



Ottawa, Friday, September 9, 1994

Reference No.: RE-94-001

IN THE MATTER OF a reference, under paragraph 34(b) of the *Special Import Measures Act*, made by the Northwest Horticultural Council, an organization representing growers/exporters in the state of Washington, to the Canadian International Trade Tribunal;

AND IN THE MATTER OF an advice rendered by the Canadian International Trade Tribunal, under section 37 of the *Special Import Measures Act*;

RESPECTING the dumping in Canada of fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America.

ADVICE

The Tribunal hereby concludes that the evidence before the Deputy Minister of National Revenue discloses a reasonable indication that the dumping of fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America, excluding fresh, whole, Delicious, Red Delicious and Golden Delicious apples imported under the authority of a ministerial exemption issued pursuant to the *Canada Agricultural Products Act* and the *Fresh Fruit and Vegetable Regulations*, has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

Raynald Guay
Raynald Guay
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Desmond Hallissey
Desmond Hallissey
Member

Nicole Pelletier
Nicole Pelletier
Acting Secretary

Reference No.: RE-94-001

Date of Advice:

September 9, 1994

Tribunal Members:

*Raynald Guay, Presiding Member
Anthony T. Eyton, Member
Desmond Hallissey, Member*

*Director of Research:
Research Officer:*

*Marcel J.W. Brazeau
Anis A. Mahli*

Counsel for the Tribunal:

Shelley Rowe



Ottawa, Friday, September 9, 1994

Reference No.: RE-94-001

ADVICE rendered under section 37 of the *Special Import Measures Act* respecting:

**FRESH, WHOLE, DELICIOUS, RED DELICIOUS AND GOLDEN
DELICIOUS APPLES, ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

TRIBUNAL: RAYNALD GUAY, Presiding Member
ANTHONY T. EYTON, Member
DESMOND HALLISSEY, Member

STATEMENT OF REASONS

On July 14, 1994, on the basis of a properly documented complaint filed by the Apple Committee of the Canadian Horticultural Council (CHC), the Deputy Minister of National Revenue (the Deputy Minister) initiated an investigation into the alleged injurious dumping of fresh, whole, Delicious, Red Delicious and Golden Delicious apples (hereinafter referred to as "delicious apples¹"), originating in or exported from the United States of America, excluding fresh, whole, Delicious, Red Delicious and Golden Delicious apples imported under the authority of a ministerial exemption issued pursuant to the *Canada Agricultural Products Act*² and the *Fresh Fruit and Vegetable Regulations*³ (the subject goods). The Deputy Minister was of the opinion that the evidence disclosed a reasonable indication that the alleged dumping had caused, was causing or was likely to cause material injury to the production in Canada of like goods.

On August 10, 1994, the Northwest Horticultural Council, an organization representing growers/exporters in the state of Washington, referred to the Canadian International Trade Tribunal (the Tribunal), under paragraph 34(b) of the *Special Import Measures Act*⁴ (SIMA), the question of whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America, had caused, was causing or was likely to cause material injury to the production in Canada of like goods.

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1. The term "delicious apples" will be used to refer to the total of Delicious, Red Delicious and Golden Delicious apples.
 2. R.S.C. 1985, c. 20 (4th Supp.).
 3. C.R.C. 1978, c. 285.
 4. R.S.C. 1985, c. S-15.

The Tribunal, under paragraph 37(b) of SIMA, is required to render its advice on the question without holding any hearings and solely on the basis of the information that was before the Deputy Minister when he reached his decision, and not later than 30 days from the date that the Tribunal received notice of the reference.

Red Delicious and Golden Delicious apples have an elongated shape, narrowing to a five-point base, and are bright red and yellow, respectively. Delicious apples, the older variety of apples from which Red Delicious apples were derived, continue to be harvested commercially from existing orchards, but they are being replaced by new plantings of the Red Delicious strains.

The goods that are the subject of the Deputy Minister's investigation exclude imports for processing into other products or for repacking for the consumer market, where necessary, in order to alleviate shortages in the domestic market.

The harvesting of apples generally begins in August and extends through October. In conventional apple orchards, hand-picking from ladders is the most widely used and desirable harvesting method, as great care must be taken to avoid bruising the apples. Mechanical harvesting sometimes replaces hand-picking; however, apples harvested by this method sometimes suffer extensive bruising. Apples that suffer extensive bruising are normally processed into juice and applesauce.

After harvesting, apples are transported to packing houses to be graded and packed. If apples are to be kept for a length of time, they are stored in bins and cooled quickly. The most common storage methods are cold or regular storage and controlled atmosphere (CA) storage. In CA storage, the temperature is kept at 0°C to extend storage life and the humidity level is maintained at 93 to 95 percent to reduce shrivelling. CA storage provides for the availability of high-quality apples for up to 12 months, whereas cold storage is used to store apples for 3 to 7 months.

