

DEPARTMENT OF COMMERCE**Bureau of Economic Analysis****Proposal To Collect Information on the Annual Survey of Foreign Direct Investment in the United States**

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 25, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50(OC), Washington, DC 20230 (Telephone: 202-606-9800).

SUPPLEMENTARY INFORMATION:**I. Abstract**

The Annual Survey of Foreign Direct Investment in the United States (Form BE-15) obtains cut-off sample data on the financial structure and operations of nonbank U.S. affiliates of foreign investors. The data are needed to provide reliable, useful, and timely measures of foreign direct investment in the United States, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign investors, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development (R&D) activity. The data are also used to update similar data for the universe of U.S. affiliates collected once every five years in the BE-12 benchmark survey.

No changes to the forms and instructions are proposed.

II. Method of Collection

The BE-15 annual survey is sent to potential respondents at the end of March each year. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31, 60 days after mailing. Reports must be filed by every nonbank U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales, or net income (or loss) of over \$30 million. Potential respondents are those nonbank U.S. business enterprises that report in the 1997 benchmark survey of foreign direct investment in the United States, along with nonbank affiliates that subsequently enter the direct investment universe. The BE-15 is a cutoff-sample survey, as described; universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608-0034.

Form Number: BE-15.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,975.

Estimated Time Per Response: 26 hours.

Estimated Total Annual Burden: 128,000 hours.

Estimated Total Annual Cost: \$3,840,000 (based on an estimated reporting burden of 128,000 hours and an estimated hourly cost of \$30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 19, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-122-837]

Initiation of Antidumping Duty Investigation: Greenhouse Tomatoes From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 24, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Thomas Schauer, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4794 or (202) 482-0410, respectively.

SUPPLEMENTARY INFORMATION:**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce's (the Department's) regulations are to the provisions at 19 CFR part 351 (2000).

The Petition

On March 28, 2001, the Department received a petition on imports of greenhouse tomatoes filed in proper form by Carolina Hydroponic Growers Inc., Eurofresh, HydroAge, Sunblest Management LLC, Sunblest Farms LLC, and Village Farms (referred to hereafter as "the petitioners"). On April 2, 2001, the Department requested additional information and clarification of certain areas of the petition. The petitioners filed supplements to the petition on April 9 and 11, 2001.

In accordance with section 732(b) of the Act, the petitioners allege that imports of greenhouse tomatoes from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed this petition on behalf

of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act. Furthermore, the petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

Scope of Investigation

The merchandise subject to this investigation consists of all fresh or chilled tomatoes grown in greenhouses in Canada, *e.g.*, common round tomatoes, cherry tomatoes, plum or pear tomatoes, and cluster or "on-the-vine" tomatoes. Specifically excluded from the scope of this investigation are all field-grown tomatoes.

The merchandise subject to this investigation may enter under 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, *i.e.*, field-grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition must be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

On April 11 and 12, 2001, potential respondents made submissions challenging industry support for the petition pursuant to sections 732(b)(3) and 732(c)(4)(D) of the Act. They argue that the domestic like product is all fresh or chilled tomatoes for the fresh market, regardless of whether the tomatoes are grown in a field or in a greenhouse. Certain potential respondents argue further that the Department should poll the domestic producers of the like product (as defined by potential respondents), *i.e.*, all producers of tomatoes for the fresh market, in order to determine whether there is sufficient industry support for the petition. In addition to their disagreement over the petitioners' definition of the domestic like product, these potential respondents assert that, in the petitioners' calculation of an industry-support percentage, the petitioners underestimated the size of the total U.S. industry producing tomatoes for the fresh market. Certain potential respondents did not propose that the Department poll the U.S. producers of the domestic like product but requested that the Department dismiss the petition and terminate the proceeding for lack of industry support.

