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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

Dear Sirs/Mesdames:

Re: Re-investigation of normal values in *Certain Whole Potatoes*

The British Columbia Vegetable Marketing Commission (the “**BCVMC**”) writes to request that the Canada Border Services Agency (the “**CBSA**”) initiate an immediate re-investigation of the normal values and export prices of certain whole potatoes, originating in or exported from the United States of America (the “**USA**”), for use and consumption in the Province of British Columbia (“**BC**”). The BCVMC provides these representations in accordance with the CBSA policy set out in Memorandum D14-1-8, Re-investigation and Normal Value Review Policy – *Special Import Measures Act* (the “**Re-investigation Policy**”).

A. THE BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

The BCVMC is a commission established by legislation and empowered to regulate the production, transportation, packing, storing and marketing of certain vegetables grown in BC, including potatoes. The BCVMC administers the legislative scheme by way of a sub-delegation of powers to various agencies, in which potato growers are stakeholders. The BCVMC submits these representations to the CBSA on behalf of the various agencies (specifically, BC Fresh Vegetables Inc., Fraserland Organics Inc., Island Vegetable Co-op Assn., Okanagan Grown Produce Ltd. and Vancouver Island Farm Products Inc.) and on behalf of all registered potato producers in BC.

B. THE RELEVANT MEASURES IN FORCE

The BCVMC makes these representations with respect to the CBSA measures currently in force in *Certain Whole Potatoes*.¹ These measures relate to the ongoing enforcement of the findings of the Anti-dumping Tribunal, dated June 4, 1982, and the findings of the Canadian Import Tribunal, dated April 18, 1986, subsequently continued, with amendments, by orders of the Canadian International Trade Tribunal (the “**Tribunal**”) in 1990, 1995, 2000, 2005, 2010 and 2015.²

¹ CBSA dumping file #: 4237-53 and dumping case # AD/518, AD/689.

² *Certain Whole Potatoes*, most recently continued by the Tribunal in its order made in Expiry Review No. RR-2014-004 on September 9, 2015 (the “**2015 CITT Order**”).

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The subject goods in *Certain Whole Potatoes* are generally classified under the following tariff classification numbers: 0701.90.00.10 and 0701.90.00.20.³

The CBSA's last re-investigation in *Certain Whole Potatoes* was initiated on May 21, 2014 and the CBSA issued its Notice of Conclusion of Re-investigation on September 18, 2014 (the "**2014 Re-investigation Conclusion**"), setting out its conclusions on normal values (the "**2014 Normal Values**") and export prices. Attached at **Schedule "A"** is a copy of the 2014 Re-investigation Conclusion with cover letter from the CBSA to the BCVMC, dated September 18, 2014 and 2014 Normal Values. For ease of reference, the 2014 Normal Values are as follows:

Product	Normal Value/cwt
5x10 lb film/mesh bags	\$14.63
10x5 lb film/mesh bags	\$15.84
50 lb Carton	\$14.69
50 lb Sack	\$15.00
100 lb Sack	\$12.67
10 lb paper/poly bags	\$14.63
15 lb paper/poly bags	\$14.63
20 lb paper/poly bags	\$14.63

Figure 1: 2014 Normal Values

With respect to export prices, the 2014 Re-investigation Conclusion revised the methodology used to set export prices. Prior to the issuance of the 2014 Re-investigation Conclusion, the "mostly" prices (as reported in the National Potato and Onion Report published by the US Department of Agriculture ("**USDA**")) were used to determine the exporter's selling price. Effective as of September 18, 2014, export prices were to be determined based on the lesser of the importer's purchase price and the exporter's selling price. Where the export price cannot be determined in this manner, they were to be determined based on "the **declared selling price to the Canadian importer as reflected on the customs documentation** that is presented in accounting for the goods, adjusted by deducting from the selling price all costs, charges, expenses, duties and taxes described in subparagraphs 24(a)(i) to (iii) of [the *Special Import Measures Act*, RSC 1985, c S-15 ("**SIMA**")], where this information is included with the customs documentation".⁴ Since September 18, 2014, it is the BCVMC's understanding that the export price has been determined using the later methodology, utilizing the declared selling price on customs documentation.

³ CBSA Notice of Conclusion of Re-investigation, dated September 18, 2014 (the "**2014 Re-investigation Conclusion**"), p. 1, attached as Schedule "A".

⁴ Letter from the CBSA to BCVMC, dated September 18, 2014, p. 1 and 2014 Re-investigation Conclusion, p. 2, attached as Schedule "A" (emphasis added).

For the reasons set out in Part C and Part D below, the BCVMC requests that the CBSA immediately initiate a re-investigation of the normal values and export prices of certain whole potatoes.

C. THERE IS A NEED FOR UPDATED NORMAL VALUES

Several factors substantiate that an immediate re-investigation of normal values by the CBSA is required. In summary:

1. the normal values were last determined over five years ago, and they are now outdated;
2. there have been changes in exporters' costs of growing, harvesting, packaging and selling potatoes;
3. there continues to be a high volume of imports of subject goods into BC from the USA;
4. the nature of the subject goods are such that their costs are subject to fluctuations;
5. there have been changes in the exporters to BC;
6. there have been fluctuations in the currency exchange rate between Canada and the USA; and
7. the 2015 CITT Order is set to expire on September 8, 2020, and a potential expiry review is imminent.

These factors, which are discussed in more detail next, support the CBSA initiating a re-investigation of the 2014 Normal Values.

