



March 8, 2024

Privileged and Confidential

Sent by Email

Ministry of Economy and Industry of Israel
Trade Commissioner, Import and Trade Administration
5 Bank Israel Street
P.O. Box 3166
Jerusalem 91030101

Attention: Mr. Danny Tal

Dear Mr. Commissioner Tal:

Anti-Dumping Investigation

I am writing to you on behalf of the Cannabis Council of Canada (**C3**), the national and international representative of Canada's licensed producers and processors of cannabis, in my capacity as Chair of the Board of Directors of C3.

C3's mission is to promote industry standards, support the development, growth, and integrity of the regulated cannabis industry, and serve as an important resource for issues related to the responsible use of cannabis for medical and non-medical purposes.¹

We were advised that pursuant to section 24(d) of the *Trade Levies and Safeguard Measures Law, 5591 - 1991 (Law)*, you launched an anti-dumping investigation, of your own initiative, into the import of medical cannabis inflorescences from Canada into Israel.

We are an interested party within the meaning of Section 6.11 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-Dumping Agreement)*.²

In the January 18, 2024, decision to initiate (<https://www.gov.il/he/departments/news/news-cannabis-180124>), you indicate that there is, in your view, sufficient *prima facie* evidence of import dumping on the part of Canadian exporters of cannabis inflorescences for medical use, actual injuries or probability of actual injuries in the Israeli manufacturing cannabis industry. The decision also states that you believe that a causal link between the import dumping and said injuries exist.

We believe that this investigation should be closed since there are neither special circumstances that justify the decision to initiate it on your own initiative, nor any *prima facie* evidence to support the concern of the existence of dumping, which simply does not exist, let alone any material injury or causal link.

¹ <https://cannabis-council.ca/>

² See also Section 4 of *Trade Levies and Safeguards Measures Law, 1991*.

Please find below our observations on these questions.

I. Timeline to respond and notification process.

The decision was shared with the Canadian Embassy on January 18, 2024. Some of our members named in the notification did not receive the notice from your office due to errors in their addresses. Since some producers learned about the decision to initiate this investigation later than others, they were given less time to respond.

The initial deadline to respond to the questionnaires was set to no later than February 17, 2024 at 4 pm (IST) which translates in Canada to 9 am EST or 6 am PST.

On the Ministry's own initiative, the initial deadline was extended to February 29, 2024, indicating that producers could apply for a thirty day (30) extension of the deadline pursuant Section 27(b) of Law. This information was also not effectively conveyed by your office to all named producers due to the same factors as described above.

C3 was informed that some producers did request an extension to the deadline to respond to March 28, 2024. The objective behind that request was to allow them to properly formulate their responses and collate the requested information. Unfortunately, the decision was made to not allow the extension request, using the discretion provided under Section 27(b) of the Law.

On February 28, 2024, one day before the expiration of the delay, C3 members learned the deadline had been extended to March 10, 2024. And while we appreciate that Sundays are working days in Israel, this is not the case in Canada. This means that the last working day by which targeted producers can respond is March 8, 2024, by not later than 6 am PST (Canada- Pacific). This represents effectively 20 days less than requested.

We respectfully submit that this decision is not compatible with the *audi alteram partem* rules and does not provide C3 with confidence that this process is guided by the search for the truth. Furthermore, this refusal does not align with Israel's obligations under Section 6.1.1 of WTO Anti-Dumping Agreement which provides that positive consideration should be given to extension requests and that they be granted to the extent practicable.

This decision raises our concerns about the Ministry's commitment to conduct the investigation in a manner that provides appropriate consideration for responding producers, allowing them sufficient time to provide a comprehensive response. We had hoped the process to initiate would have been handled more fairly and as a result remain concerned about how a decision based on this process can effectively be grounded on the merits of evidence.

We cannot find a purpose for the refusal to allow targeted producers sufficient time to provide a comprehensive response. This is particularly true in the context of the complexity of the cannabis industry and the complicated issues arising from this investigation.

