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PUBLIC

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: Request for Re-investigation of Normal Values and Export
Prices 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 CBSA 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 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, 2015 and 2021.²

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-2020-002 on June 2, 2021 (the “**2021 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 resulting 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 and the attached 2014 Normal Values. For ease of reference, the 2014 Normal Values are as follows:

<u>Product</u>	<u>Normal Value/cwt</u>
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

In addition to setting the 2014 Normal Values, 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. Following the 2014 Re-investigation Conclusion, export prices were to be determined based on the lesser of the importer's purchase price and the exporter's selling price, effective as of September 18, 2024. However, where the export price could not be determined in this manner, the 2014 Re-investigation Conclusion provided that 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

It is the BCVMC's understanding that, since the 2014 Re-investigation Conclusion on September 18, 2014, it has been this latter methodology that has been utilized to determine the export price – i.e. 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 (see attached 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).

C. THE BCVMC'S 2020 REQUEST FOR RE-INVESTIGATION

On January 10, 2020, the BCVMC submitted a request to the CBSA that it initiate a re-investigation into the normal values and export prices for certain whole potatoes (the “**2020 Representations**”). In the 2020 Representations, the BCVMC submitted that the 2014 Normal Values were outdated and did not reflect the current USA cost of production, estimating that this cost of production had increased by 7-10% from the 2014 Normal Values by 2020. Further, the BCVMC expressed concern that relying on custom declarations to determine export price could be vulnerable to abuse, and easily circumvented.

On June 23, 2020, the CBSA notified the BCVMC that it was “not currently planning on conducting a re-investigation of the SIMA measures on certain whole potatoes”, but that the CBSA would initiate an expiry review investigation if the Tribunal initiated an expiry review on July 29, 2020. This expiry review occurred, ultimately resulting in the Tribunal’s order in Expiry Review No. RR-2020-002, dated June 2, 2021 (the “**2021 Expiry Review**”).

The BCVMC acknowledges that the spring of 2020 was an unprecedented time, due to the COVID-19 pandemic, and that this may have resulted in there being other pressing priorities for the CBSA. However, as is set out in more detail in these representations, the 2014 Normal Values are now further outdated, and do not reflect the reality of the current USA cost of production. As such, the BCVMC again requests that the CBSA immediately initiate a re-investigation of the normal values and export prices of certain whole potatoes.

D. THERE IS A NEED FOR UPDATED NORMAL VALUES

Several factors substantiate that an immediate re-investigation of normal values by the CBSA is required, including:

1. the normal values were last determined over ten years ago, based on data that is now eleven years old, and the 2014 Normal Values are now significantly outdated;
2. there have been substantial 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 2021 CITT Order is set to expire on June 1, 2026, and a potential expiry review is quickly approaching.

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

1. NORMAL VALUES WERE LAST DETERMINED OVER TEN YEARS AGO

One factor that the CBSA will consider in determining whether to initiate a re-investigation 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. In undertaking this re-investigation and setting the 2014 Normal Values, the CBSA considered various USA cost studies, meaning that the data utilized was necessarily from the prior year, 2013.⁶ As such, the 2014 Normal Values are now over ten years old, and are based on data that is over eleven years old.

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”.⁷ We note that, for example, in 2024 the CBSA issued a Notice of Initiation of a Re-Investigation in *Gypsum Board*, under the Re-investigation Policy.⁸ One of the factors raised in representations was that a re-investigation had not been conducted since 2018, with one representation asserted that “The normal values and references prices in *Gypsum Board* are so old that alleging staleness does not capture the extent of their irrelevance and obsolescence.”⁹

Given the passage of time since the 2014 Normal Values were set, we submit that there is a very strong case for the CBSA to now conduct a re-investigation.

2. THERE HAVE BEEN SIGNIFICANT CHANGES IN EXPORTERS’ COSTS

A second factor identified for consideration by the CBSA is “changes in the exporter’s costs”,¹⁰ which is also described as being a factor supporting a finding that there is a “strong case for conducting a re-investigation”.¹¹

Over the past few years, each of Canada and the USA have experienced inflation rates at a forty-year high. In the case of potatoes, the input costs of growing, harvesting, packing and selling potatoes have increased significantly since the 2014 Normal Values were determined, directly affecting the applicability of the current 2014 Normal Values. Several specific examples of increased input costs are described next, with respect to the costs of labour, debt financing, fertilizer and packaging, are set out below.

We also summarize several studies on aggregate cost of production in the US, which demonstrate that the cost of producing fresh potatoes in the Columbia Basin and Klamath Basin regions in Washington State, Idaho and California (which export potatoes to BC) have increased significantly since the 2014 Normal Values were established. For example, in Idaho, the cost of production increased by approximately 50% from 2014 to 2023.

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

⁶ Schedule A, Re-investigation Conclusion, p. 2. 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.

⁷ Schedule A, Re-investigation Policy, para. 13.

⁸ Notice of Initiation of a Re-investigation, dated January 17, 2024.

⁹ Representations by The International Brotherhood of Boilermakers and Teamsters Local 213, dated December 6, 2023.

