



OTTAWA, January 7, 2021

# STATEMENT OF REASONS

Concerning the preliminary determination with respect to the dumping of

WHEAT GLUTEN

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

## DECISION

Pursuant to subsection 38(1) of the *Special Import Measures Act*, the Canada Border Services Agency made a preliminary determination on December 23, 2020 respecting the 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 OF EVENTS**

[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.<sup>1</sup>

[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 the named countries.

[5] Upon receiving notice of the initiation of the investigation, the Canadian International Trade Tribunal (CITT) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping of the above-mentioned goods has caused injury or retardation or is threatening to cause injury to the Canadian industry producing the like goods.

[6] On October 13, 2020, pursuant to subsection 37.1(1) of SIMA, the CITT made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping of wheat gluten from the named countries has caused injury or retardation or is threatening to cause injury to the domestic industry.<sup>2</sup>

[7] On November 5, 2020 the CBSA notified interested parties that the preliminary stage of the investigation will be extended pursuant to subsection 39(1) of SIMA.

[8] On December 23, 2020, as a result of the CBSA’s preliminary investigation and pursuant to subsection 38(1) of SIMA, the CBSA made a preliminary determination of dumping of wheat gluten from the named countries.

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

<sup>2</sup> Canadian International Trade Tribunal; Wheat Gluten Dumping Determination and Reasons (October 28, 2020), PI-2020-003.

[9] On December 23, 2020, 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 was made and ending on the earlier of the day on which the CBSA causes the investigation in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

### **PERIOD OF INVESTIGATION**

[10] The Period of Investigation (POI) is January 1, 2019 to April 30, 2020.

### **PROFITABILITY ANALYSIS PERIOD**

[11] The Profitability Analysis Period (PAP) is January 1, 2019 to April 30, 2020.

### **INTERESTED PARTIES**

#### **Complainant**

[12] 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.

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

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

[14] There is only one other domestic producer of like 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**

[15] 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

## **Importers**

[16] At the initiation of the investigation, the CBSA identified 48 potential importers of the subject goods based on both information provided by the complainant and CBSA import entry documentation. The CBSA sent an Importer RFI to all potential importers of the goods. The CBSA received two responses to the Importer RFI.<sup>3</sup>

## **Exporters**

[17] At the initiation of the investigation, the CBSA identified 51 potential exporters/producers of the subject goods from information provided by the complainant and CBSA import entry documentation. All of the potential exporters were asked to respond to the CBSA's Dumping RFI.<sup>4</sup>

[18] Fourteen companies provided responses to the CBSA's Dumping RFI. A number of these companies are associated and submitted combined responses to the RFI.

[19] Of the responses received, two were considered complete submissions for purposes of a preliminary determination. These submissions and results have been summarized in the *Preliminary Results of the Dumping Investigation* section, found below.

[20] Respondents who have not provided complete submissions have been informed that their information may be used for the purposes of a final determination only if a complete response is provided in a timely fashion, bearing in mind the time limits of the investigation.

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<sup>3</sup> Exhibit 11 (NC) – RFI sent to importers

<sup>4</sup> Exhibit 10 (NC) – RFI sent to exporter

## **Governments**

[21] 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, 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.

[22] At the initiation of the investigation, the governments of Austria, Belgium, France, Germany, Lithuania and the European Union were sent a Government Particular Market Situation RFI.<sup>5</sup> Responses to the Government PMS RFI were received from the Governments of Belgium, France, Germany and Lithuania, and the European Commission during the preliminary phase of the investigation.

## **PRODUCT INFORMATION**

### **Product Definition<sup>6</sup>**

[23] 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.*

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<sup>5</sup> Exhibit 9 (NC) – RFI sent to governments

<sup>6</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Para. 4.

*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>7</sup>**

[24] 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".

[25] 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.

[26] 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).

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<sup>7</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 5 to 13.

## **Production Process<sup>8</sup>**

[27] 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.

[28] 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.

[29] 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.

[30] 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.

[31] 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**

- [32] 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.