1. NORMAL VALUES WERE LAST DETERMINED OVER FIVE YEARS AGO

The CBSA Re-investigation Policy sets out various factors that the CBSA will consider in determining whether to initiate a re-investigation. One of these factors is "the elapsed time since values were last issued".⁵

As set out above, the CBSA commenced its last re-investigation into normal values on May 21, 2014, and this re-investigation concluded on September 18, 2014. Further, as the CBSA was required to incorporate "various US university cost studies"⁶ when setting the 2014 Normal Values, the data utilized was necessarily from the prior year, 2013.⁷ The resulting 2014 Normal Values are now over five years old, and are based on data that is over six years old. As such, the 2014 Normal Values are outdated and a re-investigation by the CBSA is required.

⁵ Re-investigation Policy, p. 3, para. 12(b).

⁶ Re-investigation Conclusion, p. 2.

⁷ It is the understanding of the BCVMC that the CBSA utilized university cost studies reports prepared by the University of Idaho during its 2014 Re-investigation, namely the 2013 Cost of Potato Production for Idaho With Comparisons to 2012, dated November 15, 2013 (as defined below, the "**2013 Idaho COP Report**", a copy of which is attached as Schedule B) and the 2013 Cost of Potato Production in Idaho: 5-Year Trend, dated January 17, 2014.

The Re-investigation Policy states that if “several years have elapsed since the values were last issued”, that this would be one factor in the CBSA finding that there is a “strong case for conducting a re-investigation”.⁸ We also note that the CBSA recently issued a Notice of Re-investigation in *Certain Oil Country Tubular Goods (OCTG I & II) and Seamless Casings*,⁹ under the Re-investigation Policy, and that one of the factors raised in representations was the fact that over four years had passed since the last re-investigation concluded on December 14, 2015.¹⁰

The passage of over five years is particularly relevant to the accuracy of the 2014 Normal Values in the present matter. In assessing the 2014 Normal Values, the CBSA did not receive any responses from exporters to its Requests for Information. Accordingly, the 2014 Normal Values were determined based on “the total costs and expenses associated with growing and harvesting potatoes, using various US university cost studies, plus an amount for profit and an estimated amount for packing, administration and selling of the goods, as specified by the Minister”.¹¹ With the passage of time, there have been changes in the costs of growing, harvesting, packing and selling potatoes, which have directly affected the applicability of the current 2014 Normal Values. These cost changes are discussed in more detail next.

2. THERE HAVE BEEN CHANGES IN EXPORTERS’ COSTS

A second factor identified by the Re-investigation Policy for consideration by the CBSA is “changes in the exporter’s costs”,¹² and again, the Re-investigation Policy lists this factor as one supporting a finding that there is a “strong case for conducting a re-investigation”.¹³

In the case of potatoes, the costs of growing, harvesting, packing and selling potatoes has increased considerably since the 2014 Normal Values were determined. Several examples, including the costs of labour, debt financing, water and packaging, are set out below. Overall, as is described in Part C(2)(ii) below, it is estimated that the cost of producing potatoes has increased by **approximately 10%**, and the cost of producing fresh potatoes specifically has likely increased by more.

i. Some Specific Examples

Labour Costs

As noted above, the cost of farm labour has increased since the last re-investigation was completed in 2014. Labour is used in crop production, including the operation of cultivating, planting and harvesting machinery, driving transport trucks and managing irrigation systems, as well as in storage and packing.

⁸ Re-investigation Policy, p. 3, para. 13.

⁹ Notice of Re-investigation, dated September 27, 2019

¹⁰ Representations by Tenaris and Evraz North America to the CBSA, dated August 30, 2019.

¹¹ 2014 Re-investigation Conclusion, p. 2.

¹² Re-investigation Policy, p. 3, para. 12(g).

¹³ Re-investigation Policy, p. 3, para. 13.

The United States Department of Agriculture National Agricultural Statistics Service (the “**USDA-NASS**”) published the following chart in May 2019, summarizing farm wage rates in the USA (for all workers, as well as those in field/livestock specifically) for the period of 1998 through 2019 (by quarter):

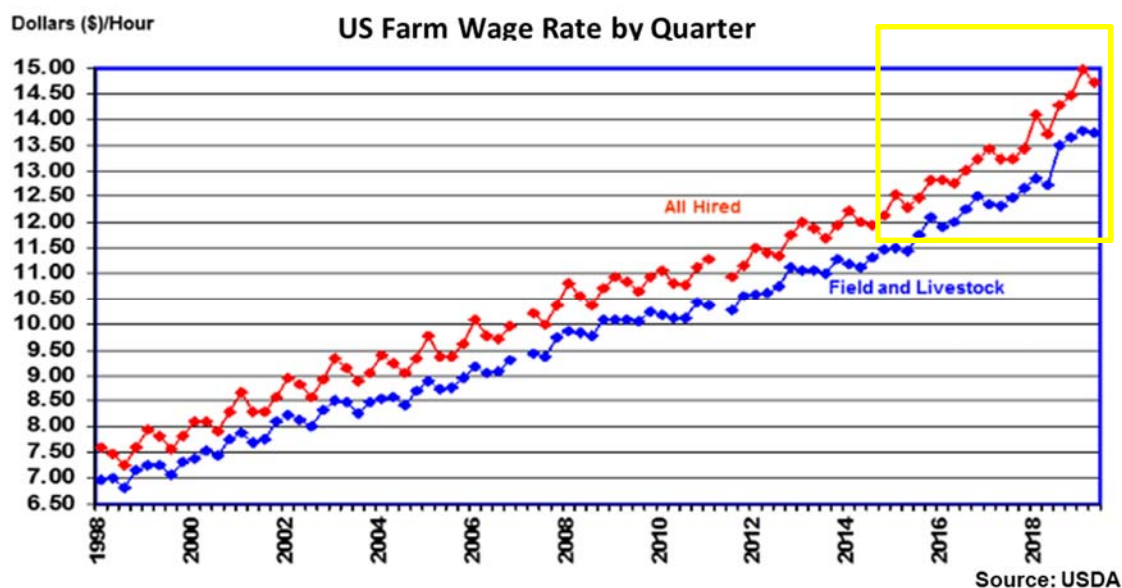


Figure 2: USDA-NASS USA Farm Wage Rate (1998-2018)¹⁴

The yellow box on Figure 2 above highlights the changes in labour wage rates since approximately September 2014, when the 2014 Normal Values were established. It demonstrates the significant increases in farm wages (including for field and livestock workers specifically, signified by the blue line) during this period, from approximately US\$11.50 per hour in the third quarter of 2014 to approximately US\$13.75 per hour in the second quarter of 2019. This represents an increase of approximately **19.6%**.