On April 13 and 16, 2001, the petitioners submitted comments on the potential respondents' industry-support challenge. Foremost, the petitioners view the comments of the potential respondents as more directly related to the like-product analysis and an effort to

broaden the scope of the domestic like product rather than comment upon industry support. The petitioners request that the Department disregard the comments of the potential respondents as unrelated to standing with respect to the greenhouse tomato industry. The petitioners also assert that the arguments submitted by the potential respondents in reference to Departmental precedent, the International Trade Commission's (ITC's) like-product analysis, standing, and changes in the domestic industry are incorrect. On April 16, 2001, the potential respondents replied to the petitioners' April 13, 2001, submission and again requested that the Department not consider an initiation of an investigation until it has polled all producers of tomatoes for the fresh market.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The ITC, which is responsible for determining whether "the domestic industry" has been materially injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.¹

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic-like-product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the definition of domestic like product, in the context of this case, we find that considering

¹ See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988), and *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

greenhouse tomatoes a distinct domestic like product is reasonable. We reached this decision after evaluating the arguments and information presented and examining information that we obtained independently. Through our analysis we identified several factors that distinguish greenhouse tomatoes as a distinct domestic like product. The distinctions between tomatoes produced in greenhouses and tomatoes produced in a field are found in the production process, cost, pricing, and marketing. The petitioners also argued that physical differences distinguish greenhouse-grown and field-grown tomatoes.

With regard to production process, unlike producers of field-grown tomatoes, the petitioners produce greenhouse tomatoes in a laboratory-type situation in which they control the growing environment (e.g., temperature, humidity, and, in some cases, light). This enables the greenhouse producer to have greater control over quality and results in higher yields per acre than field production. Also, the per-acre and per-pound cost of production for greenhouse tomatoes is much higher than for field-grown tomatoes. This higher cost of production generally results in higher pricing than for field-grown tomatoes. To obtain the higher prices for their greenhouse tomatoes than the prices for field-grown tomatoes, it is necessary for the producers of greenhouse tomatoes to distinguish their products from the field-grown tomatoes in their marketing efforts. These factors support our conclusion that, in the context of this case, it is reasonable to conclude that the domestic like product, like the scope of the investigation, is limited to tomatoes grown in greenhouses.² For more information on our analysis and the data upon which we relied see Initiation Checklist, Re: Industry Support.

We also disagree with the potential respondents' assertion that in the petitioners' calculation of an industry-support percentage they underestimated the size of the industry producing greenhouse tomatoes. To support their assertion that the U.S. industry is larger than that identified by the petitioners, the potential respondents cite to an estimate by an industry expert of the size of the greenhouse tomato industry.

² We note that the Department has broad authority to define the scope of antidumping duty investigations. See *Diversified Products Corp. v. United States*, 6 CIT 155, 159 (1983). Further we acknowledge that the ITC has authority to find a domestic like product to be broader or narrower in scope than the class or kind of merchandise described by the Department. See *Hosiden Corp. et al. v. United States*, 85 F. 3d 1561, 1563 (Fed. Cir. 1996).

In a subsequent submission the petitioners reiterated their earlier clarification that this industry expert's figure is overstated. Moreover, the petitioners' response is supported by other information on the record (see Initiation Checklist, Re: Industry Support).

The petitioners were not able to locate recent statistics on the total production volume or value of the domestic like product, but they have sufficiently established that such information is not reasonably available to them. Therefore, in accordance with section 351.203(e)(1) of the regulations, we have accepted other publicly available information as a sufficient measure of current production levels, i.e., 1998 acreage and sales figures for greenhouse tomato production and the petitioners' estimate of 2000 greenhouse tomato acreage. We find the acreage and sales information to be reasonably available to the petitioners and indicative of production levels.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from parties other than the potential respondents. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Constructed Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this

information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate. The anticipated period of investigation is January 1, 2000, through December 31, 2000.

The following Canadian companies were identified in the petition as producers of greenhouse tomatoes: Amco Produce Inc., Clifford Produce, Double Diamond Acres Ltd., Co-Op Sales Agency, DiCiocco Farms, Erie-James Ltd., Erie Shores Growers Ltd., Fruits et Legumes Vegebec Inc., Great Northern Hydroponics, Golden Jem Produce Inc., Huron Produce Ltd., Huy Farms Ltd., Hydro-Serre Mirabel, Mastronardi Produce Ltd., MCM Acres Ltd., Mucci International Marketing, Rx Farms Ltd., St. Laurent Greenhouse, and Veg Gro Sales Inc. Other producers are likely to be identified as we proceed with this investigation.