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<sup>8</sup> Exhibit 2 (NC) – Wheat Gluten Complaint – Paras. 17-24.

## **Classification of Imports**

[33] Subject goods are normally classified under the following tariff classification numbers:

1109.00.10.00

1109.00.20.00

[34] 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**

[35] 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.

[36] In considering the issue of like goods, the 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.

[37] After considering questions of use, physical characteristics and all other relevant factors, the CBSA initiated its investigation under the premise that domestically produced wheat gluten are like goods to the subject goods. Further, the CBSA was of the opinion that subject goods and like goods constitute only one class of goods.

[38] In its preliminary injury inquiry for this investigation, the CITT further reviewed the matter of like goods and classes of goods. On October 28, 2020, the CITT issued its preliminary inquiry *Statement of Reasons*<sup>9</sup> for this investigation, indicating that it considered the subject goods to be comprised of a single class of goods.

## **THE CANADIAN INDUSTRY**

[39] The complainant, and the supporting producer, Permolex Ltd, account for all known domestic production of like goods.

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<sup>9</sup> Canadian International Trade Tribunal; Wheat Gluten Dumping Determination and Reasons (October 28, 2020), PI-2020-003.

## **IMPORTS INTO CANADA**

[40] During the preliminary phase of the investigation, the CBSA refined the estimated volume and value of imports based on information from CBSA import entry documentation and other information received from exporters and importers.

[41] The following table presents the CBSA's analysis of imports of wheat gluten for the purposes of the preliminary determination:

**Imports of Wheat Gluten<sup>10</sup>**  
(% of Volume)

<b>Country of origin or export</b>	<b>POI</b> (January 1, 2019 to April 30, 2020)
<b>Australia</b>	<b>3.7%</b>
<b>Austria</b>	<b>3.7%</b>
<b>Belgium</b>	<b>10.3%</b>
<b>France</b>	<b>37.9%</b>
<b>Germany</b>	<b>12.7%</b>
<b>Lithuania</b>	<b>6.6%</b>
<b>All Other Countries</b>	<b>25.1%</b>
<b>Total Imports</b>	<b>100%</b>

## **REPRESENTATIONS**

[42] During the preliminary phase of the investigation, representations were made concerning the complainant's allegations of a particular market situation in Austria, Belgium, France, Germany and Lithuania. Representations were also made with respect to various exhibits on the administrative record, including certain RFI responses. These representations concern the completeness of information provided, government involvement with certain sectors, the relationships between certain parties, identity of the exporter/importer, and various other factors. Counsel for the complainant also addressed the accuracy and completeness of the reported cost of production information and other missing or unclear information provided in the various RFI responses.<sup>11</sup>

[43] The CBSA has noted the arguments submitted in the representations and will take them into consideration in the course of verifying and analyzing information for the purposes of final decisions.

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<sup>10</sup> Exhibit 13 (PRO) – CBSA Complaint Analysis

<sup>11</sup> (NC) Exhibits 48, 50, 71, 85, 88, 102, 131, 133 – Various comments submitted by counsel for complainant

## **INVESTIGATION PROCESS**

[44] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of wheat gluten released into Canada during the POI.

[45] The governments and the exporters/producers were notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits may result in the margins of dumping and the assessment of anti-dumping duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favorable to them than if complete, verifiable information was made available.

[46] Several parties requested an extension to respond to their respective RFIs. The CBSA reviewed all requests and all exporters and governments that requested an extension were granted an extension of time that still provided CBSA adequate time to review their responses for purposes of the preliminary determination of the investigation.

[47] After reviewing the RFI responses, supplemental RFIs (SRFIs) were sent to respondents who submitted complete submissions in order to clarify information provided in the responses and request additional information, where necessary.

[48] For responding parties that did not provide complete information, deficiency letters were sent to them directly in order to notify the parties that information was missing and that without the missing information being furnished, preliminary determinations would be made on the basis of facts available.