¹⁰ Re-investigation Policy, p. 3, para. 12(g).

¹¹ Re-investigation Policy, p. 3, para. 13.

i. **Specific Examples of Input Cost Increases**

a. **Labour Costs**

First, the cost of farm labour has increased substantially 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 storing and packing potatoes.

The United States Department of Agriculture National Agricultural Statistics Service (the “**USDA-NASS**”) published the following chart in May 2024, summarizing farm wage rates in the USA (for all workers, as well as those in field/livestock specifically) for the period of 2004 through 2024 (by quarter):

U.S. Farm Wage Rate Quarterly Data

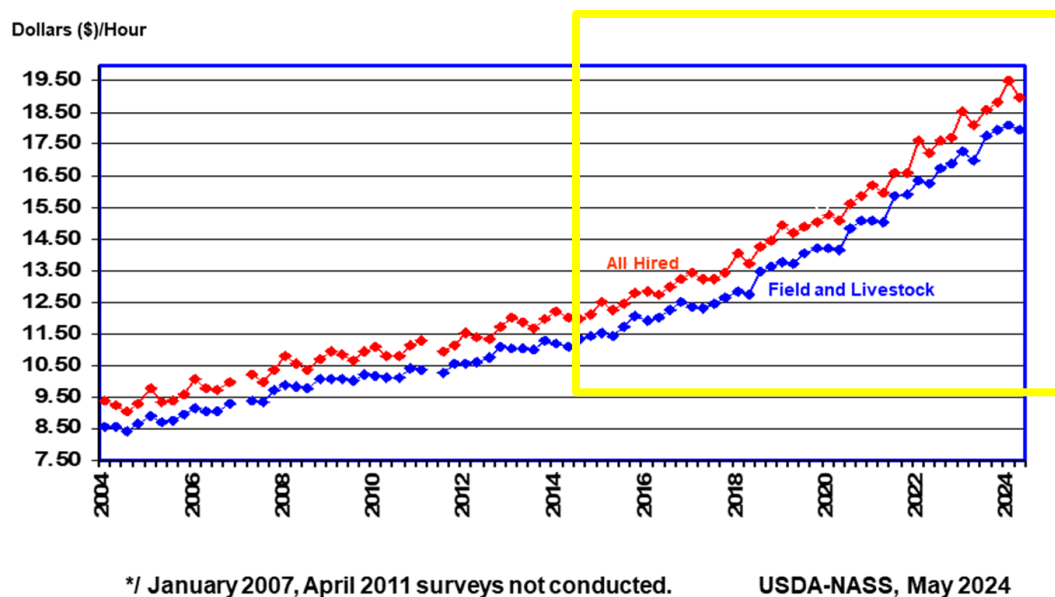


Figure 2: USDA-NASS USA Farm Wage Rate (2004-2024)¹²

The area in the yellow box on Figure 2 above highlights the changes in labour wage rates from approximately September 2014 (when the 2014 Normal Values were established) to May 2024. It depicts the significant increases in farm wages (including for field and livestock workers specifically, signified by the blue line) during this period, from \$11.33 per hour in the third quarter of 2014, to \$17.98 per hour in the second quarter of 2024.

¹² USDA-NASS, “U.S. Farm Wage Rate Quarterly Data” (May 2024), accessed online at: https://www.nass.usda.gov/Charts_and_Maps/Farm_Labor/fl_qtrwg.php

This represents an increase in labour wages of approximately **58.7%** during this time period.

b. Interest Rates

A second input cost that has increased significantly since the 2014 Normal Value were set is interest rates. Interest rates impact the cost of debt financing/borrowing money, which is often undertaken to purchase or rent land or machinery. Increased debt financing costs impact the cost of producing potatoes.

The following chart sets out the federal prime rate (depicted by the green line) as well as the 15-year and 30-year mortgage rates (depicted by the blue and red lines, respectively) in the USA for the period of January 2014 through to January 2025:

