

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

Finding of the Canadian International Trade Tribunal
in Inquiry No. CIT-3-88
under Section 42 of the *Special Import Measures Act*

Pre-Hearing Conference

Call: January 6, 1989

Place of Hearing:

Vancouver, British Columbia, and
Ottawa, Ontario

Public Hearing:

January 10 to 14, 1989 (Vancouver)
January 18 to 21, 1989 (Ottawa)

Participants:

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(Association Representing Exporters)

February 3, 1989

CANADIAN INTERNATIONAL TRADE TRIBUNAL*

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Member: Raynald Guay

Member: Arthur B. Trudeau

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*The Canadian Import Tribunal ceased to exist on December 31, 1988, and was replaced by the Canadian International Trade Tribunal.



Inquiry No.: CIT-3-88

Friday, the 3rd day of February 1989

PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
RAYNALD GUAY, MEMBER
ARTHUR B. TRUDEAU, MEMBER

INQUIRY UNDER SECTION 42 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

FINDING

The Canadian Import Tribunal has conducted an inquiry under the provisions of subsection 42(1) of the *Special Import Measures Act* consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated October 6, 1988, and of a final determination of dumping dated December 22, 1988, respecting fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America, excluding Delicious, Red Delicious and Golden Delicious apples imported in non-standard containers for processing.

Pursuant to subsection 43(1) of the *Special Import Measures Act* and paragraph 57(2)(a) of the *Canadian International Trade Tribunal Act*, the Tribunal hereby finds that the dumping of the aforementioned goods has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Raynald Guay
Raynald Guay

Presiding Member: Arthur B. Trudeau
Arthur B. Trudeau

Witnessed: Robert J. Martin
Robert J. Martin
Secretary

The Statement of Reasons will be issued within 15 days.



Statement of Reasons to accompany the finding issued on February 3, 1989.

Ottawa, Ontario, February 20, 1989

Robert J. Martin,
Secretary

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PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
RAYNALD GUAY, MEMBER
ARTHUR B. TRUDEAU, MEMBER

STATEMENT OF REASONS

Robert J. Bertrand, Q.C., Presiding Member

On October 13, 1988, the Canadian Import Tribunal, pursuant to subsection 42(1) of the *Special Import Measures Act*, initiated an inquiry subsequent to the preliminary determination of dumping made by the Deputy Minister of National Revenue for Customs and Excise respecting the importation into Canada of fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America, excluding Delicious, Red Delicious and Golden Delicious apples imported in non-standard containers for processing.

The Secretary of the Canadian Import Tribunal was given notice of the preliminary determination in a letter from the Director General, Assessment Programs Division, National Revenue, Customs and Excise, dated October 6, 1988, and received on the same day. The notice was published in Part I of the Canada Gazette of October 29, 1988.

The Deputy Minister's investigation was initiated as a result of a complaint filed by the Canadian Horticultural Council (the CHC). The investigation period covered imports of the subject goods from August 1, 1987, to July 31, 1988.

Upon receipt of the Notice of Preliminary Determination of Dumping, the Secretary sent a Notice of Commencement of Inquiry to the Deputy Minister, the Government of the United States of America, the complainant, the Canadian producers, the importers and exporters of the subject goods, and others on the Canadian Import Tribunal's mailing list. This notice was published in Part I of the Canada Gazette of October 22, 1988.

A Notice of Change of Location and Date of Public Hearing was sent out on November 28, 1988, informing concerned parties that the hearing would commence on January 10, 1989, in Vancouver, British Columbia. This notice was published in Part I of the Canada Gazette of December 10, 1988.

On December 22, 1988, the Secretary of the Canadian Import Tribunal received the Notice of Final Determination of Dumping dated the same day. The notice was forwarded to participants and was published in Part I of the Canada Gazette of January 14, 1989.