[49] The preliminary determination is based on the information available to the CBSA at the time of the preliminary determination. During the final phase of the investigation, additional information may be obtained and selected responding parties may be verified, the results of which will be incorporated into the CBSA's final decision, which must be made by March 23, 2021.

## **PRELIMINARY RESULTS OF THE DUMPING INVESTIGATION**

[50] The following presents the preliminary results of the investigation into the dumping of wheat gluten from the named countries.

## **Normal Value**

[51] Normal values are generally estimated based on the domestic selling prices of like goods in the country of export, in accordance with the methodology of section 15 of SIMA which relies on domestic prices, or one of the methodologies of section 19. Where the methodology of subsection 19(b) is used, it is based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits.

## **Export Price**

[52] The export price of goods sold to importers in Canada is generally estimated in accordance with the methodology of section 24 of SIMA based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price. 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.

[53] Where there are sales between associated persons and/or a compensatory arrangement exists, the export price is estimated based on the importer's resale price of the imported goods in Canada to unrelated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs included in the resale price that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada as provided for in paragraphs 25(1)(c) and 25(1)(d) of SIMA.

## **Particular Market Situation (PMS) – Named Countries in Europe**

[54] 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 PMS prevails.

[55] Pursuant to subsection 16(2.1), the President may form the opinion that a PMS can exist in respect of any goods of a particular exporter or of a particular country.

[56] 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 use one of the methodologies of section 19 to determine normal values.

[57] Where the methodology of paragraph 19(b) has been applied and the CBSA is of the opinion that a PMS also distorts the cost of inputs that are material in the production of the goods, the President 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.

[58] The CBSA is investigating allegations that a PMS exists with respect to the wheat gluten markets in Austria, Belgium, France, Germany and Lithuania (the named countries in Europe). A PMS may be found to exist where factors such as government regulations, government support programs, taxation policies, distorted input costs or any other circumstances in which normal market conditions or patterns of supply and demand do not prevail have had a significant impact on the domestic sales of like goods in the country of export. The complainant alleges that the combination of these factors point towards the existence of a PMS in the European Union wheat gluten market.

[59] At the initiation of the investigation, the CBSA considered evidence supplied in the complaint and from its own research to be sufficient to examine whether a PMS exists in the named countries in Europe. Consequently, the CBSA sent RFIs pertaining to the alleged PMS to the Government of Austria, the Government of Belgium, the Government of France, the Government of Germany, and the Government of Lithuania as well as to the European Commission. Questions pertaining to PMS were also included in the Dumping RFI sent to producers and exporters of wheat gluten originating in or exported from these countries

[60] Responses to the Government PMS RFI and Supplemental RFIs were received from the Government of Belgium, the Government of France, the Government of Germany, the Government of Lithuania and the European Commission during the preliminary phase of the investigation. The Government of Austria did not provide a response to the CBSA's Government PMS RFI during the preliminary phase of the investigation. The CBSA also received responses to the Dumping RFI from a number of exporters and/or producers, which contained questions concerning the alleged PMS. Counsel for the complainant also submitted representations on the issue of PMS during the preliminary phase of the CBSA's investigation.

[61] The CBSA has considered the evidence and comments provided by the complainant, the responding exporters/producers, the governments, as well as all of the other information on the administrative record. For the purposes of the preliminary determination, the CBSA has not formed the opinion that a particular market situation exists in the wheat gluten markets in Austria, Belgium, France, Germany or Lithuania that affects the domestic sales such that they do not permit a proper comparison with the sales to the importers in Canada.

[62] In the final phase of the investigation, the CBSA will continue to review and analyze the information available and will seek to gather additional information in an attempt to form an opinion as to whether a PMS, pursuant to paragraph 16(2)(c) of SIMA, exists with respect to the wheat gluten markets in Austria, Belgium, France, Germany and Lithuania.

## **Margin of Dumping**

[63] The estimated margin of dumping by exporter is equal to the amount by which the total estimated normal value exceeds the total estimated export price of the goods, expressed as a percentage of the total estimated export price. All subject goods imported into Canada during the POI are included in the estimation of the margins of dumping of the goods. Where the total estimated normal value of the goods does not exceed the total estimated export price of the goods, the margin of dumping is zero.