The petitioners based constructed export prices on terminal market prices they obtained from the U.S. Department of Agriculture's Agricultural Market News Service. In order to obtain ex-factory prices, the petitioners deducted international transportation and customs duty, U.S. inland freight, and commissions from the sales value. The petitioners calculated international transportation and customs duty from data compiled by the U.S. Bureau of Census. The petitioners calculated U.S. inland freight on the basis of a weighted-average of freight invoices for shipments of tomatoes within the United States. We reviewed the information provided regarding constructed export price and have determined that it is adequate and accurate and represents information reasonably available to the petitioners (see Initiation Checklist, Re: Less-Than-Fair-Value Allegation).

With respect to normal value, the petitioners provided home-market prices derived from weekly wholesale prices published by Canada's Ministry of Agriculture and Agri-Food. In order to obtain ex-factory prices, the petitioners deducted inland freight and commissions. As a result of our review of the petitioners' calculation of the inland freight adjustment, we determined that it was necessary to revise the amount used (see Initiation Checklist, Re: Less-Than-Fair-Value Allegation). Otherwise, we determined that the information the petitioners used for the calculation of home-market price is adequate and accurate and represents information reasonably available to them.

The petitioners have provided information demonstrating reasonable

grounds to believe or suspect that sales of greenhouse tomatoes in Canada were made at prices below the fully absorbed cost of production, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, cost of production includes cost of materials and fabrication, selling, general, and administrative expenses, and packing expenses. The petitioners obtained the cost of materials and fabrication and packing expenses from publicly available Canadian industry data and affidavits from officials of the petitioning companies. To calculate selling, general and administrative, and interest expenses, the petitioners relied upon the 2000 financial statements of a Canadian company in the same general industry. As a result of our review of the costs used by the petitioners, we determined it was necessary to revise certain items (see Initiation Checklist, Re: Less-Than-Fair-Value Allegation).

Pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioners also based normal value for sales in Canada on constructed value. The petitioners calculated constructed value using the same cost of materials, fabrication, and selling, general and administrative figures used to compute Canadian home-market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in constructed value an amount for profit.

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market were made at prices below the fully absorbed cost of production. The petitioners requested that the Department conduct a country-wide sales-below-cost investigation in connection with the requested antidumping investigation. The Statement of Administrative Action (SAA) accompanying the URAA states that "an allegation of sales below cost need not be specific to a particular exporter or producer." SAA, H. Doc. 103-316, Vol. 1, 103d Cong., 2d Session, at 833 (1994). The SAA, at 833, also states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." Further, the SAA provides that "(n)ew section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or

suspect' that below-cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.*

Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their cost of production, we find the "reasonable grounds to believe or suspect" that sales of the foreign like product in Canada were made at prices below their respective cost of production within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair Value Comparison

Based on the data provided by the petitioners, there is reason to believe that imports of greenhouse tomatoes from Canada are being, or are likely to be, sold in the United States at less than fair value. As a result of the comparison of constructed export prices to normal value, we recalculated estimated dumping margins for imports of greenhouse tomatoes from Canada that range from 0.00 percent to 126.73 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioners contend that their injured condition is evidenced by declining trends in market share, pricing, production levels, profits, sales, and utilization of capacity. Furthermore, the petitioners contend that injury and threat of injury is evidenced by negative effects on their cash flow, ability to raise capital, and growth.

These allegations are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on greenhouse tomatoes from

Canada and other information reasonably available to the Department, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of greenhouse tomatoes from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Canada. We will attempt to provide a copy of the public version of the petition to each producer named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than May 14, 2001, whether there is a reasonable indication that imports of greenhouse tomatoes are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 17, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01-10154 Filed 4-23-01; 8:45 am]

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