On December 31, 1988, sections 16 to 37 and 41 to 62 of the *Canadian International Trade Tribunal Act* (Bill C-110) came into effect. As a result, the Canadian International Trade Tribunal (the Tribunal) was established and the Canadian Import Tribunal ceased to exist on that day. Transitional provisions of the Act provide, however, that members of the former Tribunal continue to have

jurisdiction with respect to any matter pending before it. Such powers are contained in section 57 of the *Canadian International Trade Tribunal Act*. It is, therefore, in accordance with such transitional provisions that the inquiry was continued and the finding of February 3, 1989 made for which these are the reasons.

THE PARTICIPANTS

The complainant, the CHC, acting on behalf of Canadian apple growers, and the Northwest Horticultural Council (the NHC), acting on behalf of Washington State apple growers exporting to Canada, were represented by counsel in these proceedings.

At the request of counsel for the NHC, a pre-hearing conference was held in Ottawa on January 6, 1989, with members of the panel, four representatives of Revenue Canada and counsel for the NHC present, and counsel for the CHC taking part via telephone. A motion from counsel for the NHC was made requesting that the import statistics obtained by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) be placed on the record of these proceedings.

After the Tribunal had heard submissions from all concerned parties, it ruled that the requested import statistics in the Deputy Minister's possession, modified to exclude information on normal value and margins of dumping, be provided in confidence to the Tribunal and parties' counsel. The Tribunal acceded to counsel's motion because of the importance of the data which pertained to the subject delicious apple imports only. Data available from sources such as Statistics Canada did not distinguish between varieties of apples. The Deputy Minister's data, obtained from a sampling of customs entry documents for the period August 1, 1987, to July 31, 1988, covered subject goods imports in terms of volume and price by variety, grade, count size and destination. The sample amounted to about 50 per cent of total imports of subject goods and covered a full crop year. This information was comprehensive and detailed to a degree far beyond that which the Tribunal was able to gather in the time available and it complimented the information developed by it.

In view of the large volume of information and complexity of the data, it was also requested that the information be supplied in machine readable form to facilitate analysis. Independent counsel for the NHC, who had provided the Tribunal with undertakings to assure the confidential treatment of the data, were allowed to assist the Tribunal's statistical staff in developing tables and graphs from the information supplied. Importers' and exporters' names were excluded from the data base.

Public and in camera hearings were held in Vancouver, British Columbia, from January 10 to 14, 1989, and in Ottawa, Ontario, from January 18 to 21, 1989, to hear the evidence and argument of interested parties.

The complainant submitted detailed documentary evidence and presented several witnesses from the industry concerned who testified at the hearing. In addition, several expert witnesses appeared to answer questions in their area of expertise.

The exporter submitted documentary evidence, presented several witnesses, including a Washington State grower and the President of the Washington State Apple Advertising Commission, and called under subpoenas two representatives of large wholesalers-distributors of the subject goods in Canada.

In the context of this inquiry, the Tribunal retained the services of Dr. John R. Groenewegen for the preparation of a report on the effects of U.S. Delicious apple exports on Canadian Delicious apple growers. Dr. Groenewegen appeared at the hearing to answer questions concerning this report which forms part of the record.

THE PRODUCT

Delicious, Red Delicious and Golden Delicious apples marketed as fresh fruit for consumer consumption are the subject of this inquiry. Apples imported in non-

standard containers for processing were specifically excluded from the preliminary and final determinations of dumping.

The original Delicious tree was discovered in 1868 by Jesse Hiatt on his farm in Peru, Iowa. This apple variety, originally called the Hawkeye, was subsequently purchased by Starks Brothers Nurseries in Louisiana, Missouri, and renamed the Delicious. Following its discovery, the Delicious apple variety quickly spread and is now one of the most popular variety grown in North America. In Canada, the majority of Delicious apples are grown in the Okanagan Valley in British Columbia. Washington State is by far the leading producer of Delicious apples in the United States.

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

In planning an orchard of Red Delicious apples, the selection of the right cultivar or scion variety and rootstock is of utmost importance. The cultivar is actually the fruit bearing part of the tree and is known by name, in this case, Red Delicious, while the rootstock refers to the root system and a short portion of the trunk. There are two types of rootstocks: those grown from seed, known as seedling rootstocks; and those grown from mother plants through vegetative propagation, called clonal rootstocks.