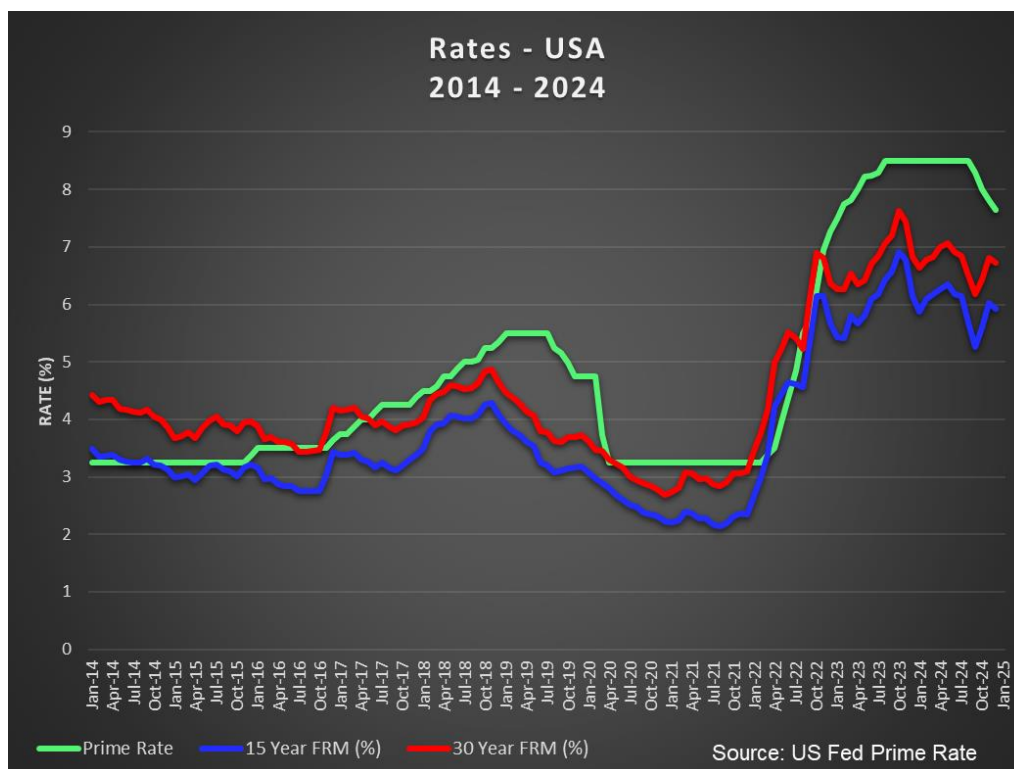


Figure 3: USA Interest Rates (2014 to 2025)¹³

Figure 3 demonstrates how these interest rates have increased significantly over the past decade, particularly in the most recent few years. For example, the prime rate has risen from **3.25%** (in 2014) to **7.65%** (in December 2024), representing an increase of **135%**.

¹³ USA Federal Prime Rates, accessed online at: <https://www.fedprimerate.com/index.html>

c. Fertilizer Costs

Fertilizer costs have also increased dramatically since the 2014 Normal Values were established. The next chart tracks the cost of four key fertilizers that are used in potato production (being DAP, MAP, Potash and Urea), in Canadian dollars from August 2013 to October 2024.

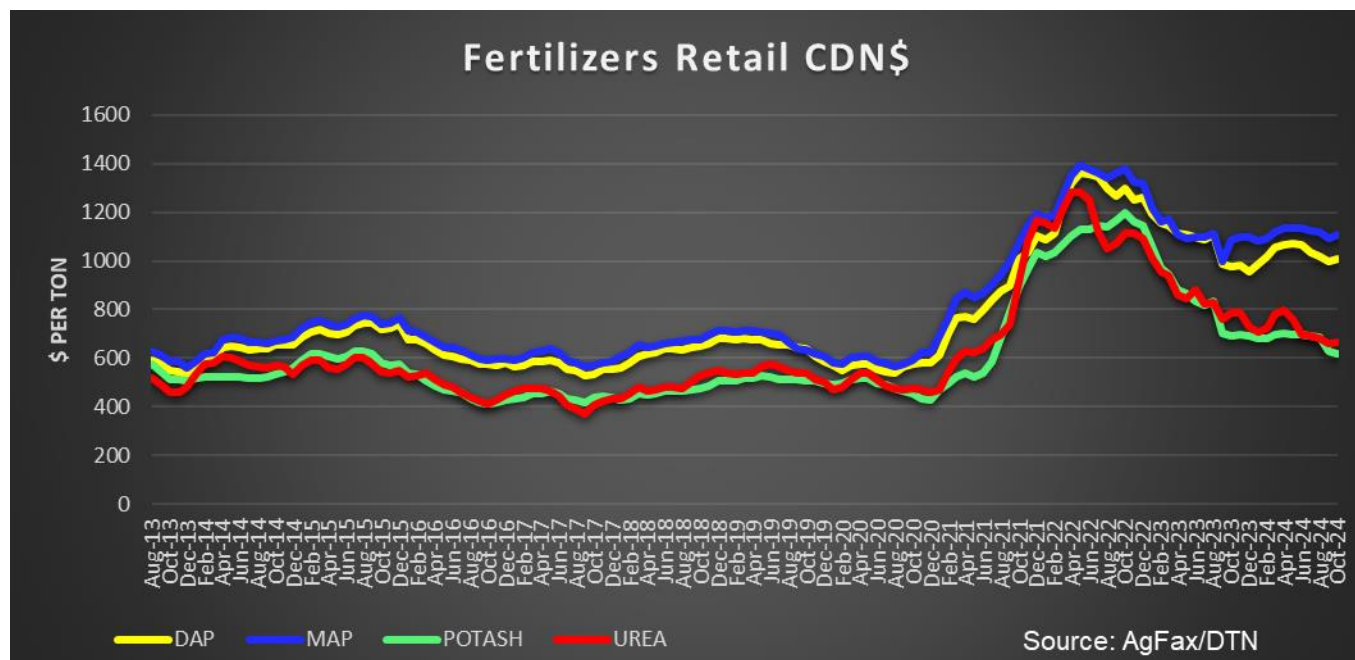


Figure 4: Fertilizer Costs (2013 to 2024)¹⁴

While Figure 4 shows that the price of these inputs have come down from their peak in 2022, they are still up significantly from 2014 prices: **81.09%** (for DAP), **88.49%** (for MAP), **19.34%** (for Potash), and **24.65%** (for Urea).