With respect to potatoes specifically, labour input costs are discussed in US university cost studies prepared by the University of Idaho for the Idaho Potato Commission.¹⁵ The 2013 version of this report, dated November 15, 2013 (the “**2013 Idaho COP Report**”), the 2017 version of this report, dated January 15, 2018 (the “**2017 Idaho COP Report**”) and the 2018 version, dated January 18, 2019 (the “**2018 Idaho COP Report**”), are attached at **Schedule “B”** through **Schedule “D”**.

¹⁴ USDA-NASS, “U.S. Farm Wage Rate Quarterly Data”, published at: https://www.nass.usda.gov/Charts_and_Maps/Farm_Labor/fl_qtrwpg.php

¹⁵ It is the understanding of the BCVMC that the CBSA utilized similar university cost studies reports prepared by the University of Idaho during its 2014 Re-investigation, namely the 2013 Idaho COP Report (which is attached as Schedule B) and the 2013 Cost of Potato Production in Idaho: 5-Year Trend, dated January 17, 2014.

Idaho's cost data is particularly relevant to assessing appropriate normal values, as Idaho has more acres of potatoes planted than any other state in the USA, as well as the largest volume of production. It is also one of the primary states of origin of potatoes exported to BC (along with Washington and Oregon).

The following data is extracted from Table 3 of the 2013 Idaho COP Report, the 2017 Idaho COP Report and the 2018 Idaho COP Report (together, the "**Idaho COP Reports**"), and sets out changes in labour costs associated with potato production in Idaho for the period of 2013 through 2018, and the increase that has occurred during this period. We have calculated the change that has occurred between 2013 and 2018 due to the fact, as noted above, it is the BCVMC's understanding that the 2014 Normal Values took into account 2013 data.

	2013	2014	2015	2016	2017	2018	<i>Change (13-18)</i>
<u>Labour Class (overhead)</u>							
Equipment Operator Labor (25%)	\$17.80	\$18.10	\$18.50	\$19.15	\$19.70	\$21.10	18.5%
Truck Driver Labor (25%)	\$13.80	\$14.05	\$14.40	\$14.90	\$15.35	\$16.45	19.2%
Irrigation Labor: HL & WL (30%)	\$12.60	\$12.85	\$13.15	\$13.60	\$14.00	\$15.00	19.0%
Irrigation Labor: CP (25%)	\$17.80	\$18.10	\$18.50	\$19.15	\$19.70	\$21.10	18.5%
Irrigation Labor: Chem-Fert (25%)	\$17.80	\$18.10	\$18.50	\$19.15	\$19.70	\$21.10	18.5%
General Farm Labor (15%)	\$10.25	\$10.40	\$10.65	\$11.00	\$11.35	\$12.15	18.5%

Figure 3: Idaho Labour Rates (2013 to 2018)¹⁶

Accordingly, the Idaho COP Reports demonstrate that labour wages associated with growing potatoes in Idaho have increased between **18.5%** and **19.2%** since 2013.

Interest Rates

A second input cost that has increased since the 2014 Normal Value were set, impacting the cost of debt financing and therefore producing potatoes, is interest rates. Interest rates impact the cost of borrowing money, which is a cost often incurred for land or machinery purchases or rentals.

¹⁶ Extracted from Table 3 of the 2013 Idaho COP Report (see Schedule B, p. 12), the 2017 Idaho COP Report (see Schedule C, p. 11) and the 2018 Idaho COP Report (see Schedule D, p. 10).

The following chart sets out the federal prime rate in the USA for the period of January 2013 through to August 2019:

