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SAFEGUARDS - IMPORTS OF CERTAIN FRUITS AND VEGETABLES AT VERY LOW OR DISTRESSED PRICES

Note by Canada

On 6 July 1973, the Minister of Finance instructed the Tariff Board to make an enquiry respecting trade of certain fresh and processed fruits and vegetables. In his letter of instruction to the Chairman of the Tariff Board, the Minister of Finance drew attention to the fact that, "In some years there have been periodic imports or the threat of imports of certain fruits and vegetables at very low or distressed prices". He asked the Board "to consider how ... provision could be made for action to be initiated quickly to ... counter the adverse effects of low-priced imports, or the threat of low-priced imports, on Canadian growers and processors". Recently the Chairman of the Tariff Board submitted the Report on these matters to the Minister of Finance and the Minister tabled the Report in the House of Commons. Chapter 5 of that Report is entitled, "Safeguards Respecting Low- or Distress-Priced Imports" and is circulated below for the information of other delegations.

It will be noted that the Tariff Board Report examines the present situation regarding certain imports of fruit and vegetables at low or distressed prices, considers a number of ways to deal with such situations, and makes a series of recommendations regarding safeguard measures for certain fruits and vegetables. This Report is in the nature of advice and is not binding on the Government in any legal way. The Government is now considering the Report.

CHAPTER V: SAFEGUARDS RESPECTING LOW- OR DISTRESS-PRICED IMPORTS

In the Board's letter of reference from the Minister of Finance, the Minister drew attention to the fact that "in some years, there have been periodic imports or the threat of imports of certain fruits and vegetables at very low or distress prices ...". He asked the Board "to consider how ... provision could be made for action to be initiated quickly to ... counter the adverse effects of low-priced imports, or the threat of low-priced imports, on Canadian growers and processors".

The Board construes "low-priced imports", in this context, as resulting from an abnormal market condition in which, due to an over-supply of a particular fresh fruit or vegetable in an exporting country, imports occur at unusually low price levels and are associated with depressing effects on domestic prices. The primary concern is with import price levels which are significantly lower than the usually prevailing import prices in previous years. These lower import prices often are the result of selling a commodity at distress-priced levels which in the longer run would not be sufficient to sustain continuing production in the exporting country.

The purpose of the following discussion is to explore possible safeguard measures which could temporarily be applied, in addition to existing duties and with the requisite speed, to mitigate or to counter the effect of low-priced imports arising from short-term and abnormal production and marketing conditions. "Low-priced imports" (sometimes referred to as "low-cost imports") of fresh fruits and vegetables may also occur, not as a result of temporary over-supply, but from underlying and continuing advantages conferred on foreign producers by reason of such factors as better climate or lower labour costs. Factors which determine the underlying competitive structure of horticultural production in Canada relative to other countries have been considered by the Board and are taken into account in its conclusions and recommendations regarding the permanent tariff structure.

Canada also imports significant volumes of fruits and vegetables in processed or semi-processed forms. External conditions of over-supply affecting fresh horticultural commodities often lead to depressed prices for these commodities in the processed or semi-processed state. The ensuing study therefore considers low-priced or distress-priced imports as they may pertain to fresh, semi-processed and processed products.

SUBMISSIONS TO THE TARIFF BOARD

In its brief to the Tariff Board the Canadian Horticultural Council, on behalf of domestic fruit and vegetable producers, made certain specific proposals for the establishment of an "automatic" surtax mechanism. A number of other interested parties also made submissions respecting the problem of low-priced imports. Possible provisions to deal with these imports were also discussed at length during the public sittings.¹

¹ Transcript, Volumes 7 and 8, pages 827-978

The Canadian Horticultural Council proposed that an automatic mechanism be "built in" to the existing tariff which would levy a surtax when the import price level of a commodity declined below a certain point. The Council suggested the following possible amendment to the existing Customs Tariff:

As soon as practicable after the commencement of each calendar year the Minister shall cause to be determined the average value, weighted as to quantity, at which fresh fruits and vegetables, of a class or kind produced in Canada, were imported into Canada in the preceding three calendar years. Whenever the invoice value of any imported fresh fruit or vegetable is less than 90% of such average value, i.e. the surtax value, there shall be collected, in addition to the duties otherwise established, a surtax equal to the difference. Until a new average value is determined, the previous average value shall be used.

The present Customs Tariff already authorizes the imposition of a surtax and such surtax has been applied over the years on imports of certain fresh and processed fruits and vegetables. The Horticultural Council supported the principle of the existing surtax legislation; the Council did, however, take issue with the administrative procedures, contending that the relief intended through a surtax is often ineffective because of late application.

The Canadian Food Processors Association, on behalf of domestic food processors, stated:

If surtaxes are imposed on fresh fruit and vegetables sold in Canada at distress prices, a similar surtax must be applied to processed products produced from these raw materials when they are imported (i.e. if a surtax is imposed on fresh or frozen strawberries a similar surtax should be applied to strawberry jam for the period of inventory.

This Association was of the opinion, however, that the formula proposed by the Horticultural Council (90 per cent of the previous three-year price average) would be excessively restrictive and would discourage lower prices achieved through technological improvements.²

¹Canadian Food Processors Association, Brief to the Tariff Review Board - Horticultural Products (Ref. No. 152).

²Transcript, Volume 8, page 943.

The Canadian Fruit Wholesalers' Association and the Ontario Greenhouse Vegetable Producers' Marketing Board generally supported the surtax proposals by the Canadian Horticultural Council.¹ The Wholesalers' Association, however, noted a number of potential administrative problems should a mechanism as proposed by the Council be implemented, such as the possibility of falsification of weights and the validity of the invoice prices recorded at the point of shipment. The Consumers' Association of Canada also supported the principle of a surtax as protection against low-priced imports while stressing the need for careful evaluation of the formula to be applied.

The Canadian Importers Association Inc. took the position that existing surtax legislation was adequate to deal with low-priced imports. This association advocated, rather than a surtax, the possible employment, in certain circumstances, of deficiency payments to Canadian growers under the provisions of the Agricultural Stabilization Act.