[64] Although the CBSA received Dumping RFI responses from exporters in each of the named countries except Australia, a number of the responses were insufficient for the purposes of the preliminary determination. Requests to provide the required information have been sent out to these respondents. The letters noted deficiencies and advised the respondents to provide a revised RFI response to ensure that the CBSA has sufficient time to review, analyze and verify the information provided. For the purposes of the preliminary determination, sufficient information has not been furnished by the respondents to enable the CBSA to estimate normal values and export prices as provided in sections 15 to 28 of SIMA. As such, the information provided by the respondents has not been used for the purposes of the preliminary determination of dumping.

[65] Further information regarding each respondent who did submit a complete response is detailed below.

## **France**

[66] The CBSA received a substantially complete response to the Dumping RFI from two respondents in France, ADM Bazancourt and Roquette Frères.

### ***ADM Bazancourt<sup>12</sup>***

[67] ADM Bazancourt is a manufacturer that processes wheat into various products including sweeteners, wheat gluten, and starches. The company was established in 1990 as a private corporation and was acquired by Archer-Daniels-Midland in 2017. All of the subject goods shipped to Canada by ADM Bazancourt were produced at its production facility, located in Bazancourt, France. The company headquarters is also located in Bazancourt.

[68] ADM Bazancourt provided a substantially complete response to the CBSA's Dumping RFI, including a database of domestic sales of wheat gluten during the PAP. There were sufficient profitable sales of like goods to estimate normal values in accordance with the methodology of section 15 of SIMA, using the exporter's domestic prices of wheat gluten in France.

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<sup>12</sup> Exhibits 57 (PRO) and 58 (NC) – Response to Dumping RFI – ADM Bazancourt.

[69] During the POI, all of the subject goods exported to Canada by ADM Bazancourt were sold to ADM Agri-Industries, a related importer. Due to the relationship between the two companies, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the estimated section 24 export prices with the estimated section 25 export prices. The test revealed that the estimated export prices in accordance with section 24 of SIMA were reliable and, therefore, export prices for ADM Bazancourt were estimated in accordance with section 24 of SIMA.

[70] The total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 10.1% for ADM Bazancourt, expressed as a percentage of the export price.

### ***Roquette Frères***<sup>13</sup>

[71] Roquette Frères is a family-owned company, created in 1933 and the parent company of the Roquette Group, a global leader in plant-based ingredients, plant proteins and pharmaceutical excipients. Roquette Frères is a manufacturer of wheat gluten in France. It has two wheat gluten production plants in France, located in Lestrem and Beinheim. All of the subject goods shipped to Canada by Roquette Frères were produced at the production facility located in Lestrem. The company headquarters is also located in Lestrem.

[72] Roquette Frères provided a substantially complete response to the CBSA's Dumping RFI, including a database of domestic sales of wheat gluten during the PAP. There were sufficient profitable sales of like goods to estimate normal values in accordance with the methodology of section 15 of SIMA, using the exporter's domestic prices of wheat gluten in France.

[73] During the POI, all of the subject goods exported to Canada by Roquette Frères were sold to Roquette America Inc., a related importer. Due to the relationship between the two companies, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the estimated section 24 export prices with the estimated section 25 export prices. The test revealed that the estimated export prices in accordance with section 24 of SIMA were unreliable and, therefore, export prices for sales to Roquette America Inc. were estimated in accordance with section 25 of SIMA.

[74] The total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 16.1% for Roquette Frères, expressed as a percentage of the export price.

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<sup>13</sup> Exhibits 61 (PRO) and 62 (NC) – Response to Dumping RFI – Roquette Frères.

### *All Other Exporters – France*

[75] For exporters of subject goods originating in or exported from France that did not provide a response to the Dumping RFI or did not furnish sufficient information, the normal values and export prices were estimated on the basis of facts available.

[76] In establishing the methodology for estimating normal values and export prices, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by exporters of wheat gluten from the named countries and customs documentation.