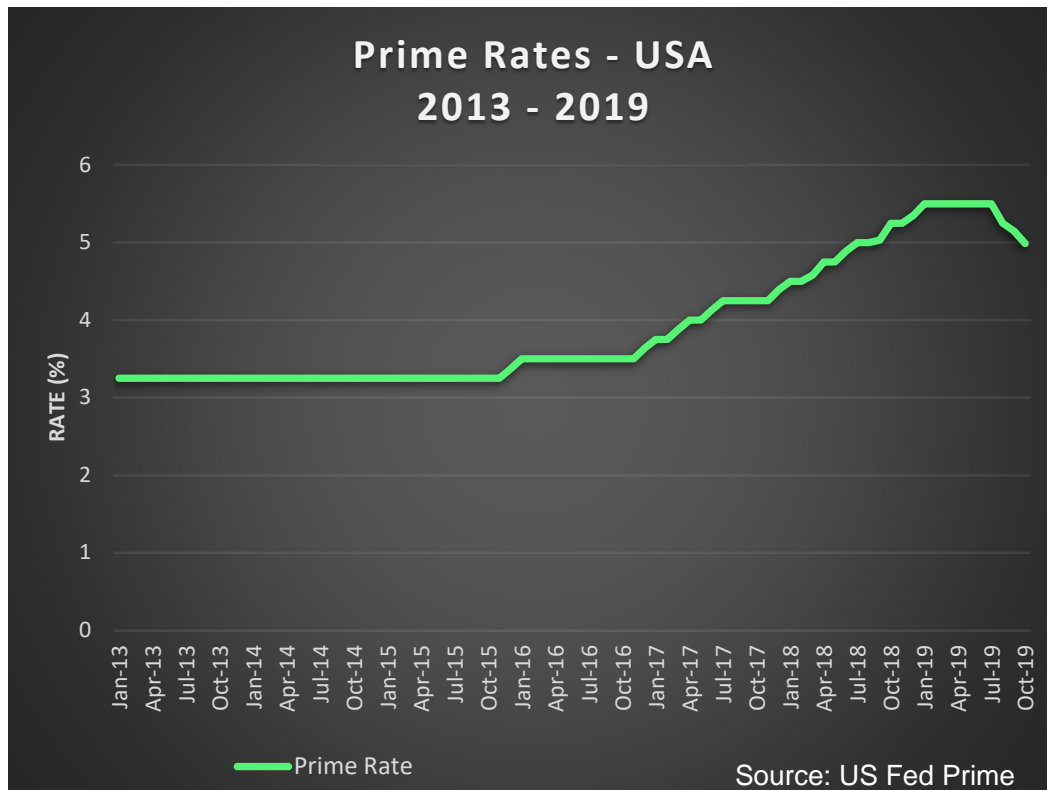


Figure 4: USA Federal Prime Rate (2013 to 2019)¹⁷

This chart demonstrates how the prime rate has fluctuated in recent years, and how it has risen from **3.25%** (in 2013/2014) to **4.99%** in October 2019.

Additionally, the Idaho COP Reports demonstrate that operating interest rates in Idaho rose from **5.75%** in 2013 to **6.75%** in 2018.¹⁸

¹⁷ US Federal Prime Rates, published at: http://www.fedprimerate.com/prime_rate_history-monthly.htm

¹⁸ Extracted from Table 3 of the 2013 Idaho COP Report (see Schedule B, p. 11), the 2017 Idaho COP Report (see Schedule C, p. 11) and the 2018 Idaho COP Report (see Schedule D, p. 10).

Water Costs

The Idaho COP Reports also provide data on water assessment costs in four regions of Idaho, which are summarized as follows:

	2013	2014	2015	2016	2017	2018	<i>Change 13-18</i>
Southwestern Idaho	\$45.55	\$50.60	\$50.60	\$53.50	\$53.50	\$53.50	17.5%
Southcentral Idaho	\$42.20	\$45.60	\$45.60	\$47.50	\$47.50	\$47.50	12.6%
Eastern Idaho South District	\$25.00	\$35.00	\$35.00	\$37.00	\$38.00	\$38.00	52.0%
Eastern Idaho North District	\$11.00	\$12.05	\$12.05	\$12.50	\$12.75	\$12.75	15.9%

Figure 5: Idaho Water Costs (2013 to 2018)¹⁹

This demonstrates that the cost of water (which is used in irrigation and for cleaning potatoes after harvest) has increased in Idaho between **12.6%** and **52.0%** since the 2014 Normal Values were established (utilizing 2013 data).

¹⁹ Extracted from Tables 4-a, 4-b and 4-c of the 2013 Idaho COP Report (see Schedule B, pp. 12-13), the 2017 Idaho COP Report (see Schedule C, p. 12) and the 2018 Idaho COP Report (see Schedule D, p. 11).

Packaging Costs

As a final example, the costs associated with packaging potatoes have also changed since the 2014 Normal Values were determined. The following chart sets out West Coast paper pricing for two types of packaging: corrugated medium packaging and lineboard:

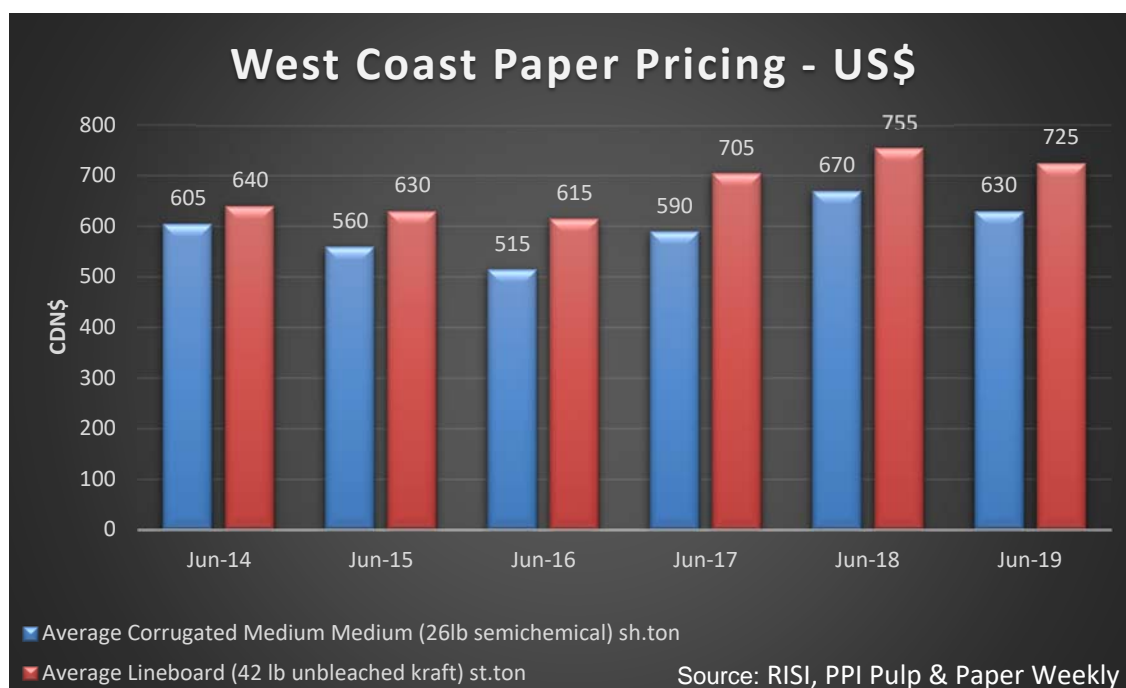


Figure 6: Packaging Costs (June 2014 to June 2019)²⁰

This chart demonstrates how the cost of corrugated medium has risen from \$605.00 to \$630.00 over the five years from June 2014 to June 2019, and how lineboard has risen from \$640.00 to \$725.00 over the same period. This represents increases of **4.1%** and **13.2%**, respectively.