The National Farmers Union in its brief made no specific comment concerning measures to counter distress-priced imports. The Union proposed instead far-reaching changes in agricultural tariff policy, under which the existing tariffs would be replaced by a system of variable import levies; the adoption of such a system would implicitly deal with low-priced imports.

PRESENT SURTAX PROVISIONS

In recent years the federal government has principally taken action against low-priced imports via the imposition of a temporary surtax pursuant to sections 8(2) to 8(4) of the existing Customs Tariff. Section 8(2) of this Act permits a surtax where produce of any country is imported into Canada under such conditions as to cause, or threaten, serious injury to Canadian producers of like or directly competitive products. Section 8(2) was introduced in 1968 as an amendment to the Customs Tariff in conjunction with the passage of the Anti-Dumping Act. Imports are made subject to surtax by Order-in-Council. Under section 8(4) a surtax order expires after 180 days unless extended by an act of Parliament.

¹The proposals of these, and other, organizations are more fully presented in Chapter III.

Prior to 1968, Canadian action to counter low-priced imports was authorized under section 40A.(7)(b), now superseded, of the Customs Act. This former section of the Customs Act made a specific provision for fresh fruits and vegetables with respect to the determination of value for duty in the case of certain price declines; existing governing legislation under the Customs Tariff does not so specify. Former section 40A.(7)(b) established the value for duty as being the average value at which like fresh produce was imported during the prior three-year period. A distinction should be made between the "value for duty" legislation existing prior to 1968 as against surtax action subsequently enabled by section 8(2) of the Customs Tariff. However, the net effect of these two systems would be the same.

Between 1957 and 1968, under previously existing value for duty provisions, action was taken in the case of the following horticultural products: fresh and frozen strawberries (1957); frozen peas (1958/59); and table potatoes (1961/62, 1962/63, 1966 and 1968). Requests were received, also, but no action was taken, for green onions (1960); fresh sour cherries (1964); fresh peaches (1965); and lettuce (1967).

Subsequent to 1968 a surtax was imposed on greenhouse tomatoes (1969); fresh, frozen and preserved strawberries (1971); and sweet cherries (1973). Surtax requests were also received with respect to table potatoes in 1969, 1971 and 1976 and with respect to canned tomatoes in 1976; however, in no instance was surtax action taken.

Surtax measures contemplated, or taken, by Canada under section 8(2) of the Customs Tariff are affected by Canada's obligations as a contracting party to the General Agreement on Tariffs and Trade (GATT). Changes in existing legislative and/or regulatory provisions designed to deal more effectively with this problem of low-priced imports need to be looked at in the light of Canada's commitments as a member of GATT. Article XIX of GATT permits "emergency action", such as a surtax, where particular products are imported under such conditions as to cause or threaten injury. This article binds any contracting party, in the event of proposed emergency action, to give notice in writing as far in advance as is practicable to other contracting parties whose exports may be affected. Article XIX also states that the exporting country has the right to retaliate if no agreement is reached respecting any emergency action.

The bulk of Canada's imports of fresh and processed fruits and vegetables originates in the United States. That country is thus the GATT member whose trade interests have been most affected by surtax actions taken by Canada. Under present consultative arrangements between the two countries, Canada has agreed to inform the United States regarding intended surtax measures in advance of their

implementation. Mexico, which is also a supplier of fresh fruits and vegetables for Canadian markets, is not a member of GATT. However, Mexico is normally accorded notification, and an opportunity for consultation, when Canada contemplates emergency measures in respect of Mexican imports.

The main criteria used by the Canadian government to evaluate the extent to which low-priced imports may cause or threaten injury to Canadian producers are: (a) current and prospective producer prices in Canada and in the exporting country and their relation to prices in the previous five-year period, (b) current and prospective f.o.b. import prices and their relation to prices in past periods, (c) domestic and foreign data respecting production, acreage, and inventories, and (d) Canadian and foreign production cost data, if available.

The present procedure for handling surtax action involves: (a) an initial request to the Minister of Agriculture and/or Finance by the Canadian Horticultural Council or other grower or processor interests; (b) initial consideration by the Department of Agriculture followed by interdepartmental consultation involving normally representation from the Departments of Agriculture, Consumer and Corporate Affairs, External Affairs, Finance, Industry, Trade and Commerce and National Revenue; (c) notification of Canadian concern to United States authorities followed by possible consultation if United States commodity involved; and (d) submission to Cabinet requesting Order-in-Council authority for surtax; (e) issue of Order-in-Council specifying product(s), price level at which surtax is triggered and specific or open dates of application; and (f) revocation of Order-in-Council on recommendation of Minister of Finance or expiration under section 8(4) of the Customs Tariff after 180 days.

Under working arrangements between Canada and the United States, that country has two working days to indicate whether or not it wishes consultation in accordance with Article XIX of GATT. Five to ten working days may be required from the date of notification before the necessary consultation with United States authorities is completed.

The Canadian Horticultural Council's major complaint about existing surtax arrangements is the time required for implementation. It noted that requests for action have involved implementation periods ranging from twenty-nine to sixty days. The Board agrees that the possibility of delay exists at various points in the procedure outlined above and that this delay could be crucial in the case, for example, of highly perishable fruits such as cherries with a comparatively short harvest period.

Producer groups frequently cannot forecast possible injury from low-priced imports with sufficient lead time to allow in-depth assessment of the usual criteria. Weather factors, particularly the amount of rainfall, in the last harvest month, are critical in determining the size of a fruit or vegetable crop. It is probably not feasible for potentially affected domestic growers to anticipate the need for surtax protection much more than four weeks prior to the need for actual surtax implementation. A well-documented case, however, is important to the interdepartmental consideration which precedes a recommendation for surtax action and to the consultation normally instituted with the exporting country. Considerable time also is required to reach agreement at various levels in the governmental decision-making process on the points at issue. It is open to question whether in some cases, particularly where perishables are concerned, the present procedure or even a streamlined version can respond quickly enough to avert the apprehended injury to Canadian growers. A quick response to surtax action requests requires good basic documentation already in place and the institution of preventative rather than reactive decision-making procedures by government.

