, even with the impact of COVID-19 on the increasing consumption of wheat products, wheat production is estimated at a record high in 2019-2020.<sup>64</sup> In light of these trends, the USDA estimates higher exports from the EU.

[136] The complainant also submits that Australia's wheat industry has also become increasingly export oriented in recent years. In total, approximately 65% to 75% of Australia's total wheat production is exported each year.<sup>65</sup> Specifically, based on most recently available data on UNComtrade, exports of wheat gluten from Australian producers increased from 105,642 MT in 2017 to 115,739 MT in 2018.<sup>66</sup> The Manildra Group (Manildra), is said to be one of the largest wheat gluten producers in the world with well-established distribution channels and sales offices in Australia, the United States, Korea, Taiwan, Philippines and Indonesia.<sup>67</sup> Although sales data from Manildra is not publicly available to the complainant, it is suggested that a significant portion of Australia's exports of wheat gluten can be accounted for by this one producer.<sup>68</sup>

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<sup>60</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 179

<sup>61</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-22(NC)

<sup>62</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-24(NC)

<sup>63</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-25(NC) at page 17.

<sup>64</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-26 (NC) at page 1.

<sup>65</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-30(NC)

<sup>66</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-31(NC)

<sup>67</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-32(NC)

<sup>68</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 183

[137] The complainant also points out that wheat gluten producers from the named countries have publicly indicated their export strategies.<sup>69</sup>

[138] The CBSA's analysis of the production and export trends contained in the complaint support the assertion that the named countries, in aggregate, are export oriented. The CBSA recognizes that this may lead wheat gluten producers in the named countries to target certain export markets, including Canada. The CBSA also acknowledges that the medium term international trade landscape may be significantly altered by developments related to the current COVID-19 pandemic. More specifically, it is possible that individual countries may trend away slightly from relying on global supply chains, a factor that would hedge any threat caused by the named countries being export oriented.

### **Significant Freely Disposable Capacity in the Named Countries<sup>70</sup>**

[139] The complainant has referenced information published by a variety of sources, including Reuters, the European Commission, the USDA and other publications to support the assertion that significant excess capacity to produce wheat gluten in the named countries exists.<sup>71</sup>

[140] For example, according to the European Commission's 2019-2030 agricultural outlook, the EU market for cereals will grow significantly, reaching 319 million tonnes by 2030, due to the increased planting of protein crops based on availability of arable land.<sup>72</sup> In the medium term, the strong growth in EU production of protein crops is projected to continue and reach 6.3 million tonnes. In particular, wheat and maize arable areas are projected to expand at the expense of other cereals. This is consistent with the USDA grain market report indicating a substantial increase in wheat production into 2019 as wheat planting areas in France, Germany, and Belgium increased due to producers switching away from rapeseed to other crops, such as wheat.<sup>73</sup> On a country-specific basis, the EU's top wheat producer, France, has increased its production by 3 million MT in 2019 alone.<sup>74</sup>

[141] The CBSA recognizes the significant excess capacity of wheat gluten producers in the global market, including the named countries, which, if directed to Canada, could result in a significant increase of subject imports, and pose a threat to the domestic industry.

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<sup>69</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para.182

<sup>70</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 184

<sup>71</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibits 9-23(NC), 25, 26, 34, 35, 36

<sup>72</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-25(NC) at page 4.

<sup>73</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-26(NC) at page 4.

<sup>74</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-26(NC) at page 6.

## **Ease of Shifting Production<sup>75</sup>**

[142] The complainant has submitted information outlining how producers can shift production to wheat gluten from other goods with relative ease and has provided specific information with respect to producers in France and Australia.

### *France*

[143] Two of the largest wheat gluten producers in the world are both headquartered in France; Tereos SCA (Tereos) and Roquette Freres SA (Roquette).

[144] Historically, Tereos has been known primarily as a sugar producer, however, after a wave of deregulation in the European sugar market, Tereos pursued a strategy of diversification and international expansion into new food products in 2018. In that respect, Tereos' diversification strategy envisages an increased focus on the production and supply of wheat gluten on the basis of 10% growth in demand for wheat protein in the food industry between 2014 and 2020.<sup>76</sup> The complainant submits that it is reasonable to infer that revenues from wheat gluten will therefore increase substantially in the coming years as Tereos shifts its focus toward this product.

[145] In a similar respect, Roquette has also shifted its focus toward producing more plant-based and wheat protein type products. Although Roquette offers a broad range of products, including in the pharmaceutical and cosmetics sectors, Roquette positions itself primarily as a food business. In 2017, Roquette sought to consolidate its position as a leading producer of plant-based food products.<sup>77</sup> To that end, Roquette acquired a new manufacturing facility in the Netherlands that specializes in plant-based proteins.<sup>78</sup> Accordingly, Roquette has the ability to shift production to wheat gluten as the demand for this product increases in coming years.