ii. Aggregate COP

The Idaho COP Reports calculate the operating and ownership costs associated with growing Russet Burbank potatoes (both with fumigation and with no fumigation), which are tallied to determine a cost of production per acre. The Idaho COP Reports also prepare a similar calculation for the cost of production of Russet Burbank potatoes per hundredweight ("**cwt**"); however, the cost of production per cwt is determined on the basis of field run yield,²¹ which represents all crop that is removed from the field, as opposed to the paid yield, which is the crop that is marketable and can be sold. Field run yield is higher than paid yield, which takes into account losses that occur during harvesting, washing and storing.

²⁰ Fastmarkets RISI, see the following for the methodology used by Fastmarkets RISI to collect this data:

<https://www.risiinfo.com/approach/methodology/price-assessment-methodology/>

²¹ See, for example, the 2017 Idaho COP Report, at p. 7 (attached as Schedule C).

For the purposes of determining normal values, utilizing paid yield (as opposed to field yield) to determine the cost of production more accurately reflects the cost of production of the goods sold. Accordingly, the BCVMC has utilized paid yield in its calculations of cost of production. Additionally, the determination of paid yield has changed since the 2014 Normal Values were determined. In the 2013 Idaho COP Report (which, as noted above, the BCVMC understands that the CBSA considered in determining the 2014 Normal Values), paid yield was assessed as 95% of field run yield. In the 2018 Idaho COP Report, paid yield was changed to 90% of field run yield.²² While the 2018 Idaho COP Report does not provide details of the reason for the change, it is the view of the BCVMC that paid yield determined on the basis of 90% of field-run yield more accurately reflects the crop losses that occur during harvesting, washing and storing. Accordingly, to the extent the 2014 Normal Values were determined on the basis of either (a) field-run yield or (b) paid yield assessed at 95% of field-run yield, the 2014 Normal Values will now understate the cost of production.

Attached at **Schedule “E”** are calculations that set out:

- Page E-1 - Potato Cost of Production in Idaho per acre, which contains data extracted from the Idaho COP Reports;
- Page E-2 – Potato Cost of Production in Idaho per cwt (calculated on field run yield), which contains data extracted from the Idaho COP Reports;
- Page E-3 – Field Run Yield in Idaho per acre, which contains USDA data; and
- Page E-4 - Potato Cost of Production in Idaho per cwt (calculated on paid yield), which is based on the data from page E-1 and page E-3.

²² See page 7 of the 2018 Idaho COP Report, at Schedule **D**, which refers to a paid yield of 90% of field-run yield, and that 95% was used prior to 2017.

The Idaho cost of production per cwt (calculated on the basis of paid yield), as set out on Page E-4 of Schedule E, may be summarized as follows:

Operating Cost of Production Per CWT For Irrigated Russet Burbank Potatoes By Region							
	Southwestern	Southcentral	Eastern - South		Southcentral	Eastern - South	Eastern - North
Year	Russet Burbank with Fumigation	Russet Burbank with Fumigation	Russet Burbank with Fumigation		Russet Burbank No Fumigation	Russet Burbank No Fumigation	Russet Burbank No Fumigation
2012	\$ 5.00				\$ 4.63		
2013	\$ 4.89				\$ 4.63		
2014	\$ 4.93	\$ 5.02	\$ 4.95		\$ 4.56	\$ 4.57	\$ 4.48
2015	\$ 5.14	\$ 4.99	\$ 4.94		\$ 4.63	\$ 4.57	\$ 4.55
2016	\$ 4.69	\$ 4.47	\$ 4.47		\$ 4.07	\$ 4.16	\$ 4.15
2017	\$ 5.17	\$ 4.93	\$ 4.90		\$ 4.56	\$ 4.54	\$ 4.49
2018	\$ 5.13	\$ 4.94	\$ 5.02		\$ 4.66	\$ 4.57	\$ 4.59
5-Yr % Chg (2013-18)	5%				1%		

Ownership Cost of Production Per CWT For Irrigated Russet Burbank Potatoes By Region							
	Southwestern	Southcentral	Eastern - South		Southcentral	Eastern - South	Eastern - North
Year	Russet Burbank with Fumigation	Russet Burbank with Fumigation	Russet Burbank with Fumigation		Russet Burbank No Fumigation	Russet Burbank No Fumigation	Russet Burbank No Fumigation
2012	\$ 2.24				\$ 2.41		
2013	\$ 2.25				\$ 2.46		
2014	\$ 2.45	\$ 2.38	\$ 2.33		\$ 2.58	\$ 2.52	\$ 2.37
2015	\$ 2.52	\$ 2.49	\$ 2.41		\$ 2.65	\$ 2.57	\$ 2.41
2016	\$ 2.54	\$ 2.44	\$ 2.41		\$ 2.59	\$ 2.58	\$ 2.39
2017	\$ 2.73	\$ 2.65	\$ 2.56		\$ 2.82	\$ 2.74	\$ 2.51
2018	\$ 2.72	\$ 2.70	\$ 2.60		\$ 2.93	\$ 2.74	\$ 2.55
4 5-Yr % Chg (2013-18)	21%				19%		