ALTERNATIVES TO PRESENT SYSTEM

The Canadian Horticultural Council recommended a version of the present import surtax procedures by which a surtax would be imposed automatically on fresh fruits and vegetables whenever import invoice values fall below 90 per cent of the previous three-year average. Before considering the Horticultural Council's proposal, the Board examined various alternatives.

Quantitative Import Restrictions

The Export and Import Permits Act provides legislation enabling the Canadian Government, under specific conditions, to make certain imported goods subject to quantitative restrictions. This Act establishes a list of goods (import control list) for which import permits are required. No fresh or processed fruit or vegetable is currently included in the import control list established under this Act.

Apart from considerations of international trade, administrative difficulties would occur if quotas were used to cushion the domestic market from external situations of over-supply. An integrated system of quotas would be necessary, perhaps covering a large number of varieties, grades and packs of vegetables and fruits. Criteria for determining quota levels would have to be established across the board and levels set annually, or more frequently.

A major objection to any quota system is that, until the determined quota point is reached, imports can still occur at distress prices and pressures to obtain a share of the market are increased. After the cut-off, consumers have no alternative, at whatever price, to domestic supplies. Any quota system for fresh fruits and vegetables entails an administratively cumbersome, and essentially arbitrary, allocation of quota shares among importers.

Moreover, domestic fruit and vegetable producers showed concern primarily over low prices rather than the volume of imports per se. While quotas are one means to stabilize prices, their applicability to the horticultural industry is doubtful, particularly for highly perishable commodities. For these reasons, the Board concluded that the use of quantitative restrictions was not a suitable alternative.

Variable Import Levies

The European Economic Community (EEC) makes use of a system of variable levies on agricultural commodities. In brief, EEC variable import levies are tied to "reference prices" for commodities coming under this system. Reference prices are based on production costs within the Community, and in fact are the prices at which the Community supports the production of these commodities. To the extent that c.i.f. import prices are below the reference price, a duty is imposed equal to the difference. For fresh fruits and vegetables, this system would automatically impose higher duties where imports are entered at low or distress prices; thus protection against low import prices due to external over-supply conditions is implicit.

In the EEC framework, variable import levies are an integral part of a much broader farm support programme, and their rôle in countering the adverse effects of low-priced imports resulting from over-supply in exporting countries is related to the achievement of these broader objectives. The Board felt that to make proposals covering the desirability of a variable import levy system within the framework of a general national farm support programme would not be within its terms of reference. It is pointed out, however, that, given the considerable degree of government intervention necessary in such a system its practical application in Canada is doubtful. Moreover, the operation of such a tariff arrangement would entail the very considerable burden of collecting detailed production cost data with attendant definitional problems and judgments as to what constitutes a "reasonable" or "normal" net return to producers.

Farm Price and Income Support Measures

The Board's letter of reference makes mention of provisions to counter the "adverse effects" of low-priced imports. The Board therefore examined not only quotas and surtax levies, but also such measures as price stabilization and farm income support programmes.

At present, a price support programme is available to fruit and vegetable producers under the federal Agricultural Stabilization Act; provincial legislation also provides for price or income support programmes. The federal Act authorizes subsidies, or stabilization payments, to producers of specified commodities where prices decline below a certain "prescribed price" (90 per cent of the average price during the preceding five years).¹ Price support may also be provided by the Agricultural Stabilization Act via the purchase, and possession of, agricultural commodities for subsequent resale either off shore or domestically. Under the federal Act, stabilization assistance has been given to growers of various fruit and vegetable crops (e.g. potatoes, tomatoes, apples, peaches, sweet cherries and carrots).

Both federal and provincial programmes usually operate in response to abnormal price declines. Lower domestic prices may be the result of purely domestic market conditions, in some cases may mainly reflect low import prices, and in other cases may result from depressed prices in both internal and external markets. In the past, price stabilization and income support measures have been introduced when domestic price levels were depressed compared to previous years, irrespective of other factors.

It is recognized that such measures can be employed to deal with the adverse effects of low-priced imports, but only in a remedial fashion, that is, after the market disruption or injury from low-priced imports has developed. The Board is of the opinion that the government should act by other means to minimize market disruption resulting from low- or distress-priced imports, retaining the instrument of price stabilization and income support measures as a longer term remedy, especially when depressed domestic prices are the result of internal conditions.

¹The prescribed price may exceed this formula in certain circumstances.

Action Under the Anti-Dumping Act

The Anti-Dumping Act is sometimes applicable to import situations involving low-priced imports. However, some important distinctions should be made between a surtax and dumping duty imposed pursuant to the Anti-Dumping Act. Action may be undertaken against low-priced imports under the Anti-Dumping Act in the event, and to the extent, that import prices are below the normal value of like goods sold in the home market of the exporter, i.e. where there is dumping. However, even where there is no dumping, the import price levels may nonetheless be low relative to prices in Canada, and may cause, or threaten to cause, injury which calls for emergency action such as a surtax by the Canadian government. It is conceivable, moreover, that in the case of dumping, the import price inclusive of dumping duty, may still constitute low- or distress-priced imports injurious to Canadian growers or processors.

THE RECOMMENDED APPROACH - A TWO-TIERED SURTAX SYSTEM

After considering the various alternatives to deal with distress-priced imports, the Board could see no valid reason to recommend a change from the import surtax concept which has been in place since 1968. It concluded that some form of surtax action provided the simplest and best means of coping with this problem. In considering how to improve the existing surtax system and in judging the proposals of the Horticultural Council regarding an automatic surtax system, the Board had the advantage of having studied in considerable detail a wealth of statistical data, covering a period of fifteen years, on all the vegetables and fruits which might qualify for surtax treatment under section 8 of the Customs Tariff. The Board was able to use the knowledge about individual commodities which it had gleaned from its broader tariff level study to make certain general judgments about the horticultural industry. Subsequently the Board applied these judgments to its study of the surtax system once it had decided upon that route as the most practical and rational way of attacking the problems created by distress-priced imports.