II. Decision to invoke Section 24(d) of the Law and to initiate the investigation

Pursuant to section 24(c) of the Law, the Trade Commissioner may initiate, under special circumstances, an investigation at his/her own initiative, even without the submission of a complaint, provided that he/she finds that there is sufficient evidence to fulfill the requirement stated in section 21(b). Such sufficient evidence must exist of dumping, injury and a causal link. This essential requirement is also found in section 5.6 of the WTO Anti-dumping Agreement which provides that an investigation may proceed only if the authorities have sufficient evidence of dumping, injury and a causal link, as described in section 5.2 of said

agreement, to justify the initiation of an investigation. Simple assertions, unsubstantiated by relevant evidence, do not constitute sufficient evidence.

To justify this decision to initiate the investigation without having received a complaint, the contention has been made that the “*business characteristics*” of the cannabis industry in Israel constitute special circumstances.

As articulated in the decision, these characteristics make it difficult, and even hinder the possibility, for manufacturing companies to unite and submit an orderly complaint either independently or through a representative association, “*as most local manufacturers are also engaged in imports*”.

The decision also mentions that filing a complaint may take time and involves many resources. It further states that the Israeli cannabis industry has suffered in recent years from heavy injuries. It mentions amongst other issues that the Israeli cannabis industry faced or is facing COVID pandemic and financial difficulties.

We would like to underscore the fact that the issues that the Israeli cannabis industry is facing are not unique. The COVID pandemic also affected the Canadian cannabis industry and the Canadian cannabis industry is also facing serious financial difficulties. Indeed, the rate of Canadian cannabis companies becoming insolvent persisted in 2023 (from approximately 40% in 2022 to 12% in 2023).³

In addition, the decision determined that the Israeli producers were being hindered from being able to organize themselves to file complaints but failed to give proper weight to the fact that, as mentioned, a coalition of eleven (11) Israeli cannabis producers was not hindered from submitting a petition to the High Court in Israel in 2021 to demand “*to stop the pace of cannabis imports from abroad*”.

Respectfully, the “business characteristics” being relied on do not constitute “special circumstances” under the Law. It is our position that you failed to adequately support this decision. We find the vague terms used and the tenuous rationale to justify such an important decision that falls outside of the normal process is unacceptable. The discretion provided by law is not unfettered. The manner in which the decision was exercised in this instance is causing serious harm to the Canadian cannabis industry, which is not engaged in dumping its products in Israel.

We would note that our industry does not receive any subsidies from the Canadian government and is strictly regulated.

III. Flawed *prima facie* determination of dumping

To be clear, there is no negative price differential between Canadian domestic prices and Canadian export prices to Israel. **There is simply no dumping into Israel of Canadian medical cannabis.**

The *prima facie* case to justify initiating this investigation is fundamentally flawed. As discussed below, the flawed process was based on inherently unreliable and/or in-existent data. This is, in our view, caused by the fact that the decision to initiate this investigation was outside of the normal process without familiarity with the Canadian cannabis industry. It did not adequately take into account the complexity of our industry, key characteristics of our domestic industry, and the characteristics of the product under review. Moreover, the decision contains significant errors which could have been avoided with open-source research.

³ [Canadian cannabis insolvencies persist in 2023 amid industry woes \(mjbizdaily.com\)](https://mjbizdaily.com/canadian-cannabis-insolvencies-persist-in-2023-amid-industry-woes/).