d. 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 that are frequently used in potato production - corrugated medium packaging and lineboard:

¹⁴ DTN (formerly AgFax), accessed online at:

<https://www.dtnpf.com/agriculture/web/ag/crops/article/2024/10/15/retail-fertilizer-prices-continue>

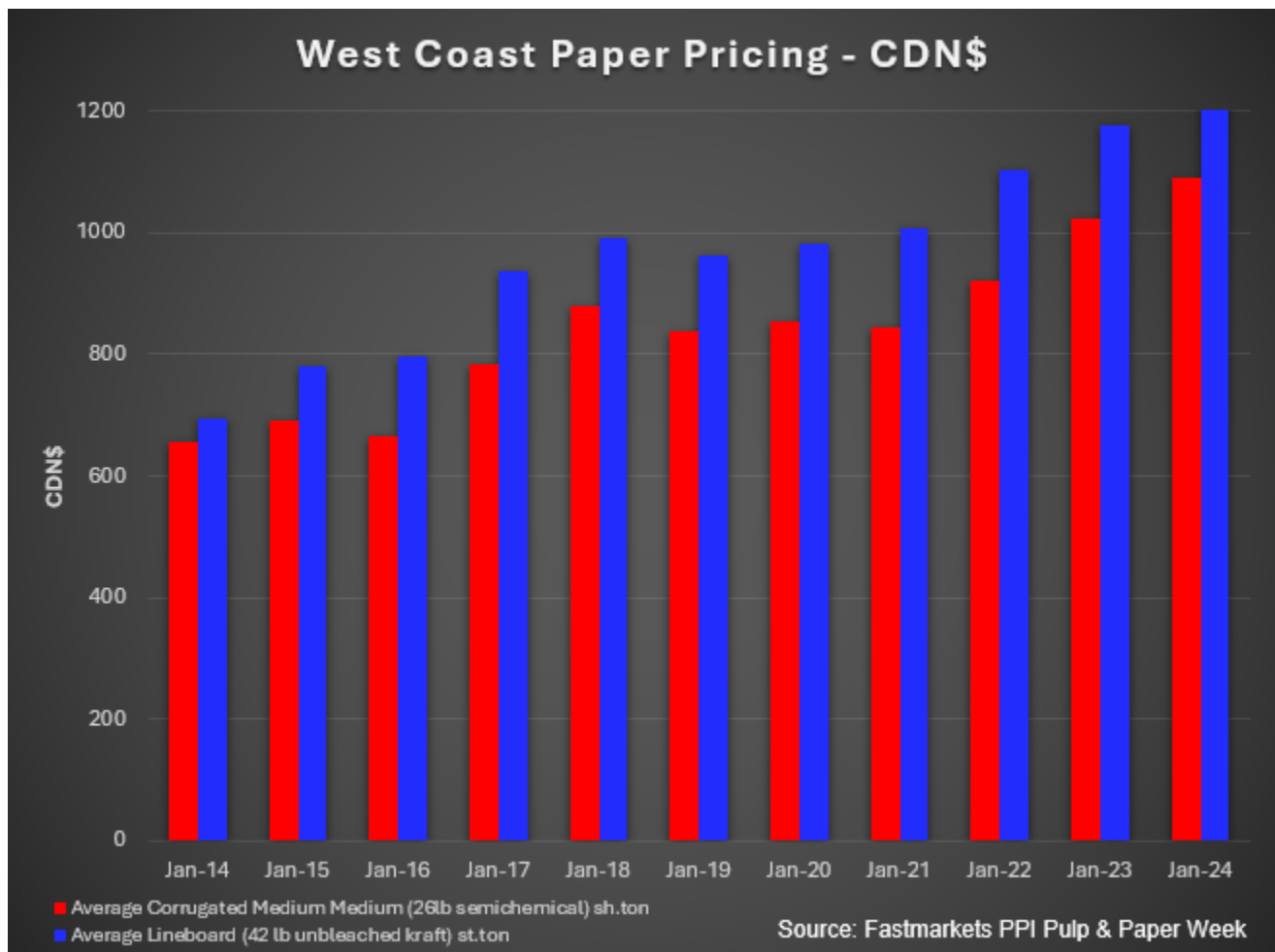


Figure 5: Packaging Costs (January 2014 to January 2024)¹⁵

Figure 5 demonstrates how the cost of corrugated medium (the red bars) has risen from \$655.00 to \$1,089.00 over the ten years from 2014 to 2024, and how lineboard (the blue bars) has risen from \$693.00 to \$1,240.00 over the same period. This represents increases of **66.26%** and **78.93%**, respectively.

ii. Aggregate Increases in Cost of Production

The increases in the cost of specific inputs are also carried through to the aggregate cost of production, which have increased substantially and is discussed next.