### *Australia*

[146] Australian producer, Manildra also provides a diverse and complementary product line including starch products, fuel ethanol, syrups and sugar.<sup>79</sup> Accordingly, Manildra has the ability to shift production to wheat gluten from some of its other products. Indeed, Manildra has increased its production capacity in response to increased demand for its products during the ongoing COVID-19 crisis, with the intent of producing an additional 50 million kilograms of flour by the middle of 2020.<sup>80</sup> In order to achieve that target, Manildra has installed new machinery at its mill in New South Wales.<sup>81</sup>

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<sup>75</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 188

<sup>76</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-40(NC) at page 14.

<sup>77</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-42(NC) at page 4.

<sup>78</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 190 and Exhibit 9-43(NC)

<sup>79</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Exhibit 9-44(NC)

<sup>80</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 191 and Exhibit 9-45(NC)

<sup>81</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 191 and Exhibit 9-46(NC)

[147] The CBSA recognizes that wheat gluten producers in some of the named countries appear to be well positioned to shift production to subject goods with relative ease. If this occurs and exports are directed to Canada, this could lead to a potential increase in importation of subject goods into Canada.

### **Pricing of Subject Wheat Gluten Imports<sup>82</sup>**

[148] As described in the Injury section, the complainant has noted an increase of dumped wheat gluten imported into Canada. The complainant stated that the competitively-priced EU wheat has led to a massive surge in exports to date.<sup>83</sup> Furthermore the complainant states that the average unit values for export sales from subject countries to all countries are priced much lower than their exports to Canada. The complainant also suggests that due to increasing competition from the EU, as well as the global surplus of wheat gluten product, subject countries will be ever more likely to lower prices to secure contracts.<sup>84</sup>

[149] The CBSA's analysis of import data supports the allegation of increased volume of subject goods and recognizes the excess capacity in the global market and lower prices of wheat gluten, including the named countries, which, if directed to Canada, could result in a significant increase of subject imports, and pose a threat to the domestic industry.

### **Measures Impacting Wheat Gluten Imports in Other Countries<sup>85</sup>**

[150] The complainant states that most countries around the world impose applied tariffs on wheat gluten imports.<sup>86</sup> Specifically, more than 71% of the global wheat gluten market is concentrated within only ten countries. Of these, 31% of the global market has higher tariff rates on European wheat gluten than levied in Canada.<sup>87</sup>

[151] While there are no anti-dumping measures in force for wheat gluten in other countries, the CBSA finds that the presence of other tariffs and quotas on wheat gluten imports for many countries, as well as the higher tariff rates that have been applied on European wheat gluten in other countries, are likely to lead to the diversion of subject goods into the Canadian market and further increase the volume of exports to Canada from the named countries.

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<sup>82</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 194-197

<sup>83</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para.194 and Exhibit 9-26(NC) at 6.

<sup>84</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras.195-196

<sup>85</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 198-199

<sup>86</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 198

<sup>87</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Table 11 and Exhibit 9-48(NC)

## **Attractiveness of the Canadian Market<sup>88</sup>**

[152] The complainant describes Canada as an “open” market for European wheat gluten and an “opening” market for Australia. The complainant reiterates that since the coming into force of CETA on September 21, 2017, imports from the EU have increased significantly. Similarly, the CPTPP will continue to slowly reduce the over-access customs rate until it is phased out with duty free access in 2028.<sup>89</sup>

[153] The CBSA recognizes that MFN import duties applicable to EU wheat gluten imports were relaxed upon the implementation of CETA and, respectively, the CPTPP for Australia, which may further increase the volume of exports to Canada from the named countries. The CBSA acknowledges that Canada remains an attractive open wheat gluten market to exporters from the named countries, which poses a threat to domestic producers from allegedly dumped and subsidized goods.

### **CBSA’s Conclusion – Threat of Injury**

[154] The complaint contains evidence that discloses a reasonable indication that imports of allegedly dumped subject goods from the named countries pose a threat of injury to the wheat gluten industry in Canada. The information provided by the complainant indicates that the rate of increase of dumped goods, subsidization of agricultural and biofuel sectors, export-orientation of the named countries, significant freely disposable capacity, ease of shifting production, lower pricing, presence of other tariffs and quotas on wheat gluten imports for many countries and attractiveness of the Canadian market, as described above, are collectively posing a threat to the Canadian wheat gluten industry.

### **CAUSAL LINK – DUMPING AND INJURY**

[155] The CBSA finds that the complainant has provided sufficient evidence that discloses a reasonable indication that they have suffered injury due to the alleged dumping of the subject goods imported into Canada. There is a reasonable indication that the injury the complainant has suffered in terms of increased volume of subject goods, price depression and undercutting, lost sales and market share, as well as negatively impacted financial results, is related directly to the price advantage the apparent dumping has produced between the subject imports and the Canadian produced goods.