[77] The CBSA decided that the normal values and export prices estimated for the exporters whose submissions were substantially complete for the preliminary determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for estimating normal values since it reflects exporters' actual trading practices during the POI. The CBSA first considered whether the information from the exporters of wheat gluten from France, who provided substantially complete information was appropriate to use as the basis for estimating the margin of dumping for all other exporters in France.

[78] The CBSA examined the difference between the estimated normal value and the estimated export price for each individual transaction of Roquette Frères and ADM Bazancourt, and considered that the highest amount (expressed as a percentage of the export price), was an appropriate basis for estimating normal values. This methodology relies on information related to goods that originated in France and limits the advantage that an exporter may gain from not providing the necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[79] Using the above methodologies, for exporters that did not provide a response or provided an incomplete response to the Dumping RFI, and for purposes of the preliminary determination, the margin of dumping of subject goods originating in or exported from France was estimated based on the highest amount by which an estimated normal value exceeded the estimated export price, on an individual transaction for Roquette Frères during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[80] Using the above methodologies, for the preliminary determination, the estimated margin of dumping for all other exporters in France is 22.5%, expressed as a percentage of the export price.

### **Lithuania**

[81] The CBSA received a substantially complete response to the Dumping RFI from one exporter in Lithuania, Roquette Amelina AB.

### ***Roquette Amilina AB<sup>14</sup>***

[82] Roquette Amilina is a majority owned subsidiary of Roquette Frères and a manufacturer of wheat gluten in Lithuania. It has one wheat gluten production plant located in Panevezys. The company headquarters is also located in Panevezys.

[83] Roquette Amilina is considered to be the exporter for SIMA purposes for the goods it has produced and sold for export to Canada during the POI.

[84] Roquette Amilina provided a substantially complete response to the CBSA's Dumping RFI, including a database of domestic sales of wheat gluten during the PAP. There were sufficient profitable sales of like goods to estimate normal values in accordance with the methodology of section 15 of SIMA, using the exporter's domestic prices of wheat gluten in the Lithuanian market.

[85] During the POI, certain subject goods exported to Canada were sold to a related importer. Due to the relationship between the two companies, a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the estimated section 24 export prices with the estimated section 25 export prices. The test revealed that the estimated export prices in accordance with section 24 of SIMA were unreliable and, therefore, export prices for these sales were estimated in accordance with section 25 of SIMA.

[86] For subject goods exported to Canada and sold to unrelated vendors during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[87] The total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 10.1% for Roquette Amilina, expressed as a percentage of the export price.

### ***All Other Exporters – Lithuania***

[88] For exporters of subject goods originating in or exported from Lithuania that did not provide a response to the Dumping RFI or did not furnish sufficient information, the normal values and export prices were estimated on the basis of facts available.

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<sup>14</sup> Exhibits 59 (PRO) and 60 (NC) – Response to Dumping RFI – Roquette Frères.

[89] In establishing the methodology for estimating normal values and export prices, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by exporters of wheat gluten from the named countries and customs documentation.

[90] The CBSA decided that the normal values and export prices estimated for the exporters whose submissions were substantially complete for the preliminary determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for estimating normal values since it reflects exporters' actual trading practices during the POI. The CBSA first considered whether the information from the exporter of wheat gluten from Lithuania, Roquette Amilina, who provided substantially complete information was appropriate to use as the basis for estimating the margin of dumping for all other exporters in Lithuania.

[91] The CBSA examined the difference between the estimated normal value and the estimated export price for each individual transaction of Roquette Amilina, and considered that the highest amount (expressed as a percentage of the export price), was an appropriate basis for estimating normal values. This methodology relies on information related to goods that originated in Lithuania and limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[92] Using the above methodologies, for exporters that did not provide a response or provided an incomplete response to the Dumping RFI, and for the purposes of the preliminary determination, the margin of dumping of subject goods originating in or exported from Lithuania was estimated based on the highest amount by which an estimated normal value exceeded the estimated export price, on an individual transaction for Roquette Amilina during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[93] Using the above methodologies, for the preliminary determination, the estimated margin of dumping for all other exporters in Lithuania is 26.1%, expressed as a percentage of the export price.