In Canada, seedling rootstocks have been used extensively in the past, producing large or standard trees that may be 6 m high with a 10-m spread. These trees mature slowly, beginning to bear fruit in 7-10 years. These larger apple trees are now disappearing from Canadian orchards and are being replaced by smaller trees grown from clonal rootstocks. These smaller trees are sometimes known as "dwarf trees."

The so-called dwarf trees begin producing apples only 3-4 years after planting and grow apples that can be picked without a ladder. Because of their shorter branches, they also lend themselves to much closer planting than larger standard trees. In fact, the number of dwarf trees per hectare can reach 1,281 compared to 84 standard trees per hectare. Although a dwarf tree will not yield as many apples as a standard tree, a hectare of dwarf trees will yield more apples than a hectare of standard trees. Further, the dwarf tree will yield a greater proportion of higher quality product. Because of the closer planting, the resulting continuous tree surface in dwarf tree orchards facilitates spraying, pruning and picking operations, all of which permit apple growers in Canada and the United States to exploit considerable economies of scale and to substantially increase annual yield.

Apples are normally harvested once they have reached maturity. It is important to harvest apples at the correct stage of maturity to optimize flavour, aroma and other desirable characteristics, and to maximize the fruit's storage life. 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, wherein a clamp grasps the tree trunk and shakes the apples off the tree, sometimes replaces hand-picking; however, because apples harvested by this method suffer extensive bruising, they are normally sent to the processing industry for making juice and applesauce.

After harvesting, apples are shipped to packing houses to be graded and packed. Some apples may be sprayed with a thin coating of edible wax to improve their appearance and increase their shelf life. If apples are to be kept for any length of time, they are put in storage bins and cooled quickly. The two most frequent storage methods used to keep apples at their best for long periods of time are cold or regular storage and controlled atmosphere (CA) storage. A third method, known as low-oxygen storage, is a modified version of the CA technique. It involves the further reduction of oxygen levels to approximately 1 per cent. This procedure is still in the research stage and is not widely used.

When held in cold storage warehouses, apples are cooled to 0°C in special chambers to slow down the ripening process and to extend the storage life. The humidity level is maintained at 93-95 per cent to reduce moisture loss which leads to shrivelling. This type of storage provides for the availability of high-quality apples well into the winter.

Respiration and ripening processes can be further slowed down by reducing the level of oxygen and increasing the level of carbon dioxide in the refrigerated storage chamber. This combination of refrigeration and atmosphere regulation is known as CA storage. The CA system extends the market season of fresh apples until May, June or later.

Apples are graded and packaged under the *Canada Agricultural Products Standards Act* as Canada Extra Fancy, Canada Fancy and Canada Commercial, the latter being reserved for apples destined for processing. Although not all provinces require grading, most have regulations that are similar to those of the federal government, e.g. B.C. Fancy, etc. Fresh apples are graded in the United States as U.S. Extra Fancy and U.S. Fancy. Each state may also apply its own grading standards to its own apples, e.g. Washington Extra Fancy, etc. The grading systems in both countries are based on uniformity of size and shape, minimum and maximum diameter, colour, maturity, freedom from disease, injury and other defects and damage, and cleanliness. Apples are also pressure tested for firmness to establish internal quality.

Generally, graded apples have a minimum diameter of 5.7 cm. This measurement can be arrived at by hand with calipers or with automated ring or weight sizers. Since size determines the number of apples that can be layered into a carton or crate, wholesale buyers order boxes of apples by count size, e.g. 113, meaning there are 113 apples per 42-lb. box. Large apples in the 60-80 count sizes are usually sold in specialty shops while the 100-133 are the usual retail range. Apples are sold to the consumer individually and in 1.36- and 2.27-kg bags. The only exception to this rule is the 1.8-kg bag sold exclusively in Quebec.

Market demand and conditions establish the price range in which the apples are sold. Within this price range, an apple will fetch a higher or lower price depending on its size, grade, etc. For example, a large Extra Fancy Red Delicious apple will normally command a higher price than will a small Fancy Red Delicious apple.