Total Cost of Production Per CWT For Irrigated Russet Burbank Potatoes By Region							
	Southwestern	Southcentral	Eastern - South		Southcentral	Eastern - South	Eastern - North
Year	Russet Burbank with Fumigation	Russet Burbank with Fumigation	Russet Burbank with Fumigation		Russet Burbank No Fumigation	Russet Burbank No Fumigation	Russet Burbank No Fumigation
2012	\$ 7.24	\$ -	\$ -		\$ 7.04	\$ -	\$ -
2013	\$ 7.14	\$ -	\$ -		\$ 7.09	\$ -	\$ -
2014	\$ 7.38	\$ 7.40	\$ 7.28		\$ 7.14	\$ 7.09	\$ 6.86
2015	\$ 7.66	\$ 7.48	\$ 7.34		\$ 7.28	\$ 7.14	\$ 6.96
2016	\$ 7.23	\$ 6.92	\$ 6.88		\$ 6.66	\$ 6.73	\$ 6.54
2017	\$ 7.89	\$ 7.58	\$ 7.46		\$ 7.38	\$ 7.29	\$ 7.00
2018	\$ 7.86	\$ 7.65	\$ 7.62		\$ 7.59	\$ 7.31	\$ 7.14
5-Yr % Chg (2013-18)	10%				7%		

Figure 7: Idaho Cost of Production per cwt, Paid Yield (2013 to 2018)²³

²³ See Schedule E, p. E-4.

The above chart demonstrates that the cost of production for Russet Burbank potatoes in Southwestern Idaho (with fumigation) has increased by 10% since 2013 (and since the 2013 Idaho COP Report, utilized in the 2014 Re-investigation). For Russet Burbanks (with no fumigation), the increase in cost of production is 7%.

While this same data was not available in the Idaho COP Reports for other regions in Idaho for the full five year period,²⁴ Figure 8 above shows that the cost of production in these other regions have also increased over the last four years.

Further, the aggregate cost of production figures in the Idaho COP Reports likely underestimate the actual cost of producing the potatoes that are the subject goods in *Certain Whole Potatoes*. This is because these reports assess “the cost of producing potatoes” generally,²⁵ and do not differentiate between potatoes grown for the fresh market and for the processing market. This is relevant because the fresh market variable costs are higher than the variable costs associated with potatoes grown for processing, as the fresh potatoes require additional soil preparation and planting costs, as well as additional chemical and fertilizer use.

Further, we note that the above figures do not take into account any cost of storage, washing, grading or packing.

Data from the USDA-NASS also demonstrates that farm service expenditures more generally have increased in recent years:

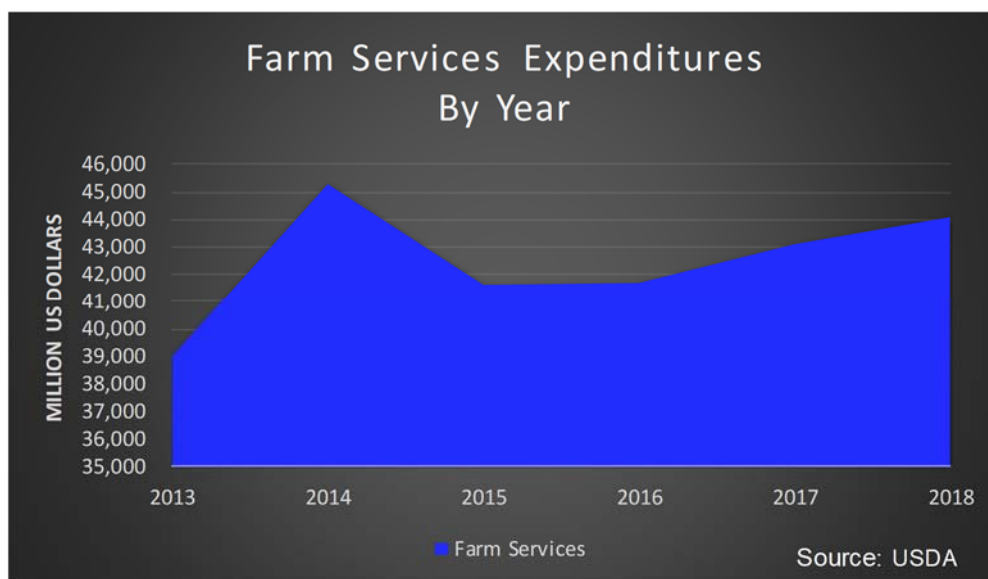


Figure 8: USDA-NASS Farm Services Expenditures 2013 to 2018

²⁴ The dataset provided in the Idaho COP Reports was expanded as of the 2017 Idaho COP Report.

²⁵ 2018 Idaho COP Report, p. 1.

Figure 9 above shows that farm service expenditures increase by **13%** between 2013 and 2018.

On the basis of the above, it is clear that there has been a change in exporters' costs since the 2014 Normal Values were established, and that the cost of production in the United States has increased.

3. CONTINUED, SUBSTANTIAL IMPORT VOLUMES

Another factor the Re-investigation Policy states is that the CBSA will consider "[t]he volume of imports of the subject goods and fluctuations in import volumes".²⁶ The CBSA enforcement statistics for the years 2014 through 2018 are as follows:

Annual Total Amounts					
Year	Value for Duty Monitored	Quantity Monitored	Value for Duty Subject	Quantity Subject	SIMA Duties
2018	\$50,181,063	620,978 MT	\$6,814,450	189,107 MT	\$91,565
2017	\$30,068,412	200,149 MT	\$8,386,904	98,613 MT	\$212,998
2016	\$50,008,639	337,559 MT	\$6,437,093	88,102 MT	\$216,562
2015	\$44,854,024	610,275 MT	\$7,111,934	260,707 MT	\$321,550
2014	\$27,776,945	847,511 MT	\$6,916,848	285,183 MT	\$394,564

Figure 9: CBSA Enforcement Statistics, Certain Whole Potatoes²⁷

These statistics show that there have been substantial volumes of imports of the subject goods from the USA into BC since the last re-investigation in 2014 and duties imposed on substantial volumes.