¹⁵ 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/>
<https://www.risiinfo.com/approach/methodology/price-assessment-methodology/>

a. Idaho

It is the understanding of the BCVMC that in carrying out the 2014 re-investigation, the CBSA utilized university cost study reports prepared by the University of Idaho (the “**Idaho CoP Reports**”), namely the “2013 Cost of Production for Idaho with Comparisons to 2012”, dated November 15, 2013 and the “2013 Cost of Potato Production in Idaho: 5-Year Trend, dated January 17, 2014”.¹⁶ A copy of the 2013 Idaho CoP Report is attached at **Schedule “B”**.

In our 2020 Representations, we attached and discussed more recent Idaho CoP Reports (from 2017 and 2018, respectively), which demonstrated that the cost of production for Russet Burbank potatoes in Southwestern Idaho (with fumigation) had increased by 10% between 2013 and 2018 (or by 7% during the same period for Russet Burbanks with no fumigation).¹⁷ A copy of the 2017 Idaho CoP Report is attached at **Schedule “C”** and the 2018 Idaho CoP Report is attached at **Schedule “D”**.

Unfortunately, further Idaho CoP Reports have not been prepared for or published by the University of Idaho since the 2018 Idaho CoP Report discussed in our 2020 Representations. While the BCVMC understands that the author of the Idaho CoP Reports, Ben Eborn, continues to prepare updated Idaho CoP Reports (using the same methodology), he does so with funding from the Idaho Potato Commission and, as a result, the full studies are not available to the BCVMC or the public.

There does, however, continue to be reporting in industry publications on the findings of these more recent Idaho CoP Reports prepared by Mr. Eborn. For example:

- In an article published on December 29, 2021 (attached at **Schedule “E”**), the cost of production in 2021 is described as being “soaring”, with Mr. Eborn being quoted in the article as stating that: “Operating costs for most growers are probably up 20 percent, minimum, and maybe as much as 30 percent,” over the prior year.¹⁸
- In an article published on October 20, 2022 (attached at **Schedule “F”**), Idaho potato input costs from 2020 and 2022 are compared, with the author noting “Potatoes are a high-cost, water-thirsty crop. Input costs for contract potato growers this year are \$3,500 to \$4,000 per acre. That’s compared to \$2,200 to \$2,400 in 2020”.¹⁹

¹⁶ Re-investigation Conclusion, p. 2.

¹⁷ As also set out in our 2020 Representations in more detail, the BCVMC expected that these Idaho CoP Reports likely underestimated the actual cost of producing the subject goods in *Certain Whole Potatoes*, as they did not differentiate between potatoes grown for the fresh market and potatoes grown for the process market, and did not take into account any cost of storage, washing, grading or packing. Fresh market variable costs are higher than the variable costs associated with potatoes grown for processing, as fresh potatoes require additional soil preparation and planting costs, as well as additional chemical and fertilizer use.

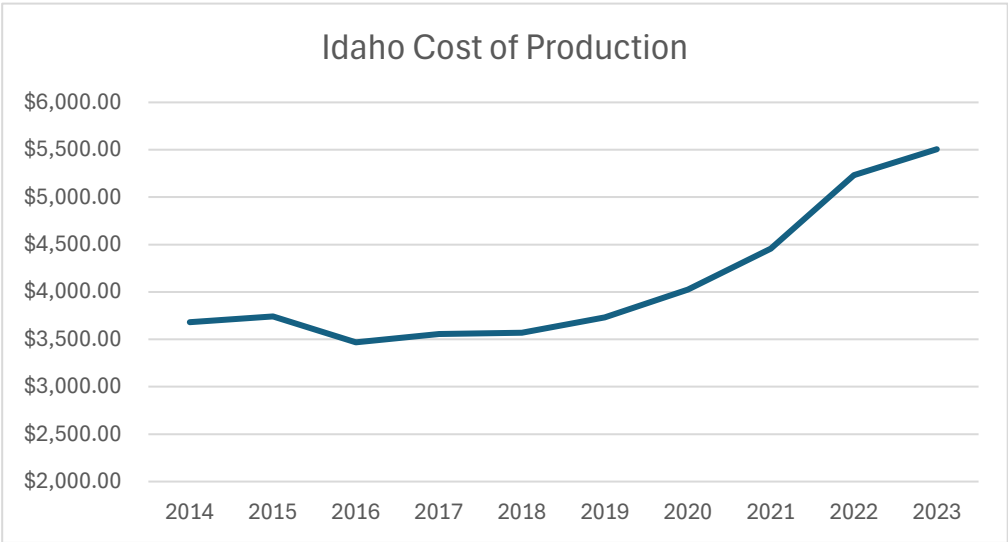
¹⁸ Schedule E, S. Ellis, “Potato prices for farmers are up but so are input costs” (December 29, 2021), Idaho Farm Bureau Federation, accessed online at: <https://www.idahofb.org/news-room/posts/potato-prices-for-farmers-are-up-but-so-are-input-costs/>

¹⁹ Schedule F, D. Miller, “High-Cost ID Potato Harvest Is a Wrap” (October 20, 2022), Progressive Farmer, accessed online at: <https://www.dtnpf.com/agriculture/web/ag/equipment/article/2022/10/20/idahos-high-quality-high-cost-potato>

- In an article published on March 27, 2023 (attached at **Schedule “G”**), Mr. Eborn himself summarized the cost of production of potatoes per acre in southwestern Idaho in each of 2021 and 2022, highlighting a 17.4% increase between these years.²⁰
- In an article published on March 28, 2024 (attached at **Schedule “H”**), Mr. Eborn summarized the cost of production of potatoes per acre in southwestern Idaho in each of 2022 and 2023, noting that while some operating costs were up and others were down, that overall production costs were expected to remain high for the 2024 crop, with total cost per acre operating costs having risen by 5.2 percent over 2023.²¹

These articles demonstrate that, if the full studies were available, the more recent Idaho CoP Reports would demonstrate the significant, continued increases in Idaho cost of production since 2018.