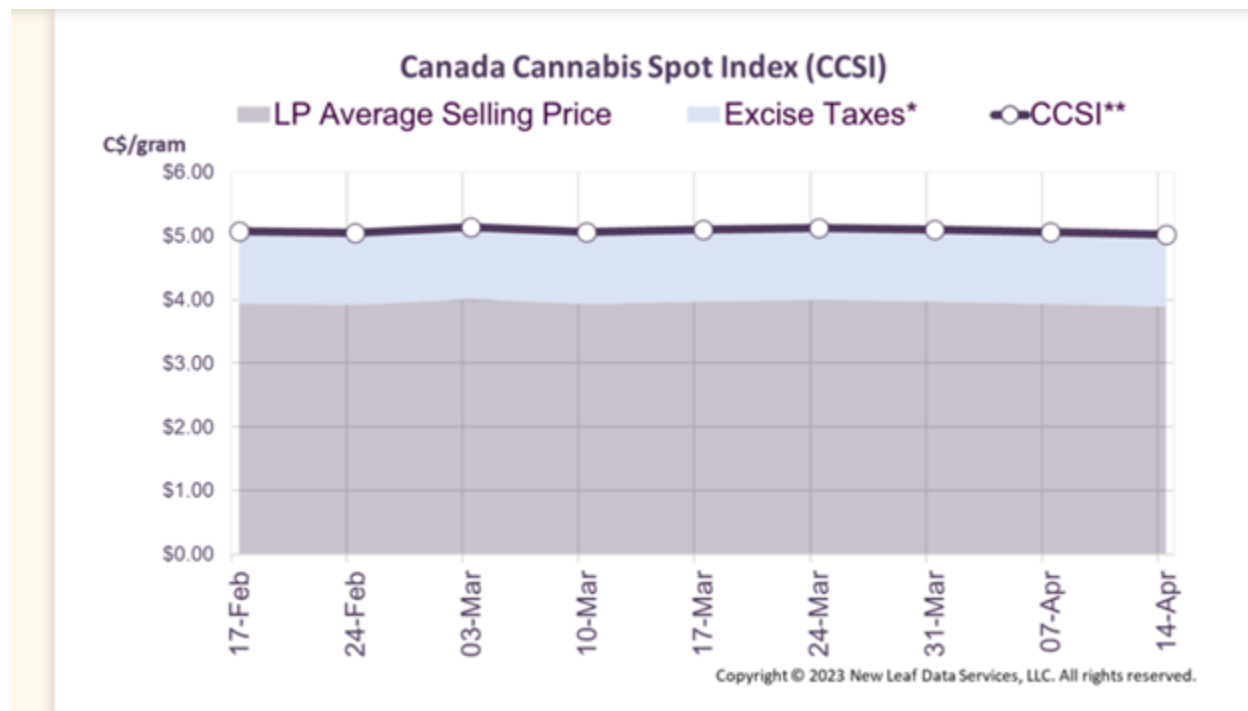
As discussed below, not only was inherently unreliable data used to establish the *prima facie* domestic wholesale price of medical cannabis in Canada, but there was also a failure to correctly interpret and apply this unreliable data.

a) The *prima facie* customary price in the Canadian market is unreliable

It was determined, for the purposes of initiating this investigation, that the customary price of comparable product in the Canadian market was **USD \$3.74** (CAN \$5.04) per gram (for a period of six months in 2023, rather than a year in the period of the investigation).

As stated in the decision, the “Canada Spot Index” was relied upon, which is available on the Benchmarks Cannabis Website.⁴ However, the nature nor the reliability of the information provided on this website was not assessed. Furthermore, the Canada Spot Index includes various mark-up fees that do not belong to producers and packaging costs that are specific to individualized products, and therefore are not appropriate for comparison with Israeli wholesale prices for bulk product. Collectively, this renders this determination unreliable.

Moreover, the price used, which is called “CCSI” on said website, “*is inclusive of the estimated federal and provincial cannabis excise taxes.*” The same slide, which is reproduced below, also provides that an “LP Average Selling Price” (which is not representative of the real wholesale price) for the same period was **USD \$2.90** (CAN \$3.91).