The CBSA website also comments that "[t]here was a high rate of compliance given that this measure has been in force since 1984. The majority of importers were aware of the measure in place and self-assessed anti-dumping duty applicable at time of entry", and that "[t]he CBSA's 2014 re-investigation introduced fixed normal values and, as a result, many exporters have been selling at or above normal values".²⁸ As is described below in Part D, the BCVMC has concerns that certain exporters and importers may be reporting the selling price on their custom declarations in a misleading way.

4. NATURE OF THE SUBJECT GOODS

A fourth factor that the CBSA may consider when determining whether to initiate a reinvestigation is "the nature of the subject goods".²⁹ The growing, harvesting, storing and selling of potatoes involves a variety of diverse costs (certain of which are outlined in Part C(2) above). These costs are subject to regular variations, which supports the regular review of normal values.

²⁶ Re-Investigation Policy, p. 3, para. 12(a).

²⁷ CBSA, "Import Statistics for SIMA Measures in Force", published at <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html> (accessed December 5, 2019).

²⁸ CBSA, "Import Statistics for SIMA Measures in Force", published at <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html> (accessed December 5, 2019).

²⁹ Re-Investigation Policy, p. 3, para. 12(b).

5. NEW EXPORTERS

Fifth, the CBSA may consider the “presence of new exporters of the subject goods” when considering whether to initiate a re-investigation. Since the 2014 Normal Values were established, there have been some changes in the exporters selling the subject goods from the USA to BC. In particular, exporter Easterday Farms in Washington has become a major exporter to BC since 2014. Additionally, exporter Wahluke re-entered the market after previously filing Chapter 11 and ceasing all sales to BC.

6. FLUCTUATIONS IN CURRENCY EXCHANGE RATE

Additionally, there have been fluctuations in the currency exchange rate since the 2014 Normal Values were established, which is another relevant factor for consideration in the Re-investigation Policy.³⁰ Below is a chart summarizing the exchange rate, based on information obtained from the UBC Sauder School of business, for the period of September 2014 (when the 2014 Normal Value came into effect) to September 2019:

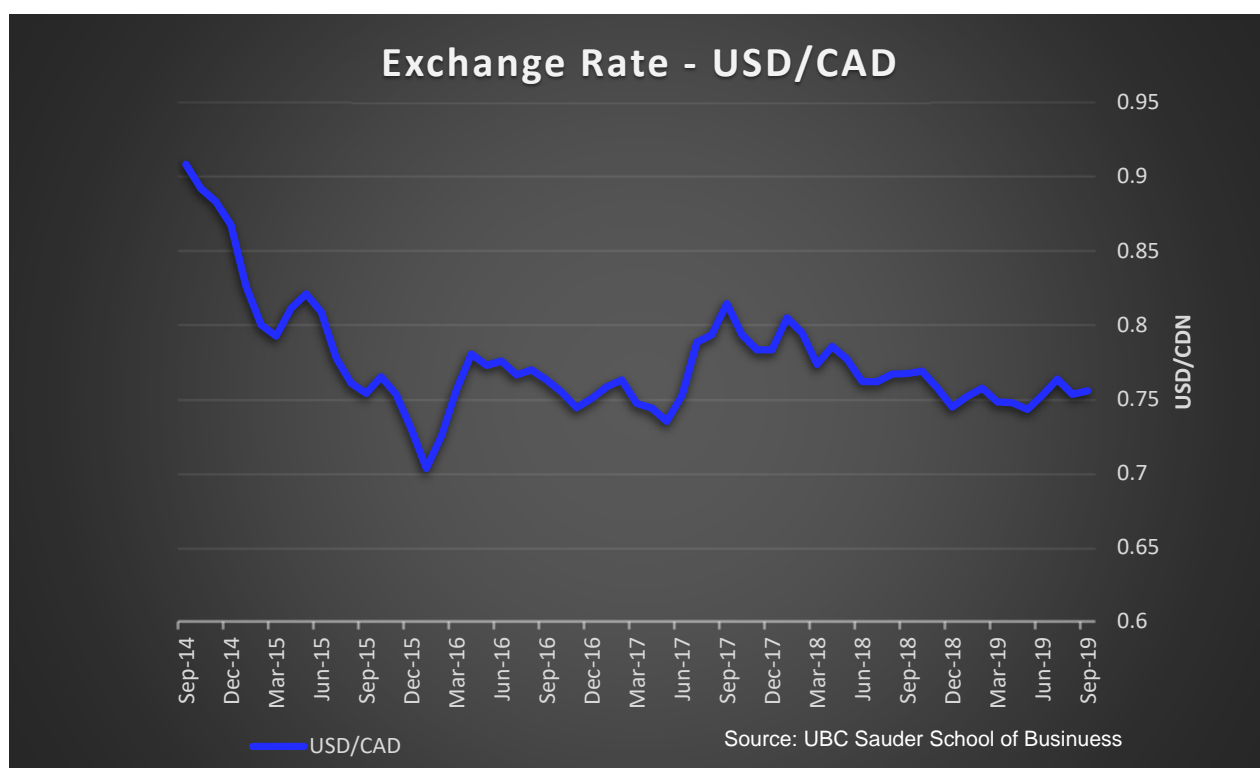


Figure 10: USD/CAD Exchange Rate (September 2014 to 2019)³¹

Notably, there was a sharp decline in the exchange rate, shortly after the 2014 Normal Values were established, and the USD/CAD exchange rate remains lower than it was in September 2014.

³⁰ Re-investigation Policy, p. 3, para. 12(h).

³¹ UBC Sauder School of Business, published at: <http://fx.sauder.ubc.ca/> (accessed on December 5, 2019).