Based on the Idaho CoP Reports, and reporting on the more recent studies conducted, the cost of production in Idaho, from 2014 through 2023, may be summarized as follows:



2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
\$3,680.00	\$3,743.00	\$3,467.00	\$3,555.00	\$3,569.00	\$3,730.01	\$4,025.68	\$ 4,456.00	\$ 5,233.00	\$5,505.00

Figure 6: Table and Graph of Idaho Cost of Production (2014-2023)²²

Since the 2014 Normal Values were established, cost of production per acre in Idaho has increased from \$3,680 to \$5,505, or by approximately **50%**.

²⁰ Schedule G, B. Eborn, “Factors Driving 2023 Planting Decisions” (March 27, 2023), Potato Country, accessed online at: <https://potatocountry.com/2023/03/27/factors-driving-2023-planting-decisions/>

²¹ Schedule H, B. Eborn, “2024 Potato Planting Considerations” (March 28, 2024), Potato Country, accessed online at: <https://potatocountry.com/2024/03/28/2024-potato-planting-considerations/>

²² These figures have been taken from Idaho CoP Reports (from 2018 and prior) and from reporting (including by Mr. Eborn himself) on the results of the more recent Idaho CoP Reports.

Additionally, there have been other university studies prepared with respect to the cost of producing potatoes in Washington State and California – both regions that export potatoes to BC.

b. Washington State

Attached are two studies undertaken by the Washington State University since the 2014 Normal Values were established:

1. 2015 Costs Estimates of Producing Fresh and Processing Potatoes in Washington²³ (attached at **Schedule “I”**); and
2. 2019 Cost Estimates of Producing Fresh and Processing Potatoes in Washington²⁴ (attached at **Schedule “J”**).

These two studies (which utilized the same methodology, allowing for comparison), demonstrate that the total cost (per acre) of producing fresh potatoes in the Columbia Basin increased from \$5,172.96 in 2015 to \$5,577.34 in 2019. This represents an increase in per acre costs of 8.07% during the period of only 2015 to 2019 (and excluding increases that occurred in 2014 and 2020-2024, which had high rates of inflation).

c. California

The University of California also conducted studies on the cost of producing fresh potatoes in the Klamath Basin, as follows:

1. 2015 Sample Costs to Produce Potatoes²⁵ (attached at **Schedule “K”**); and
2. 2023 Sample Costs to Produce Potatoes²⁶ (attached at **Schedule “L”**).

These two studies (which utilized the same methodology, allowing for comparison), demonstrate that the cost of production per acre in the Klamath Basin rose from \$3,026 in 2015 to \$3,894.51 in 2023. This represents an increase of approximately **28.7%** during this period. Notably, the period that is taken into account in these studies does not include either 2014 or 2024, both of which were periods with general inflation of costs.

²³ Schedule I, Washington State University Extension, “2015 Costs Estimates of Producing Fresh and Processing Potatoes in Washington”, accessed online at:

<https://wpcdn.web.wsu.edu/cahnrs/uploads/sites/5/2018/06/TB14.pdf>)

²⁴ Schedule J, Washington State University Extension, “2019 Cost Estimates of Producing Fresh and Processing Potatoes in Washington”, accessed online at:

<https://wpcdn.web.wsu.edu/cahnrs/uploads/sites/5/2020/06/TB67E.pdf>)

²⁵ Schedule K, University of California, “2019 Sample Costs to Produce Potatoes”, accessed online at:

https://coststudyfiles.ucdavis.edu/uploads/cs_public/4e/f5/4ef54da3-114e-4952-a66a-049765b9a747/15potatofreshmktklamathfinaldraftdec10.pdf

²⁶ Schedule L, University of California, “2023 Sample Costs to Produce Potatoes”, accessed online at:

<https://coststudyfiles.ucdavis.edu/2024/05/10/23PotatoFreshMktKlamath-Final.pdf>

d. Farm Services Expenditures

Consistent with the above cost of production studies, data from the USDA-NASS also demonstrates that farm service expenditures more generally have increased in recent years.