The Board noted in its broader tariff survey for example that the vast majority of vegetables and very many of the fruits grown in Canada are unlikely ever to be involved in a distress-priced situation requiring government intervention. Those fruits and vegetables and their growers are protected from such situations by a variety of factors including freight costs, geographical origin of competing imports and the nature of the crop. It was apparent also that for the bulk of fruits and vegetables which might at some time be the subject of surtax proposals, there existed no strong requirement for very rapid government reaction to the distress-priced import situation since these were commodities with a comparatively long

marketing season where daily losses have proportionately less impact on the return to the grower. The Board was therefore able to conclude at the outset that its recommended approach should not and need not be as comprehensive as that suggested by the Horticultural Council whereby all vegetables and fruits grown in Canada would have been covered by an automatic mechanism for surtax imposition. It was satisfied that a streamlining of the existing surtax procedures which would include an onus on the government to react within a specified period would meet the requirements for the great majority of fruits and vegetables, either fresh or processed.

The Board attached particular importance to this conclusion since in the course of its individual commodity studies it had noted the very wide seasonal variation in the import prices of each commodity and the very considerable variation in prices due to class or kind distinctions arising from grade, variety, type/form of pack or end-use. It was clear that a workable surtax system required meaningful data on average prices for the commodity at issue and that to be relevant at all in the determination of injury or the threat of injury, accurate price data would have to be collected in a narrow spectrum of those goods which can be established to be comparable as to class or kind. The Board decided early, therefore, not only that the list of commodities to be covered by any form of automatic surtax system could and should be very limited but also that within that group of commodities and for each commodity the price data collected to establish the moving averages would have to be as precise as possible.

The Board also gave considerable attention to the question of what constitutes injury for a domestic grower of vegetables or fruits. In principle, the most appropriate way of defining injury would be to establish the point at which the duty-paid landed value of competing imports falls below the domestic growers' cost of production. Injury as defined above will naturally not occur for all commodities after an identical decline in import price. Factors such as the relationship between the return to the grower and costs of production will vary from one commodity to another. Tree fruit growers are unable to control their production to the extent possible for certain vegetable growers and they may be more sensitive to sharply declining prices than producers whose large scale production and high yields allow for narrower margins. The Board considered whether the system could be constructed to allow for these individual variations in determining the surtax base but concluded that there was insufficient data on net returns to the grower to permit this type of fine-tuning. The Board is aware, too, that imports statistics are collected on an f.o.b. rather than on a c.i.f. basis and that this results in certain difficulties in comparing prices of the foreign and domestic product. The Board noted, however, that f.o.b. data would readily reflect changes in the dynamic component of import prices besides being available on a continuing basis. Moreover, the Board

considered that it was in a position on the basis of its comprehensive study of the industry to make a reasonable judgment as to the percentage decline in f.o.b. import prices which would indicate on average, for the limited number of commodities involved, a situation where competing imports were selling below Canadian production costs.

With these general considerations in mind the Board concluded that it should recommend a two-tiered surtax system under which for a small selected group of horticultural products a surtax based on a fixed percentage of the three-year moving average of import prices would operate automatically in the absence of specific action to suspend the surtax by the Minister of Finance, and whereby for all other fresh, semi-processed or processed fruits and vegetables produced in Canada an improved, streamlined version of the existing surtax provisions would be in effect.

The Proposed Surtax Mechanism

The surtax mechanism as envisaged by the Board would have the following provisions:

- (a) that a surtax be imposed whenever the value for duty of an import is below a previously posted surtax base, the amount of the surtax being equal to the difference between the value for duty and the posted surtax base,
- (b) that the surtax be imposed only when imports of the designated commodity are otherwise dutiable,
- (c) that the operation of the system may be suspended by Ministerial Order,
- (d) that the surtax base be calculated on the basis of a fixed percentage of the average unit values for duty declared during the preceding three years,
- (e) that, for each designated product, surtax bases be calculated by tariff region, by country of origin, by month, and where applicable, by variety, grade, form of product, pack and use, and
- (f) that the surtax bases thus calculated be posted well in advance of the relevant production and marketing season.

Selection of a base period

A base period consisting of the three immediately preceding years is proposed. In section 40A.(7)(b), now superseded, of the Customs Act, a three-year average was employed specifically with respect to fresh fruits and vegetables. A longer period, e.g. a monthly average based on five years or more, is also an alternative, but the upward trend in food prices poses problems. Should, for example, an annual rate of inflation of 8-10 per cent prevail for fresh commodities, import prices recorded in any period five years prior to a current import year would bear little valid relationship to current year price levels, or for determining any current year surtax base.

The use of a monthly surtax base

The surtax base could be established either with reference to annual, quarterly, or monthly averages. The Canadian Horticultural Council proposed that an annual base price be established at the beginning of each calendar year to apply for the following twelve months. After an analysis of monthly, quarterly, and annual price averages for 1966-75, however, the Board concluded that a single, or annual, surtax base would be unsatisfactory.

Import price data show that for most fresh fruits and vegetables there is a pronounced seasonal pattern within the calendar year. Import prices are notably lower when domestic shipments are at their peak; they are higher during the off-season and, as well, during the early part and towards the end of the domestic marketing season. A surtax base related to annual averages would thus be very much influenced by the considerable volume of relatively high priced imports during the off-season. The result would be that, during the main marketing period, when prices are at a normal seasonal low, the surtax would be imposed when conditions would not actually warrant it; the minimum import price, or surtax base, during this domestic marketing period would be determined by the high import price levels normal to the off-season.