This data set should not have been used to compare the domestic price with the export price, even on a *prima facie* basis. Moreover, a “domestic price” that is inclusive of the estimated federal and provincial taxes was used, which is an error that completely vitiates the *prima facie* determination of that price. This without

⁴ <https://www.cannabisbenchmarks.com/canada-reports/>

considering other adjustments that should have been taken into consideration. Again, the indicator price that used is not representative of the real wholesale price.

b) The *prima facie* customary export price is inaccurate

Based on 6 months of data in 2023 from the Israeli customs on imports of medical cannabis from Canada, it was determined that the *prima facie* average export price was **USD \$2.32**, which in our view, does not represent the customary export price. Therefore, it vitiates the flawed margin of dumping.

c) The determination of fear of the existence of dumping is unjustified

It was determined that the apparent margin of dumping was 62%.

As mentioned above, the evaluation was based on a clearly flawed average domestic wholesale price of **USD \$3.74**.

Once this basic mistake is adjusted, the difference between the average export price calculated in the decision to the domestic price falls from USD \$1.42 to USD \$0.58, before any other adjustment. This translates into an incorrect alleged margin of dumping of 25% according to the decisions unreliable data. **We do not even agree that the adjusted figure is accurate.**

In fact, there is no margin of dumping whatsoever but this 60% error in applying the decision's disputed methodology to determine the "apparent flood rate" (i.e. margin of dumping) simply epitomizes the lack of rigour of the process that led to the decision to initiate this investigation.

IV. Differences ignored

The analysis under section 4 of the Law failed to properly take into account various factors. For example, one of them is the fact that the products under investigation are imported into Israel for medical use, and, therefore, must consistently be of high quality, regardless of the batch being used. The fact that the same standards apply to domestic medical cannabis and Canadian medical cannabis is not, and should not, be determinative. Regulated medical cannabis became legal in Canada in 2001. Canadian cannabis companies have over twenty (20) years of experience producing regulated medical cannabis. This has allowed the industry to hone its skills over time to produce a higher quality product which is more consistent from batch to batch in all respects. Similar THC and CBD in a given product does mean that said products are similar.

When comparing Israeli cannabis products to the Canadian ones, the decision did not consider many facts, such as the fact that growing conditions for cannabis plants influence their chemical profile. Thus, how and where a cultivar (also called strains) is grown is directly related to the overall effect that the product provides when consumed.

This can cause the same cultivar grown in different locations to have different chemical profiles, and consequently different effects. There are many different variables which impact cultivar quality, including infrastructure and growing environments (e.g. fully indoor growing, greenhouse growing, or outdoor growing) which provide a variety of levels of control and as applied can result in variation in product quality and attributes batch to batch. All of this, together, is likely why physicians prefer Canadian products, which are grown in such a way as to allow for high quality and consistent products from batch to batch.

V. The reality ignored

The reality is that the government of Israel, which has very stringent standards for the import of medical cannabis products, has consistently relied on Canadian cannabis exports to meet its high demand for our high-quality medical cannabis. The investigation falls at a difficult time in the context of the current levels of

increased demand in your country for our high-quality products given the current political and military challenges. You should be aware that the continuation of this investigation may result in convincing some Canadian cannabis producers to simply cease their exports which might cause availability issues in Israel while unnecessarily increasing domestic cannabis prices for potentially lower quality products.

VI. Overall flawed process

We would like to submit that the decision to initiate this investigation does not contain evidence of dumping, injury and a causal link but rather assertions unsubstantiated by relevant and/or reliable evidence. The decision to launch this investigation on your own initiative without a formal complaint appears to us to be more part of a protectionist strategy by the Israeli government, than a question of determining whether there was genuinely any *prima facie* evidence to invoke unfair trade practices by Canadian cannabis producers. This is not consistent with either Israeli laws or with WTO obligations. It is also inconsistent with the spirit of the Free Trade Agreement that was agreed upon between Canada and Israel.

In light of the foregoing, and the fact that Canadian producers are being asked to invest significant resources to respond to the investigation, is placing undue pressure on our already struggling industry.

Consequently, we respectfully ask that you immediately put an end to this process.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Sabone". The signature is stylized and cursive.

Rick Sabone

Chair of the Board of Directors, Cannabis Council of Canada