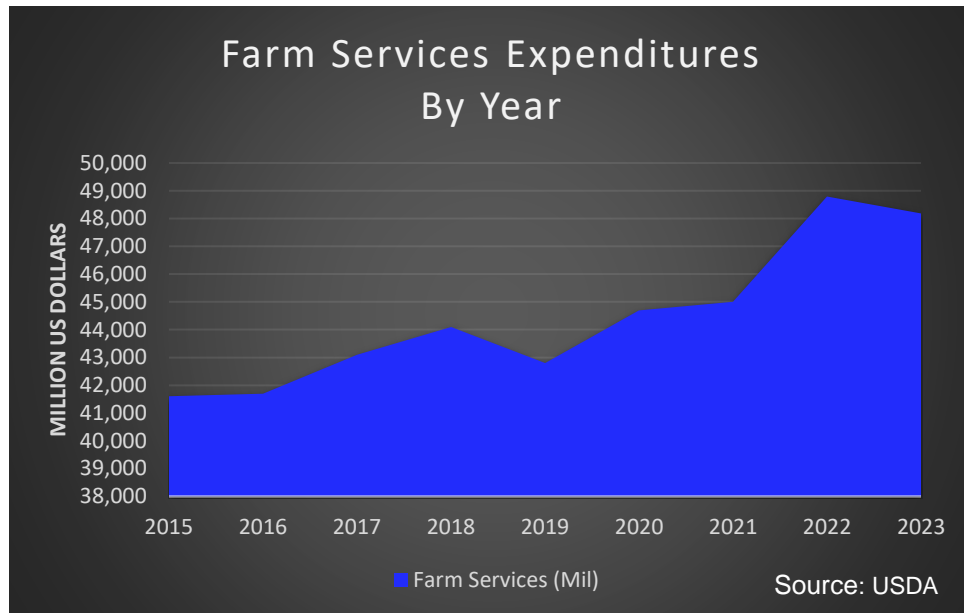


Figure 7: USDA-NASS Farm Services Expenditures 2015 to 2023

Figure 7 above shows that farm service expenditures increase by approximately **13.7%** from \$41,600 in 2015 to \$48,190 in 2023.

e. Summary

On the basis of the above, it is clear that there has been a substantial change in exporters' costs since the 2014 Normal Values were established, and that the cost of production in the USA has increased drastically. In particular, we highlight the Idaho CoP Reports (which the BCVMC understands were relied upon by the CBSA in establishing the 2014 Normal Values), which demonstrate that the cost of production per acre in Idaho has increased by approximately **50%** from 2014 to 2023.

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".²⁷ The CBSA enforcement statistics for the years 2014 through 2023 are as follows:

²⁷ Re-Investigation Policy, p. 3, para. 12(a).

Annual total amounts

Year	Value for duty monitored	Quantity monitored	Value for duty subject	Quantity subject	SIMA duties
2023	\$47,275,086	731,147 MT	\$10,162,985	223,476 MT	\$2,031
2022	\$31,310,274	539,843 MT	\$5,624,420	144,439 MT	\$4,232
2021	\$119,678,632	3,379,155 MT	\$7,672,685	315,756 MT	\$48,599
2020	\$45,550,859	836,828 MT	\$6,544,194	250,933 MT	\$23,510
2019	\$49,595,401	2,278,932 MT	\$539,355	50,216 MT	\$61,111

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 8: CBSA Enforcement Statistics, Certain Whole Potatoes²⁸

These statistics show that there have continued to be substantial volumes of imports of the subject goods from the USA into BC since the last re-investigation in 2014. Despite large value and volumes of goods being subject to the duties, the BCVMC notes that only a very small amounts of SIMA duties have been imposed in recent years (\$2,031 in 2023 versus \$394,564).

While the CBSA website comments that “The CBSA's 2014 re-investigation introduced fixed normal values and, as a result, many exporters have been selling at or above normal values”, the BCVMC suggests that this also a direct reflection of the fact that the 2014 Normal Value is currently too low and does not reflect the current cost of production in the US (i.e. USA exporters are selling at below their actual cost of production, while still selling over the 2014 Normal Value).

4. NATURE OF THE SUBJECT GOODS

A fourth factor that the CBSA may consider when determining whether to initiate a re-investigation 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 D(2) above). These costs are subject to regular variations, which supports the regular review of normal values.

²⁸ CBSA, “Import Statistics for SIMA Measures in Force”, accessed online at <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html> (including past data from the BCVMC's 2020 Representations for the period of 2014-2018).

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.

For example, and as noted in our 2020 Representations, exporter Easterday Farms in Washington has become a major exporter to BC since 2014, and exporter Wahluke re-entered the market after previously filing Chapter 11 and ceasing all sales to BC.

More recently, on September 30, 2024, Lamb Weston, the world’s largest producer of French fries, closed its potato processing plant in Connell, Washington.³⁰ This change in the industry will mean that many Washington fresh potatoes, previously destined for the processing market, will now need to find an alternative use (potentially in the BC fresh market).

6. FLUCTUATIONS IN CURRENCY EXCHANGE RATE

Additionally, there have been considerable 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.³¹

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 2024:

³⁰ “Lamb Weston shuts down Connell Potato Plant, affecting 375 jobs” (October 1, 2024), accessed online at: https://www.yoursourceone.com/columbia_basin/lamb-weston-shuts-down-connell-potato-plant-affecting-375-jobs/article_cbbb433c-804b-11ef-b36d-db2958b48c84.html

³¹ Re-investigation Policy, p. 3, para. 12(h).