In British Columbia the majority of the provincial crop is sold through B.C. Tree Fruits Limited. The agency sells apples throughout the marketing season at prices tempered by the natural market forces of supply and demand. In Ontario, Quebec and New Brunswick, the Ontario Apple Marketing Commission, the Fédération des Producteurs de Pommes du Québec and the New Brunswick Apple Marketing Board, respectively, have pricing committees which meet regularly throughout the marketing season to establish a price, F.O.B. packing house, for all fresh apples grown in their respective province. The price so-established necessarily reflects the forces of supply and demand for each variety. The Nova Scotia Growers Association, which has no price setting authority, sells its product at prices determined by the market.

THE CANADIAN APPLE INDUSTRY

Commercial apple production in Canada is well established on about 8,000 farms located in several provinces: the Okanagan Valley of British Columbia, in Southern Ontario, the north shore of Lake Ontario and the southern tip of Georgian Bay in Ontario, along the St. Lawrence Valley and the Eastern Townships in Quebec, the Saint John River Valley in New Brunswick and the Annapolis Valley in Nova Scotia. A Statistics Canada five-year production average for the period 1983-87 showed a national total production of over 500,000 tons for all varieties. Of this, British Columbia held a 35 per cent share, Ontario, also 35 per cent, Quebec, 17 per cent, Nova Scotia, 12 per cent and New Brunswick, 1 per cent. In the 1987/88 crop year, British Columbia's share rose to 39 per cent while Ontario had 32 per cent, Quebec, 16 per cent, Nova Scotia, 12 per cent and New Brunswick, 1 per cent.

The Canadian apple industry, including sales of all apples and apple-related products, with an estimated value of \$600 million, hires approximately 15,000 full-time and part-time employees at the farm level; an estimated 5,000 workers at the processing level; and an additional 10,000-15,000 workers in support jobs that depend on the apple industry.

A comparison of the 1971 and 1981 census data shows aggregate apple acreage falling by 9 per cent while farms with apple orchards fell by 16 per cent. The average area per farm, however, rose from 3.8 hectares in 1971 to 4.2 hectares in 1981. By 1986, the number of farms reporting apple acreage rose to a level marginally greater than in 1971 while average area per farm fell to 3.5 hectares.

Approximately 95 per cent of the domestic crop destined for the fresh market is handled by 115 major packing houses. CA storage capacity at these facilities was estimated at 133,000 tonnes in 1981, about 30 per cent of production in that year. Although current figures are not available, it is likely that producer groups have increased capacity through the Fruit and Vegetable Storage Construction Financial Assistance Program.

The majority of the packing houses in British Columbia belong to B.C. Tree Fruits Limited, the grower-owned cooperative. This is in contrast to eastern Canada where most packing houses are owned by limited companies. There are four regional marketing agencies for apples in Canada. B.C. Tree Fruits Limited has by far the most encompassing powers of any of these agencies. This organization has regulating powers in the areas of producer prices, product promotion and licensing as well as in the buying and selling of the product. The other three organizations, the Ontario Apple Marketing Commission, the Fédération des Producteurs de Pommes du Québec and the New Brunswick Apple Marketing Board, all have powers in establishing grower prices, in licensing and in promoting their product. The Nova Scotia Growers Association has no price setting authority.

Eighty to ninety per cent of Canadian apples are retailed through the large food chains and the convenience store chains. Small, privately owned retail produce outputs, institutional sales, roadside stands and farmers' markets account for the remainder of fresh apple sales.

There are an estimated 60 processors and packers of processed apple products. Of these, at least 15 manufacture fresh pack apple juice. An additional 30 operations reconstitute apple juice from concentrate, most of which is imported.

THE CANADIAN DELICIOUS APPLE INDUSTRY

With respect to Delicious apples, British Columbia represented, on average, about 65 per cent of production during the 1983-87 period. Ontario, on the other hand, accounted for 30 per cent while Nova Scotia had the remaining volume. During the 1987/88 crop year, these relative positions changed significantly with British Columbia increasing its share of production to 72 per cent while Ontario and Nova Scotia held 24 per cent and 4 per cent, respectively.