#### **All Other Exporters – Australia, Austria, Belgium and Germany**

[94] As previously stated, the CBSA did not receive substantially complete responses to the Dumping RFI from any exporters in the remaining named countries, so as a result, the normal values and export prices for all exporters in Australia, Austria, Belgium and Germany were estimated on the basis of facts available.

[95] In establishing the methodology for estimating normal values and export prices, the CBSA analyzed all the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by exporters of wheat gluten from the named countries and customs documentation.

[96] The CBSA decided that the normal values estimated for the exporters whose submissions were substantially complete for the preliminary determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for estimating normal values since it reflects exporters' actual trading practices during the POI.

[97] The CBSA would normally first consider whether information from an exporter of wheat gluten from the applicable country, who provided substantially complete information, would be appropriate to use as the basis for estimating the margin of dumping for all other exporters in each respective country. However, as no exporters in Australia, Austria, Belgium or Germany provided a substantially complete response to the CBSA's Dumping RFI, the CBSA instead considered whether information from exporters of wheat gluten from the named countries who provided substantially complete information, would be appropriate to use as the basis for estimating the margin of dumping.

[98] The CBSA examined the difference between the estimated normal value and the estimated export price for each individual transaction of each of the exporters that provided a substantially complete response, and considered that the highest amount (expressed as a percentage of the export price), was an appropriate basis for estimating normal values. This methodology relies on information related to goods that were shipped to Canada during the POI and limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[99] Using the above methodology, for exporters that did not provide a response or provided an incomplete response to the Dumping RFI, and for purposes of the preliminary determination, the margin of dumping of subject goods originating in or exported from Australia, Austria, Belgium and Germany were estimated based on the highest amount by which an estimated normal value exceeded the estimated export price, on an individual transaction for Roquette Amilina AB of Lithuania, during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[100] Using the above methodologies, for the preliminary determination, the estimated margin of dumping for all other exporters in Australia, Austria, Belgium and Germany is 26.1%, expressed as a percentage of the export price.

## Summary of Preliminary Results

[101] A summary of the preliminary results of the dumping investigation respecting all subject goods released into Canada during the POI are as follows:

### **Summary of Preliminary Results** Period of Investigation (January 1, 2019 – April 30, 2020)

<b>Country of origin or export</b>	<b>Estimated % Volume of Subject Goods as a Percentage of Total Imports</b>	<b>Estimated Margin of Dumping (as % of Export Price)</b>
<b>Australia – All Exporters</b>	<b>3.7%</b>	26.1%
<b>Austria – All Exporters</b>	<b>3.7%</b>	26.1%
<b>Belgium – All Exporters</b>	<b>10.3%</b>	26.1%
<b>France</b>	<b>37.9%</b>	
ADM		10.1%
Roquette Freres		16.1%
France - All other Exporters		22.5%
<b>Germany – All Exporters</b>	<b>12.7%</b>	26.1%
<b>Lithuania</b>	<b>6.6%</b>	
Roquette Amelina/Roquette Freres		10.1%
Lithuania - All other Exporters		26.1%
<b>All Other Countries</b>	<b>25.1%</b>	
<b>All Countries</b>	<b>100%</b>	

[102] Under section 35 of SIMA, if at any time before making a preliminary determination the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[103] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[104] The volumes of subject goods from each of the named countries are above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volumes of subject goods from these countries are therefore not negligible.

[105] If, in making a preliminary determination, the CBSA determines that the margin of dumping of the goods of a particular exporter is insignificant pursuant to section 38 of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period.

[106] Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. The margins of dumping, estimated for exporters in each of the named countries, are greater than the threshold of 2% and are therefore not considered insignificant.

[107] A summary of the estimated margins of dumping and provisional duties by exporter are presented in **Appendix 1**.