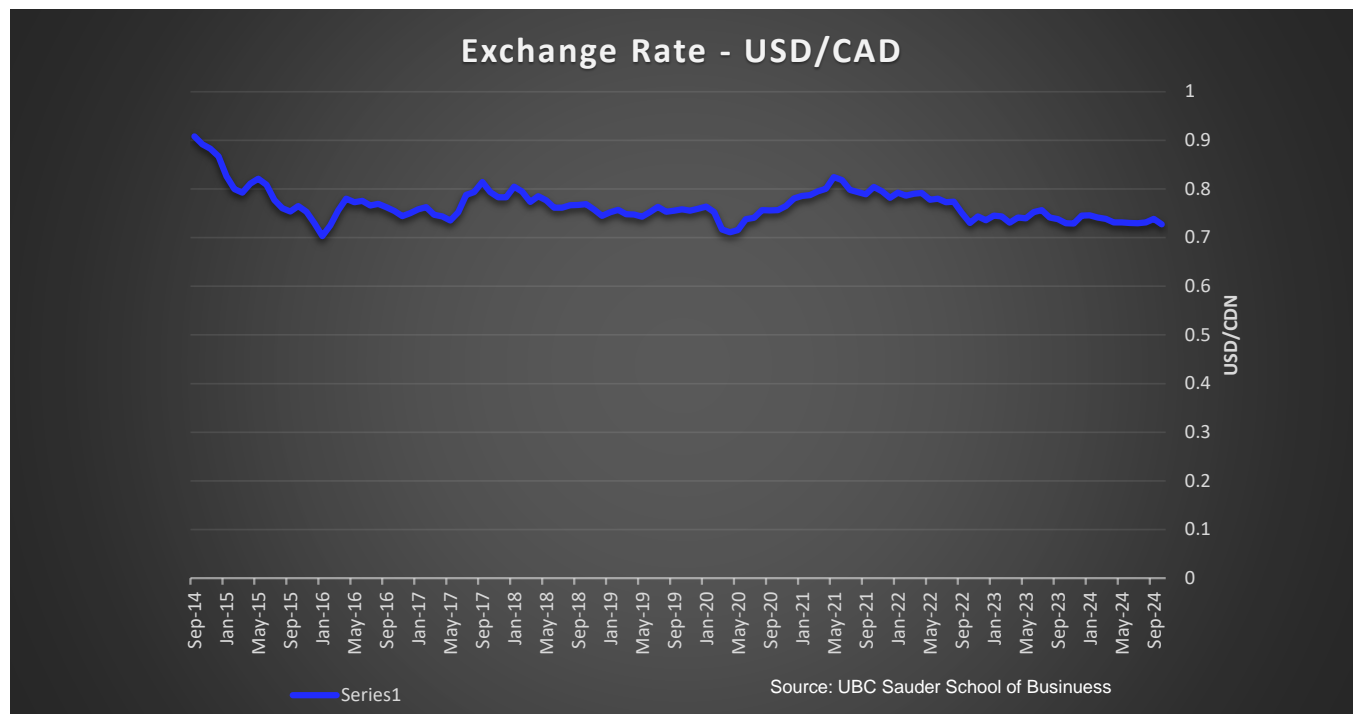


Figure 9: USD/CAD Exchange Rate (September 2014 to September 2024)³²

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

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.³³ A potential expiry review is imminent, as the current finding in the 2021 CITT Order is set to expire on June 1, 2026.

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 summer 2025, 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.

³² UBC Sauder School of Business, published at: <http://fx.sauder.ubc.ca/>.

³³ Re-investigation Policy, p. 3, para. 12(n).

E. 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 continues to have 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.

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 D(1), (3) and (7) above, with respect to normal values, as applying equally to why the CBSA should reassess export prices.

F. RETROACTIVE ASSESSMENT OF DUTIES

Finally, if the CBSA undertakes a re-investigation, the BCVMC also requests that CBSA also consider as part of this re-investigation whether retroactive duties ought to be assessed for past importations.

The CBSA’s Re-investigation Policy notes that the retroactive assessment of duties may be warranted, including where exporters did not properly notify the CBSA of changes:

Where the CBSA's analysis determines that changes to market conditions caused normal values to become significantly outdated and that the exporter failed to price up its exports in a timely manner, the CBSA may issue retroactive assessments to the exporter's Canadian importers. This is based on the revised normal value compared to the actual export price. In determining what constitutes significantly outdated, the CBSA will conduct a contextual analysis, which will give due regard to the market conditions of a particular good.³⁵

The BCVMC submits that the retroactive assessment of duties would be appropriate in all of the circumstances, including in light of the BCVMC’s past request for re-investigation (as set out in

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

³⁵ Re-investigation Policy, section 29.

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the 2020 Representations), as well as the failure of USA exports to promptly inform the CBSA in writing of changes to their costs.

G. CONCLUSION

In summary, the BCVMC requests that the CBSA immediately 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:



Erica C. Miller

ECM/grp

Enclosure

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