The aggregate domestic market for the subject apples has fluctuated around an average of 275 million pounds for the last decade. In the 1984 crop year, the market fell to a 10-year low of about 235 million pounds, but rose in each subsequent year to about 288 million pounds in the 1987 crop year. However, this still fell short of the 10-year high of about 315 million pounds reported in 1980.

Imports, all of which came from the United States, and most of which came from Washington State, by and large supplemented domestic production during this period, peaking in crop year 1986/87 when production fell to its lowest point and bottoming out in 1980 when production peaked.

THE U.S. DELICIOUS APPLE INDUSTRY

The Delicious apple is the predominant apple produced in the United States with production typically around 55 per cent of total U.S. apple production. In contrast, Delicious apple production in Canada represents 25 to 30 per cent of total

apple production. In 1987, Delicious apple production increased to 60 per cent of total apple production at 2.9 million tonnes. On average, U.S. production volumes of Delicious apples are 15-18 times the size of the Canadian crop of that variety.

The supply of Delicious apples in the United States increased by 45 per cent in 1987 over 1986 levels. The increase in U.S. production of 900,000 tonnes is over 600 per cent greater than the size of the Canadian crop of Delicious apples in 1987.

The western region of the United States is the major producer of Delicious apples and accounts for 75 per cent of production, according to the International Apple Institute. For example, in 1987, 2.9 million tonnes of Delicious apples were produced, with 2.2 million tonnes produced in the U.S. west. The western region is defined as Colorado State and all states west of Colorado.

Within the western states, data suggest that Washington State accounts for 77 to 79 per cent of all apple production. As well, it is the major producer of Delicious apples, with the state accounting for almost all of the Delicious production within the western region. Within the state, Delicious apples account for 75 per cent of apple acreage and 72 per cent of the tree inventory.

THE COMPLAINT

The complainant submitted that extensive tree plantings during the late 1970s and early 1980s in the State of Washington, which were encouraged by tax incentives and government irrigation projects, have resulted in excessive production volume which far exceeds North American and offshore market demand causing prices to decline below cost of production. In crop year 1987/88, Washington State experienced a record harvest. Its growers and packers, faced with the largest production of Red and Golden Delicious apples ever, dramatically reduced prices in order to market the crop. The result was a total collapse of North American market prices for the subject Delicious apples. In Canada, this was manifested through the presence of dumped Washington State Red and Golden Delicious apples which were priced below the Washington cost of production as determined by the Deputy Minister.

It was submitted that the dumping had caused and was causing material injury to Canadian growers in the form of price suppression, reduced grower returns, reduction of productive acreage and productivity of remaining acreage, increased consignment selling, capitalization of operating debt, decreased employment, increased need for off-orchard employment, diversion of fresh apples to processing, decreased land values and increase in the financial burden of provincial and federal government agricultural support programs.

In the complainant's view, the volume of the Washington State crop in 1987 was not an aberration, but was indicative of an ongoing trend of rising annual production. It was argued that with increasing production continuing, Washington State will have no choice but to continue to market its apples in any available foreign markets, such as Canada, at prices below the normal values established by the Deputy Minister, which counsel argued are below Canada's domestic cost of production.

Counsel argued that the remedy for the industry rests in a finding by the Tribunal that the dumping of Red and Golden Delicious apples in Canada from the United States of America has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

In addition, it was submitted that although B.C. producers grew more than 70 per cent of the subject Delicious apples in Canada (Ontario 20 per cent) and are the most affected by the dumping, this is not a case of two regional markets. B.C. producers are competing with U.S. imports in the entire Canadian market, including the Ontario market. Consequently, counsel argued that any finding of material injury should apply to all U.S. imports into Canada, whatever their destination.

Counsel for the complainant expressed concern that the Tribunal may consider issuing an order respecting only the State of Washington which would not protect Canadian growers from a price drop in other producing states nor from the possible shipping of Washington produce to Canada from an adjacent state such as Idaho. In

addition, it was requested that any finding of injury apply to every month of the year in order to ensure that Washington not be in a position to stock pile product for shipment during exempted months.