## **DECISION**

[108] On December 23, 2020, pursuant to subsection 38(1) of SIMA, the CBSA made a preliminary determination of dumping respecting wheat gluten originating in or exported from Australia, Austria, Belgium, France, Germany and Lithuania.

## **PROVISIONAL DUTY**

[109] Pursuant to subsection 8(1) of SIMA, provisional duty payable by the importer in Canada will be applied to dumped imports of wheat gluten that are released from the CBSA during the period commencing on the day the preliminary determination is made and ending on the earlier of the day on which the CBSA causes the investigation in respect of any goods to be terminated, in accordance with subsection 41(1), or the day on which the CITT makes an order or finding. The CBSA considers that the imposition of provisional duty is needed to prevent injury. As noted in the CITT's preliminary determination, there is evidence that discloses a reasonable indication that the dumping of wheat gluten has caused injury or is threatening to cause injury to the domestic industry.

[110] Imports of wheat gluten from the named countries released by the CBSA on or after December 23, 2020, will be subject to provisional duties equal to the estimated margin of dumping, expressed as a percentage of the export price of the goods per exporter. **Appendix 1** contains the estimated margins of dumping and the rates of provisional duty.

[111] Importers are required to pay provisional duty in cash or by certified cheque. Alternatively, 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. 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.

## **FUTURE ACTION**

### **The Canada Border Services Agency**

[112] The CBSA will continue its investigation and will make final decisions by March 23, 2021.

[113] If the CBSA is satisfied that the goods were dumped, and that the margins of dumping were not found to be insignificant, a final determination will be made. Otherwise, the CBSA will terminate the investigation in respect of those goods and any provisional duty paid or security posted will be refunded to importers, as appropriate.

### **The Canadian International Trade Tribunal**

[114] The CITT has begun its inquiry into the question of injury to the Canadian industry. The CITT is expected to issue its finding by April 22, 2021.

[115] If the CITT finds that the dumping has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional anti-dumping duty collected or security posted will be refunded.

[116] If the CITT makes a finding that the dumping has caused injury, retardation or is threatening to cause injury, anti-dumping duty in an amount equal to the margin of dumping will be levied, collected and paid on imports of wheat gluten that are of the same description as goods described in the CITT's finding.

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

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[118] Under certain circumstances, anti-dumping duty can be imposed retroactively on subject goods imported into Canada. When the CITT 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 CITT 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**

[119] After a preliminary determination of dumping by the CBSA, 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. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[120] 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 the CBSA's Memorandum D14-1-9, available online at:  
[www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-9-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-9-eng.html).

[121] 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.

[122] 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**

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

## **INFORMATION**

[124] This *Statement of Reasons* is posted on 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, 11<sup>th</sup> floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Sean Robertson 343-553-1584  
Laurie Trempe 343-553-5588

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

**Web site:** [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

## **ATTACHMENT**

**Appendix 1: Summary of Estimated Margins of Dumping and Provisional Duties Payable**

**APPENDIX 1 – SUMMARY OF ESTIMATED MARGINS OF DUMPING AND  
PROVISIONAL DUTIES PAYABLE**

The following table lists the estimated margins of dumping and the provisional duty by exporter as a result of the decision mentioned above. Imports of subject goods released from the Canada Border Services Agency on or after December 23, 2020, will be subject to provisional duties at the rates specified below.

Country of origin or export	Estimated Margin of Dumping*	Total Provisional Duty Payable*
<b>Australia – All Exporters</b>	26.1%	26.1%
<b>Austria – All Exporters</b>	26.1%	26.1%
<b>Belgium – All Exporters</b>	26.1%	26.1%
<b>France</b>		
ADM	10.1%	10.1%
Roquette Freres	16.1%	16.1%
France - All other Exporters	22.5%	22.5%
<b>Germany – All Exporters</b>	26.1%	26.1%
<b>Lithuania</b>		
Roquette Amelina/Roquette Freres	10.1%	10.1%
Lithuania - All other Exporters	26.1%	26.1%

\* As a percentage of export price.