7. UPCOMING EXPIRY REVIEW

Finally, the Re-investigation Policy states that the “timing of the next potential expiry review” is a relevant factor to be considered by the CBSA.³² A potential expiry review is imminent, as the current finding in the 2015 CITT Order is set to expire on September 8, 2020. The Tribunal’s website currently states that the latest possible date for issuance of a Notice of Expiry is July 9, 2020.³³

As a re-investigation is typically conducted over an approximately six-month period, if the CBSA initiates a re-investigation in the near future, it could be concluded by June 2020, before the Tribunal issues a Notice of Expiry.

The outcome of the re-investigation will assist the expiry review. Among other things, the re-investigation will result in Normal Values that more accurately represent the current cost of production in the United States and will allow for a more accurate margin of dumping calculation and injury assessment. It will also allow for the collection of more accurate enforcement statistics, determine whether outdated normal values may have contributed to past import volumes and inform the degree of subject exporter interest in the Canadian market. The timing for the upcoming expiry review therefore favours initiating the requested re-investigation.

D. THERE IS A NEED TO REVISE THE METHODOLOGY FOR ASSESSING EXPORT PRICES

As was noted above, prior to the 2014 Re-investigation Conclusion, the “mostly” prices (as reported in the National Potato and Onion Report published by the USDA were used to determine the exporter’s selling price. This was revised effective as of September 18, 2014, so that export prices were to be determined based on the lesser of the importer’s purchase price and the exporter’s selling price (or, where this is not possible, based on “the declared selling price to the Canadian importer as reflected on the customs documentation that is presented in accounting for the goods, adjusted by deducting from the selling price all costs, charges, expenses, duties and taxes described in subparagraphs 24(a)(i) to (iii) of SIMA, where this information is included with the customs documentation”.³⁴

The BCVMC has concerns that basing the export price on the declared selling price on custom documentation is vulnerable to abuse and could be easily circumvented. For example, where an importer is purchasing several types of products from an exporter (and certain of those products are not subject to duties), a higher than reasonable price could be recorded for the certain whole potatoes (thus avoiding triggering duties and saving this expense), in exchange for other products (that are not subject to duties) being purchased or recorded at an artificially low price. This would not only prevent duties from being paid when they otherwise should be, but it also would skew the data to make it appear that certain whole potatoes are not being dumped, when they are being dumped.

Figure 11 below, compares the “mostly” prices of 5x10-lb poly bales and 10x5-lb poly bales with the 2014 Normal Values, for 2015 through to 2019 (up to November 23, 2019), tracking the former methodology

³² Re-investigation Policy, p. 3, para. 12(n).

³³ <https://www.citt-tcce.gc.ca/en/collections/anti-dumping-injury-inquiries/measures-in-force-expiry-time-lines.html>

³⁴ Letter from the CBSA to BCVMC, dated September 18, 2014, p. 1 and 2014 Re-investigation Conclusion, p. 2, attached as Schedule “A” (emphasis added).

of using “mostly” prices to determine the export price. This Figure demonstrates that the “mostly” prices were below the 2014 Normal Values for the vast majority of these annual periods (and, in fact, the “mostly” prices were below the 2014 Normal Values for the full season in 2015, 2016 and 2018, for both pack sizes).

Annual Period: August 1st to April 30th for 5x10-lb Poly Bales (Mostly High Price)

Year	No. of Weeks Russets Sold Below Cost into BC	Total Weeks in Season	% of Weeks with Duty	Margin Of Dumping	
				Min	Max
2015	40 Weeks	out of 40	100%	46%	83%
2016	39 Weeks	out of 39	100%	33%	83%
2017	37 Weeks	out of 39	95%	5%	33%
2018	39 Weeks	out of 39	100%	13%	46%
2019*	16 Weeks	out of 17	94%	5%	46%

* For 2019, calculation is based on data from August 1st to Nov 23rd.

Sources: BCVMC, USDA National Potato and Onion Reports

Table 4

Annual Period: August 1st to April 30th for 10x5-lb Poly Bales (Mostly High Price)

Year	No. of Weeks Russets Sold Below Cost into BC	Total Weeks in Season	% of Weeks with Duty	Margin Of Dumping	
				Min	Max
2015	40 Weeks	out of 40	100%	32%	58%
2016	39 Weeks	out of 39	100%	22%	58%
2017	34 Weeks	out of 39	87%	13%	22%
2018	39 Weeks	out of 39	100%	6%	32%
2019*	11 Weeks	out of 17	65%	13%	32%

* For 2019, calculation is based on data from August 1st to Nov 23rd.

Sources: BCVMC, USDA National Potato and Onion Reports

Figure 11: USD/CAD Exchange Rate (September 2014 to 2019)³⁵

While the CBSA enforcement statistics set out in Part C(3) above continue to show substantial volumes of dumping and duties collected, Figure 11 suggests that the methodology for assessing export price could be allowing for circumvention of duties, such that the actual volume and margin of dumping could be even higher than is reported.

Accordingly, in addition to the request of the BCVMC for a re-investigation of Normal Values, the BCVMC also requests that the CBSA conduct a re-investigation into the methodology used to set export prices. In this respect, the BCVMC also relies on the submissions made in Part C(1), (3) and (7) above, with respect to normal values, as applying equally to why the CBSA should reassess export prices.

³⁵ UBC Sauder School of Business, published at: <http://fx.sauder.ubc.ca/> (accessed on December 5, 2019).

January 10, 2020

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E. CONCLUSION

In summary, the BCVMC requests that the CBSA immediate initiate a re-investigation of normal values and the methodology used to set export prices, with respect to *Certain Whole Potatoes*.

Yours truly,

FARRIS LLP

Per:

for:



Robert J. McDonell

RJM/

Enclosure

c.c.: BCVMC