A surtax base using a quarterly average of import prices was also considered but it too would be insensitive to seasonal fluctuations since many fresh fruits and vegetables have a marketing period in Canada shorter than three months. The Board therefore advocates a system using a monthly surtax base. The base prices for each month within the season when a surtax could apply would be published well in advance of the start of the domestic marketing season for those fresh commodities which are designated.

The individual monthly surtax base would consist of a simple, or unweighted, three-year average. A simple averaging is proposed inasmuch as periods of high import volume tend to be associated with low prices; the use of a weighted average as between years might give undue weight to earlier prices prevailing under abnormal market conditions. The average price calculated for any one month in the base period would, however, be weighted.¹

The percentage factor

It is proposed that the monthly surtax base be calculated as a percentage (termed here the "percentage factor") of the average of the f.o.b. import prices for that month in the preceding three years. This percentage would be less than one hundred, because import prices should be free to decline to some extent without the intervention of a surtax. The proposed surtax mechanism should not interfere with "normal" import price fluctuations but should come into play only where abnormal conditions cause or threaten to cause injury to domestic growers.

As mentioned earlier, the percentage decline in import prices which is likely to cause injury will be different as between commodities and indeed, for one commodity, as between different domestic producers. The Board decided that it would not be possible to fine-tune the system to the extent of having different percentage factors for different commodities, without having much more specific data regarding production costs and net return to the farmer. The Board is fully aware that the establishment of a percentage factor applicable without differentiation to the different commodities even within the small number to be covered by the new system may be unsatisfactory to some growers and advantageous for others. The Board believes, however, that in the long run, if set at the appropriate level, a common percentage factor will provide the sort of ongoing protection against abnormal conditions desired by the Canadian producer despite minor variations in the impact of the system on different growers at different times.

The Board thought it important not to set the base price too high in relation to the moving average. It believed that the 90 per cent factor recommended by the Horticultural Council would trigger a surtax too often to be really indicative of abnormal conditions. On the other hand, 80 per cent did not appear to be sufficient

¹Each of the three monthly averages would be derived by the aggregate f.o.b. value per month divided by monthly import volume. The simple average of these three weighted averages, adjusted by the appropriate percentage factor equals the monthly surtax base.

to the Board in what was likely to be a period of rising costs. In the Board's judgment, a percentage factor of eighty-five is a reasonable percentage to apply given the circumstances of the various commodities involved and the likely normal fluctuations in their prices over time as evidenced by the price data available to the Board. In this connexion, the Board was able to form a judgment of how the described system might actually work by applying a percentage factor of eighty-five to f.o.b. import prices for the period 1966-75. In working through this historical price data, assuming the proposed mechanism were operative, the results provided assurance that the system envisaged would have worked satisfactorily, i.e. would have picked up unusual price conditions while permitting a desirable degree of apparently normal price fluctuations.

The percentage factor of eighty-five is necessarily arbitrary and will satisfy some growers more than others depending on the conditions pertaining at the time. It represents a surtax base somewhat lower than that which has generally characterized surtax levels imposed by the government in the past on horticultural products. The Board considers that it is at a level commensurate with Canada's obligations under GATT and that its advantage to the domestic producer of the named commodities proposed will lie in the certainty it would create regarding continuing protection against distress situations. Nevertheless, the percentage factor and hence the surtax intervention point is modest enough to ensure that no incentive floor price is being created which will distort the normal flow of horticultural imports.

Operative period

Under Group I, Schedule "A" of the Customs Tariff, most fresh fruits and vegetables are dutiable on a seasonal basis. The period during which the proposed mechanism would operate would be integrated with, and governed by, current procedures which specify the duration of the seasonal duty. The proposed surtax mechanism would not operate in any period, or in any region, unless the normal seasonal duty under Schedule "A" is in effect.

Ministerial discretion

The need, on the one hand, is for a surtax mechanism which will operate quickly in response to certain defined circumstances. On the other hand, it should be possible to suspend the operation of this mechanism when the Minister of Finance is satisfied that no injury exists or is threatened. It is therefore proposed that the automatic provisions applying to any designated commodity could, in certain circumstances, be suspended or waived for any period by the Minister of Finance. In the Board's view such suspensions would probably be limited to circumstances where import price declines are paralleled by domestic price drops by reason of excess supply conditions both in Canada and in the exporting country, or where a regional crop failure dictates special action for one part of Canada.

It is envisaged that the surtax bases would be established and announced well in advance of the crop season or dutiable period. For non-storable fresh fruits and vegetables, 1 January would be an appropriate date. For storable fruits and vegetables and processed products, surtax bases would have to be posted on at least two different occasions, possibly six months apart, and also well in advance of the period of application. This advance notice would, of course, be useful to the industry. It would also provide the Minister with ample time to review domestic market conditions from the viewpoint of a possible suspension of the proposed provisions. Furthermore, the lapse of time between the posting of the surtax bases and the actual operation of the surtax mechanism would also provide an opportunity, probably more so than under the existing surtax procedures, for consultation with potentially affected trading partners pursuant to Canada's international obligations under GATT.

The operation of the mechanism would, in most periods, not result in a surtax. As long as import price levels are within the band allowed by the percentage factor and therefore above the monthly surtax base, importation would take place without attracting any surtax above normally applicable duties.¹

Differentiation by class or kind

The envisaged system would not be workable unless applied on the basis of goods which are conformable as to class or kind. Considerable care would be required, in the computation of monthly surtax bases, to insure that all significant price variances are taken into account. For a given commodity, a number of surtax base classifications might be needed due to class or kind distinctions arising from differences in grade, variety, or type/form of pack. From the viewpoint of equity, it would be undesirable to use a surtax base derived, for example, from low-priced bulk imports, to apply to an import shipment of higher value consumer packs. In such a situation importers could, justifiably, contest the classification procedures used in levying the surtax. Moreover, the objective of the described system is not to compensate for certain differences in grading and packaging standards between Canada and its suppliers.