[156] The complainant submitted that the continued dumping of goods from the named countries will cause further injury to the Canadian domestic industry in the future. As discussed above, the CBSA is of the opinion that this allegation of threat of injury is reasonably supported.

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<sup>88</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 192-193

<sup>89</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 192 and Exhibits 3-6(NC) and 3-7(NC)

[157] In summary, the CBSA is of the opinion that the information provided in the complaint has disclosed a reasonable indication that the alleged dumping has caused injury and is threatening to cause injury to the Canadian domestic industry.

## **CONCLUSION**

[158] Based on information provided in the complaint, other available information, and the CBSA's import documentation, the CBSA is of the opinion that there is evidence that wheat gluten originating in or exported from Australia, Austria, Belgium, France, Germany and Lithuania has been dumped. Further, there is a reasonable indication that such dumping has caused and is threatening to cause injury to the Canadian industry. As a result, pursuant to subsection 31(1) of SIMA, a dumping investigation was initiated on August 14, 2020.

## **SCOPE OF THE INVESTIGATION**

[159] The CBSA is conducting an investigation to determine whether the subject goods have been dumped.

[160] The CBSA has requested information from all potential exporters and importers to determine whether or not subject goods exported to Canada during the CBSA's period of investigation of January 1, 2019 to April 30, 2020, were dumped. The information requested will be used to determine the normal values, export prices and margins of dumping, if any. The CBSA also requested information from the Governments as well as exporters with respect to the possibility of a particular market situation.

[161] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

## **FUTURE ACTION**

[162] The CITT will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping of the goods has caused or is threatening to cause injury to the Canadian industry. The CITT must make its decision on or before the 60<sup>th</sup> day after the date of the initiation of the investigation. If the CITT concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigation will be terminated.

[163] If the CITT finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA's preliminary investigation reveals that the goods have been dumped, the CBSA will make a preliminary determination of dumping within 90 days after the date of the initiation of the investigation, by November 12, 2020. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigation.

[164] Under section 35 of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation will be terminated with respect to goods of that country.

[165] Imports of subject goods released by the CBSA on and after the date of a preliminary determination of dumping, other than goods of the same description as goods in respect of which a determination was made that the margin of dumping of the goods is insignificant, may be subject to provisional duty in an amount not greater than the estimated margin of dumping on the imported goods.

[166] Should the CBSA make a preliminary determination of dumping, the investigation will be continued for the purpose of making a final decision within 90 days after the date of the preliminary determination.

[167] After the preliminary determination, if, in respect of goods of a particular exporter, the CBSA's investigation reveals that imports of the subject goods from that exporter have not been dumped, or that the margin of dumping is insignificant, the investigation will be terminated in respect of those goods.

[168] If a final determination of dumping is made, the CITT will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The CITT is required to make a finding with respect to the goods to which the final determination of dumping applies, not later than 120 days after the CBSA's preliminary determination.

[169] In the event of an injury finding by the CITT, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping on the imported goods.

### **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[170] When the CITT conducts an inquiry concerning injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[171] Should the CITT issue such a finding, anti-dumping duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping.

### **UNDERTAKINGS**

[172] After a preliminary determination of dumping by the CBSA, other than a preliminary determination in which a determination was made that the margin of dumping of the goods is insignificant, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated.

[173] An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods. Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address to one of the officers identified in the “Information” section of this document.

[174] If undertakings were to be accepted, the investigation and the collection of provisional duties would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA’s investigation be completed and that the CITT complete its injury inquiry.

## **PUBLICATION**

[175] Notice of the initiation of this investigation is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

## **INFORMATION**

[176] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping. Written submissions should be forwarded to the attention of the SIMA Registry and Disclosure Unit.

[177] To be given consideration in this phase of the investigation, all information should be received by the CBSA by September 21, 2020.

[178] Any information submitted to the CBSA by interested parties concerning this investigation is considered to be public information unless clearly marked “confidential”. Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[179] Confidential information submitted to the CBSA will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the CITT, any court in Canada or a World Trade Organization (WTO) or North American Free Trade Organization (NAFTA) dispute settlement panel. Additional information respecting the CBSA’s policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA’s website.

[180] The schedule of the investigation and a complete listing of all exhibits and information are available at: [www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html). The exhibit listing will be updated as new exhibits and information are made available.

[181] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also available through the CBSA's website at the address below. For further information, please contact the officers identified as follows:

**Mail:** SIMA Registry and Disclosure Unit  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11th floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Sean Robertson 613-954-7409  
Laurie Trempe 613-954-7337

**E-mail:** [simaregistry@cbsa-asfc.gc.ca](mailto:simaregistry@cbsa-asfc.gc.ca)

**Website:** [www.cbsa-asfc.gc.ca/sima-lmsi](http://www.cbsa-asfc.gc.ca/sima-lmsi)

Doug Band

Director General

Trade and Anti-dumping Programs Directorate