THE RESPONSE

Counsel for the NHC, which represents Washington State Delicious apple growers and packers, spent considerable time examining and criticizing the methodology used by the Deputy Minister to determine normal values, and argued that the dumping found by the Deputy Minister is "technical dumping." The issue of the methodology used was raised early in the proceeding and the Tribunal asserted then that it had no jurisdiction to review the Deputy Minister's determination of dumping in the context of a material injury inquiry.

Respecting past and present injury, counsel submitted that apple prices in the North American market result from the interaction of many factors including: world supply, import and export movements among countries, local quality, availability of different grades and count sizes, availability and substitutability of other fruits, international disputes, effects of climate, creation of new markets and marketing skills, storage capacity, time of the year and reliability of the crop. It was argued that the evidence led by the Tribunal's expert witness relied too extensively on supply and demand determinants of price, stemming from production levels in the United States and more specifically Washington State, and did not take into account the other factors.

It was submitted that B.C. producers have experienced financial losses similar to the 1987/88 level in three or four previous years. In addition, counsel argued that B.C. industry's continuous loss position over the past 10 years is not sustainable and requested that the Tribunal find no past or present material injury.

Counsel argued that Ontario grown Delicious apples are not Extra Fancy Grade and, consequently, do not compete directly with Washington State imports of which over 90 per cent were Extra Fancy Grade. As a result, it was concluded that Ontario growers were not materially injured by Washington imports.

It was submitted that in crop year 1987/88, British Columbia overproduced and consequently placed an extremely large volume of apples on the market before November 1, thereby depressing prices in both the fresh and process markets. Furthermore, the increased diversion to processing which occurred in that year was due to a shortage of CA storage rather than to low prices in the fresh market. In addition, counsel alleged that B.C. growers have not taken appropriate action to create demand for their growing production.

In respect of the future, counsel submitted that the Tribunal must consider the propensity to dump and whether a propensity to dump would be in volumes and/or at price levels that would continue to be materially injurious.

It was submitted that U.S. price forecasts for the 1988/89 crop year are at a profitable level and further that current actual price levels are profitable.

The evidence of the Washington Apple Commission witness, who described the steps the Washington industry has taken to increase storage capacity, to improve marketing in the domestic U.S. market and to stimulate new demand for export sales, indicates that the industry is making adjustments to deal with the new production plateau.

The 1987/88 crop year was described as being an abnormality in terms of the simultaneous high production volume and quality problems. Production forecasts in evidence indicate that volumes significantly above the normal upward trend will occur once in five or six years. But, it was submitted that it was the combination of above-trend production and low quality which drove prices down in 1987/88 and that this circumstance is likely to occur once in 50 years. It was argued that future dumping cannot be predicted on the basis of an abnormal year.

Counsel concluded that, in terms of propensity to dump, there is sufficient evidence in the record to suggest to the Tribunal that the Washington State industry

has already returned to profitability, or will in the very near future, and that a finding of likelihood of material injury in this circumstance would serve no purpose.

Respecting the likelihood of a return to dumping in volumes and/or at price levels that would continue to be materially injurious, counsel held that Canada is a residual market for Washington and that the considerable expenditures which have been made to generate sales volume in export markets have been directed to countries other than Canada. Counsel argued that since prices are generally the same in Canada and the United States, it would be detrimental to the interests of U.S. shippers to sell in Canada at prices lower than those forecast. It was also submitted that, under an injury finding, Canadian importers will purchase only the highest quality Extra Fancy Grade apples while B.C. producers will continue to export the majority of their Extra Fancy Grade apples, leaving them unable to compete effectively against Washington Extra Fancy in the Canadian market.

Counsel requested that the Tribunal issue a finding of no past, present or future material injury. In the event that the Tribunal found in the alternative, it was requested that any finding of material injury excludes sales of the subject goods made east of the Manitoba/Ontario border.