¹Some qualifications should be pointed out. The Board conducted a survey of import prices which indicates that invoice prices, by individual import shipment, can vary significantly around a central mean. Even in a period, for example, when the monthly import price mean is well above the monthly surtax base, some small proportion of imports would probably be below the surtax base, given the dispersion of invoice prices, and thus be subject to a surtax levy.

Generally speaking, the import price of any kind of fresh fruit or vegetable appears to differ mainly because of differences in (a) end-use, (b) package size and/or form, and (c) variety. Grade distinctions may also result in different price levels. Fresh produce may be entered either for processing purposes or for fresh market sale; imports for processing normally comprise unwashed and ungraded "field-run" product in bulk shipments and are entered at a per pound price likely to be much less than when the same commodity is imported for fresh market sale. Fresh market imports themselves occur in a variety of sizes and pack forms; substantial price differences result, for the same commodity, between larger packs, 50 or 100 pound bags or sacks, and small retail packs, usually 1, 2, or 3 pound "cellos". Also, some vegetables such as carrots and beets may be entered for enhanced consumer appeal in "bunched" form, i.e., with leaves and stalks attached, at much higher prices than when the same commodity is entered "topped" in cello packs. With respect to fresh beets, for example, a 1974 study of invoice documents showed that per pound prices were 1.3-1.7 cents for imports for processing, 10-14 cents for topped fresh market beets in cello packs, and 25-30 cents if in bunched form. Substantially different price levels may prevail, moreover, as a result of varietal or type differences, particularly in the case of certain fruits such as apples (McIntosh vs. Red Delicious, Spartan, Granny Smith, etc.) or pears, (Bartlett vs. Anjou and Keiffer).

As discussed below, significant improvements to existing import price data and recording procedures would be necessary to make the proposed system workable and to minimize problems of classification.

Price effects of the proposed surtax provisions

A temporary surtax, as applied at present under Section 8(2) of the Customs Tariff provides, in effect, a minimum floor price for imports and thus constitutes a price support device benefiting domestic producers. The recommended "automatic" surtax system would, during its operative period, similarly establish but on a continuing and constantly adjusting basis, a floor price for imports of designated commodities. As such the system envisaged for those commodities would protect Canadian growers not only against the disruptive effects of actual imports at abnormally low or distressed prices, but also against the threat of such imports. At the same time, because of the use of moving averages, allowance is made for the interaction of competitive forces. Moreover, the proposed system could obviate the need for more direct forms of government price intervention and would appear to be largely operable under already existing provisions in the Customs Tariff, i.e. Section 8(2).

As discussed during the public sittings, it is highly improbable that any surtax levy would, in practice, actually be collected. In fact, it would seem likely that imports would be "priced up" to the level set by the declared

monthly surtax base.¹ The monthly surtax base would be derived from observed or recorded f.o.b. invoice prices. These would include the surtax amount where pricing up takes place; observed invoice prices would be lower, on the other hand, where pricing up does not occur, that is, where the observed price would exclude the surtax element. Furthermore, when imports are entered at an f.o.b. price equal to, or just above, the monthly surtax base, it would not be possible to determine directly, without reference to external market indicators, whether or not the surtax mechanism were operative; the recorded invoice price might, or might not, include a surtax component. For a designated commodity the effect of the proposed provisions could be readily judged, however, from a comparison of import prices to selling prices prevailing in the country of export.

The proposed system would not intervene in any way, of course, where import price upswings occur, in which case the consumer buys at market-determined price levels. Where there is an abnormal price decline, on the other hand, the consumer would benefit only partly from low prices since the proposed surtax structure would be targeted to prohibit import price declines below the surtax base. The Board also considered the case of a secular price decline in imports resulting from, for example, major improvements in growing and harvesting technology. In this instance consumers would eventually benefit from resulting lower import prices; however, the flow of such benefits to consumers would be significantly delayed by the surtax mechanism as described, particularly if pricing up to the surtax base is assumed. The protective device against this sort of situation lies in the Minister's ability, after consultation and due consideration of all the relevant factors to suspend the automatic surtax provisions.

Administrative requirements

Some serious practical difficulties would confront the implementation of the automatic surtax structure recommended here. Import prices would have to be collected and maintained for each fruit and vegetable, and for each of the three tariff regions, with price breakdowns as to grade, variety, produce form, and type or size of packaging. According to a rough estimate, as many as 1,300 import price series could be necessary if all fresh fruit and vegetable commodities

¹As an example of this effect, assume a United States exporter is willing to sell, and a Canadian importer willing to buy, certain fresh produce at 20 cents per pound. If the monthly base price is 25 cents, this transaction would occur at 25 cents. The importer otherwise would pay 20 cents plus a surtax of 5 cents to the federal government. A transaction price of 25 cents would entail no extra cost to the importer, who would avoid any surtax levy, but would confer a benefit of 5 cents per pound to the exporter to the extent that the market is responsive to the higher price.

were included for coverage under the automatic provisions.¹ Moreover, this would result in 6,500 monthly surtax base calculations assuming an average dutiable period of five months. An attempt to incorporate, under the proposed provisions, all semi-processed and processed horticultural products, would, in view of the variety of such products, at least triple these figures.

The Board had in any case rejected the possibility of including a broad range of fresh, processed, and semi-processed horticultural products under the proposed surtax mechanism. For most products such inclusion is, in fact, unnecessary as the likelihood of their importation at low or distress prices is small and/or the time factor is not critical.

To make the envisaged system viable, even where application is limited to a relatively few commodities, considerable additional work would be involved. Import price information as at present recorded by Statistics Canada does not provide the level of detail required; it would be necessary to establish a number of new import sub-classifications; a main task being the subsequent coding of base period data, e.g., entry documents and import invoices, into appropriate categories. Moreover, in some cases the institution of better recording procedures at the port of entry level might be required. However, the Board felt that staffing requirements could be held to an acceptable minimum, particularly through the use of electronic data processing.