The grading standards of apples in both Canada and the United States are based on uniformity of size and shape, minimum and maximum diameters, colour, maturity, freedom from disease, injury and other defects and damage, and cleanliness. Apples are also pressure tested for firmness to establish internal quality.

Domestic apples are graded under the *Canada Agricultural Products Act* as Canada Extra Fancy, Canada Fancy and Canada Commercial. Some provinces also have their own grading standards, for example, B.C. Extra Fancy. In the United States, fresh apples are graded as U.S. Extra Fancy and U.S. Fancy. In addition, some states have their own grading standards, for example, Washington Extra Fancy and Washington Fancy.

Apples are also sized for the fresh market. The size will determine the number of apples that can be layered in a carton. A count size of 113 means that there are 113 apples in a tray pack or cell pack carton weighing about 42 lbs. The most common count sizes are 72, 80, 88, 100, 113, 125 and 138.

The Canadian apple industry, which operates under the umbrella of the CHC, is comprised of five provincial organizations, the New Brunswick Fruit Growers' Association, the Nova Scotia Fruit Growers' Association, the Fédération des producteurs de pommes du Québec, the Ontario Apple Marketing Commission and the

British Columbia Fruit Growers' Association. These provincial organizations represent approximately 4,500 apple growers of the subject and non-subject varieties of apples.

Delicious apples are grown mainly in Ontario and British Columbia. British Columbia accounts for about 65 percent of total production, while Ontario for about 30 percent. In both provinces, Red Delicious apples represent about 80 percent of total delicious apple production.

In the United States, delicious apples, which are grown in a number of states, represent about 60 percent of total U.S. apple production. However, the major proportion of delicious apples is produced in three states: Washington, New York and Michigan. Washington accounts for about 80 percent of total production of delicious apples. There are several hundred packers in that state which are both privately and co-operatively owned. The state of Washington is the only significant exporting state to Canada.

The evidence provided to the Tribunal by the Deputy Minister included the documented complaint submitted by the Apple Committee of the CHC. The complainant provided information on production, sales, market, pricing, imports, and the financial performance of B.C. growers.

The Tribunal considers that the information contained in the Deputy Minister's file discloses a reasonable indication of material injury caused by the dumping of the subject goods. The Tribunal notes that the Deputy Minister found that 44 percent of the sampled, imported apples were dumped at a weighted average margin of dumping of 32 percent. The Tribunal further notes that only one normal value was established for both Red and Golden Delicious apples, notwithstanding differences in variety, grades and method of storage, factors which affect cost and selling prices. Moreover, it would appear that the Washington cost-of-production data used in establishing the normal value contain an element of opportunity cost which may distort actual returns, given that an amount was added for profit in arriving at the normal value.

The Tribunal notes that the complainant estimated the 1993-94 Canadian market for the subject goods at 197 million pounds, an increase of 17 percent over the previous year. However, the domestic growers' share of the market declined 5 percentage points, as imports, at an estimated 83 million pounds, were 34 percent above the 1992-93 volume.

Also, during the period from February to May 1994, the average B.C. price for all grades of Red Delicious apples decreased by 27 percent from the same period in 1993. According to the complainant, the apparent erosion in the average selling price translated into a reduction of 45 percent in B.C. growers' gross income, thereby reducing growers' returns from a profitable level in 1993 to a loss situation in 1994.

The Deputy Minister concluded that, on the basis of loss of market share, price erosion and reduced grower returns, the industry suffered material injury. If the case proceeds to an injury inquiry, the Tribunal will want to examine more closely, particularly for the 1993-94 crop year, the trends in production, prices, inventories, imports, market shares and grower returns.

In order to meet the requirements of section 37 of SIMA, the Tribunal must be satisfied that there is a reasonable indication of a causal link between the dumped imports and the material injury suffered by the domestic industry. The Tribunal observes

an apparent correlation between several of the injury indicators and the dumping of the subject goods. The Tribunal considers that this correlation provides a reasonable indication that the dumping has caused material injury. However, it is only through an inquiry that the Tribunal will be able to fully explore the causation element and satisfy itself that the dumping of the subject imports is causing material injury. In making this assessment, the Tribunal would examine the effects of other factors in the performance of the industry.

Therefore, on the basis of the evidence before it, the Tribunal advises, under section 37 of SIMA, that the evidence discloses a reasonable indication that the dumping of fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America, excluding fresh, whole, Delicious, Red Delicious and Golden Delicious apples imported under the authority of a ministerial exemption issued pursuant to the *Canada Agricultural Products Act* and the *Fresh Fruit and Vegetable Regulations*, has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

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