Assuming the adoption of the system, a substantial lead time would be entailed before actual implementation could commence. It would be necessary, first, to collect and appropriately classify import price data for the starting three-year base period. Moreover, the entry documents required are at present held by Statistics Canada for only the most recent twelve-month period; implementation could therefore be delayed for at least two years. This period could be shortened, however, if a two-year base period were initially employed.

Commodities covered

Fresh fruits and vegetables

The Board proposes that the described surtax system be applied, initially, only to those fresh fruits and vegetables which, in the period under review, have been subject to surtax action, or requests for such action, i.e., sweet cherries, sour cherries, strawberries, peaches, green onions, lettuce and

¹For some individual fresh commodities as many as seventy-two import price categories might be necessary, given, for example, the possible combinations arising from three tariff zones, and, in turn, three varieties, two grades, and four pack sizes.

potatoes.¹ Where necessary, other commodities could be designated for coverage subsequently, such later inclusions perhaps extending, for example, to asparagus, celery, plums and prune plums.

The Board concluded, generally, that the proposed surtax should cover those fresh fruits and vegetables which are perishable and which are normally harvested in a short period. The injury associated with distress-priced imports is most likely to occur, moreover, for those crops where the domestic harvesting period coincides with that in the United States. The principal rationale of the envisaged surtax mechanism is to ensure a prompt response to imports at distress prices. This is particularly necessary in the case of perishable crops with a short marketing season. With reference to sweet cherries, for example, virtually the entire domestic crop is marketed in the month of July. Moreover, import competition from distress-priced imports is most likely in this month, since United States growers market their crop in the same short harvesting period. Under existing surtax procedures, action pursuant to industry request might not be possible until the latter part of July, when it would be largely ineffective.

There is not the same degree of urgency for storable crops. When the marketing season extends over nine or ten months, a procedural/administrative delay of one month would expose only a relatively small proportion of the domestic crop to a period of distress-priced imports. On the other hand, for crops such as cherries and strawberries, a serious delay might result in surtax action only after almost all of the crop has been sold under abnormal market conditions created by distress-priced import competition.

It is apparent that the marketing of table potatoes does not meet all of the selection criteria outlined. Potatoes are not perishable, and, in fact, domestically grown potatoes are marketed throughout the year. It is nonetheless recommended that the proposed system cover this crop, which, by a considerable margin, is the most important vegetable produced domestically. Table potatoes, moreover, have been the subject of numerous surtax actions or requests in recent years, on seven occasions since 1959. Domestic producers of this crop have also received substantial aid under the Agricultural Stabilization Act. It is concluded that the particular problems confronting the marketing of potatoes, the likelihood of persisting problems, and the importance of this crop would justify its inclusion in any "automatic" surtax mechanism if only to ensure that the government has full knowledge of price movements for this commodity.

¹While greenhouse tomatoes were subject to surtax action in 1973 this commodity is excluded. Such action related to certain temporary tariff changes, made in that year and not to distress-priced imports.

The inclusion of table potatoes would probably necessitate changes to present Section 8(4) of the Customs Tariff which limits the duration of any surtax to 180 days. For potatoes the operative period could be fifty-two weeks; therefore, under the described automatic provisions a surtax might be in effect for most of the crop year and in excess of the existing 180-day limitation. This situation might also occur in the case of certain semi-processed, storable products which, as discussed subsequently, are designated for coverage under the automatic mechanism.

Processed and semi-processed products

The adoption of safeguard provisions for fresh commodities as described here would have a number of implications for the domestic food processing industry. Specifically, the imposition of an import surtax on the fresh, or raw, product, whether under new or existing surtax provisions, would not prevent the import into Canada of the processed or semi-processed product at distress prices, to the serious disadvantage of Canadian processors. United States processors, for example, would be able to obtain a given fruit or vegetable at a significantly lower cost than Canadian processors. United States processors would thus enjoy a cost advantage in competing in the Canadian market; imports in processed form would increase or profit margins realized by domestic processors would decline, probably both.

The adverse impact on Canadian processors would not greatly affect the viability of a large, multiplant, multiproduct firm. Of the broad range of commodities produced by such a company, only a few commodities would be affected by surtax action. Smaller independent processors who are more dependent on, or specialize in the processing of the particular fruit and vegetable liable to a surtax, could, however, be seriously affected. Furthermore, while distress-priced imports and the attendant surtax action are reflective of abnormal situations, and would not occur for a number of years in a row, one poor year can be decisive in the existence of a processing operation, particularly a smaller one.

It is also possible that the intended benefit to domestic growers of a surtax on a fresh commodity might be largely negated by increased imports of the same commodity in its processed or semi-processed form. Where United States processors, as above, enjoy cost advantages, and import competition forces domestic processors to suspend or greatly curtail production of certain lines, growers for the processing market would face declining demand and depressed farm selling prices. The Board concludes, therefore, that whenever a surtax is being imposed on a fresh fruit or vegetable, consideration should as a matter of course be given to a compensating surtax on its processed products.

There are some vegetables where the existence of abnormal surplus conditions in the country of export results in low-priced imports into Canada not in the fresh but, rather, in the processed form. This occurs when trade in the fresh form for processing is prohibited by distance and/or perishability, e.g. shelled peas for processing, shelled corn for processing and processing tomatoes. With respect to these vegetables, surtax action to counter low-priced imports would be considered on the processed products only.

The Board is of the opinion that, with the exception of the products noted below, surtax action with respect to processed products should not be provided under the recommended automatic surtax mechanism but under the existing provisions. As pointed out earlier, the Board was very reluctant to recommend a system which would require a large administrative organization. Furthermore with respect to processed products there is not the same need for a responsive surtax mechanism as for perishable fresh commodities, since they normally have a shelf-life of at least twelve months.

While no fully processed horticultural products require inclusion under automatic provisions, there are some exceptions to this general rule in the case of semi-processed horticultural products. Considerable quantities of cherries and strawberries enter into Canada in the semi-processed state for further processing.¹ For these fruits, semi-processed imports greatly exceed, in volume, imports of the fresh product for processing. It is highly probable that a surtax, if applicable only to imports in fresh form, would merely lead to a greater use of lower cost semi-processed imports as an alternative. In the case of strawberries, for example, domestic jam manufacturers can utilize either fresh, frozen, or sulphur dioxide strawberries. A surtax levied on the fresh commodity would not necessarily encourage the greater use of domestic strawberries if low cost raw product is available through imports of frozen strawberries or berries in sulphur dioxide. The Board therefore considers that the following semi-processed commodities should also be designated for coverage under the proposed automatic surtax: (a) sweet cherries, in liquid preservative; (b) sour cherries, frozen; (c) strawberries, in liquid preservative; and (d) strawberries, frozen.

Imports of fresh cherries and strawberries are subject to duty during only the short period of their domestic availability and, hence, the automatic provisions respecting these fruits would be in operation only during a brief period. However, in their storable semi-processed form these fruits are available,

¹Sweet cherries are entered in liquid preservative (sulphur dioxide) and sour cherries are entered in frozen form; strawberries may be entered either frozen or preserved in sulphur dioxide.

and imported on a dutiable basis, throughout the year. Consequently, with respect to semi-processed cherries and strawberries, the proposed surtax provisions would need to be operative throughout the year. This would require an amendment to Section 8(4) of the Customs Tariff to extend the maximum period from 180 to 360 days.

Whereas Canada's imports of fruits and vegetables, in fresh form, originate almost entirely in the United States, imports of the above-mentioned semi-processed products are frequently significant from such countries as Mexico, Poland and Italy. Thus, for the semi-processed commodities designated, the exports of several countries might be affected by the automatic mechanism proposed. To provide equal treatment to trading partners, it would be necessary to apply any formula for surtax determination according to import origin, i.e., surtax bases would need to be differentiated by country of export.

Improvements to Existing Surtax Procedures

The Board is recommending that only a relatively few horticultural products be designated for coverage under the proposed surtax mechanism. It is recommended, for those fresh, processed or semi-processed products not designated, that surtax action be considered upon request, under the surtax regulations and procedures which now exist. However, a number of improvements are proposed to the current surtax procedures in order to provide a more streamlined and responsive vehicle for evaluating, and acting upon, grower or processor requests for surtax assistance.

At present, under Section 8(2) of the Customs Tariff, the levy of a surtax requires Governor-in-Council approval, normally accorded only after full Cabinet consideration. The Board was of the opinion that the elimination of Order-in-Council requirements would serve to speed up the decision making process. It is recognized that Cabinet consideration permitting a full representation at the Ministerial level of the various interests involved, is at present deemed desirable for surtax action contemplated by Canada. Existing procedures, however, already provide for representation of consumer, grower and processor interests at the interdepartmental level. The Board recommends that the Minister of Finance be given the authority to take action after consultation with his directly interested colleagues.

In the past, the total response time to requests for surtax action has not only often been too lengthy but has also varied considerably. The Board concluded that existing procedures could be greatly improved if a mandatory time limit were established for the review of all surtax requests. It is recommended that there be a maximum period of twenty working days or four weeks between the date of any initial request and surtax implementation, or between the date of initial request and a finding that action is not warranted.

At the public sittings it was pointed out that significant delays may occur where initial surtax applications are not adequately documented. Closer co-ordination between Agriculture Canada and grower/processor groups is recommended to ensure that initial submissions include all necessary information. Specific consideration should be given to a standardized request format to be circulated in advance to associations or processor/grower groups likely to be involved.

Extension of time-limit for surtax applications

The shelf or storage life of many processed or semi-processed products often extends to one year or more; moreover, processors frequently pack, in a single production run, their market requirements for the following twelve-month period. Storable fresh vegetables and fruit are also marketed beyond a six-month period. Where surtax measures are deemed warranted for these products, the Board felt that such protection would in some circumstances be needed for the full inventory period. However, as noted previously, any surtax order authorized under existing legislation is terminated after 180 days unless continuation is approved by both houses of Parliament. The Board concludes that this 180-day period is insufficient and should be extended to a maximum of 360 days.

Summary of Recommendations

The Board recommends:

- I. That for the purpose of initiating an immediate response to low-priced imports of certain sensitive fruits and vegetables, provisions and procedures be introduced for imposing an automatic surtax, such provisions and procedures to comprise, in essence, the following:
 - (a) a surtax be imposed whenever the value for duty of an import is below a previously posted surtax base, the amount of the surtax being equal to the difference between the value for duty and the posted surtax base;
 - (b) the surtax be imposed only when imports of the designated commodities are otherwise dutiable;
 - (c) the operation of the provisions be subject to suspension by Ministerial Order;
 - (d) initially these provisions apply only to fresh sweet and sour cherries, fresh strawberries, fresh peaches, fresh lettuce, fresh potatoes, frozen sour cherries, frozen strawberries, sweet cherries in liquid preservative, and strawberries in liquid preservative;

- (e) the surtax base for each commodity be calculated on the basis of a percentage factor of eighty-five applied to the average unit values for duty declared during the preceding three years, and separate bases for each commodity be calculated by tariff region, by country of origin, by month, and where applicable, by variety, grade, form of product, pack and use, and
- (f) the surtax bases thus calculated be posted well in advance of the relevant production and marketing season.

II. That surtax action with respect to fresh and processed fruits and vegetables not designated for the purpose of the automatic surtax continue to be taken, as requested, under the existing provisions and procedure relating to Section 8(2) of the Customs Tariff but that these provisions and procedures be amended in the following manner:

- (a) approval of surtax action be at the discretion of the Minister of Finance;
- (b) the review of a request for surtax action not exceed twenty working days from the day of receipt of the request;
- (c) a standard request format be instituted on the basis of consultation between the Horticultural Council and the Department of Agriculture, and
- (d) the maximum length of time for imposing a surtax be 360 days.

III. That for every fresh fruit or vegetable in regard to which a surtax is imposed, consideration be given as a matter of course to surtax action in respect of the semi-processed or processed forms of that commodity.