CONSIDERATION OF MATERIAL INJURY

The Canadian market for fresh apples consists of a number of varieties including MacIntosh, Delicious, Spartan, Lobo, Granny Smith, Cortland, Spy and numerous other varieties. Canadian orchardists grow the majority of the varieties which appear on the Canadian market. Canada is a major grower of MacIntosh and Red and Golden Delicious apples. Granny Smith apples are not grown commercially in Canada as the growing season is too short.

Canada's total production has historically fallen short of market demand and, consequently, the country has always been an importer in order to meet the balance of Canadian demand. Imports of Red and Golden Delicious apples are, in this category, originating almost exclusively in the United States and primarily from Washington State for the fresh market.

Varieties not produced in Canada are also imported and, in this category of import, Granny Smith apples are the most notable type found on the Canadian market. The major exporters of Granny Smith apples are the Southern Hemisphere countries of New Zealand, Australia, South Africa, Chile and Argentina. France, traditionally, has been an important source as has the United States, primarily from California. In recent years, Chile's importance as a supplier of Granny Smith apples has increased and orchardists in North America are also aware that Chile is potentially an important exporter of Red Delicious apples.

Southern Hemisphere apples are harvested and appear in Canada during the last third of the Canadian marketing year (May to August). Consequently, apples from that region are fresh at that time while the Canadian and U.S. grown apples available to the market have been in storage since the previous November. Orchardists in both Canada and the United States are concerned about this development.

The Canadian production of Delicious apples is centered in British Columbia and Ontario. British Columbia has traditionally been the major producer. The marketing practices of the two provinces differ. British Columbia places much more importance than Ontario on delineating grade and count size. B.C. apples are sold in tray pack cartons, each consisting of a specific grade and size, and averaging 42 lb. in weight per carton or box.

Ontario markets its apples in polyethylene bags (3 lb., 5 lb., 10 lb.) which contain a mixture of grades and sizes in the same bag. There is some limited marketing of 42-lb. tray pack cartons, but the Ontario Apple Marketing Commission does not set a price for it. In terms of grades, Ontario produces virtually no Extra Fancy Grade whereas British Columbia markets Canada Extra Fancy, Canada Fancy and Fancy grades separately. Ontario generally exports any Extra Fancy Grade production.

British Columbia's emphasis is on selling to the higher priced fresh market. Sales to processing in British Columbia are essentially considered a salvage operation, stemming from the inevitable culling of fruit which is below fresh quality standards. Ontario traditionally directs 50 per cent of its total crop (all varieties) to the processing market and the other half to fresh sales. Respecting the Delicious variety, 31 per cent of the 1987/88 crop was sold to processors. No figures are available to develop this breakdown prior to the 1987 crop year.

B.C. Delicious apples are marketed across Canada while Ontario grown apples are primarily sold in that province and eastern Canada. Overall, British Columbia is more marketing oriented than Ontario.

The Canadian market for Red and Golden Delicious apples over the past five years has been between approximately 5.5 and 6.8 mil. 42-lb. boxes. During that period, Canadian production has accounted for over 70 per cent of the market in most years with imports from the United States making up the balance. Canada experienced a short crop in the 1986/87 crop year accounting for about 60 per cent of the market. In 1987/88, production increased and Canadian producers held a 70 per cent market share. Apples are marketed from September to June. The release of apples from storage to the fresh market is done in a fashion to afford sales of Canadian product throughout the marketing season. Imports from Washington State enter Canada throughout the marketing period. The Washington State production volume is so large that it could supply the entire Canadian market. In the event that prices for Canadian apples varied too far from the landed price of Washington apples, buyers would increase their imports thereby reducing the normal portion of the market which Canadian goods would supply. Consequently, when Canadian prices are set by B.C. Tree Fruits Limited for B.C. apples and the Ontario Apple Marketing Commission, the prevailing prices in the United States and the landed price in Canada of Washington State Delicious apples must be taken into account. Because of the immense production capacity in Washington and the ever present availability of Washington apples, the status of Canada in the pricing mechanism is that of a "price taker" vis-à-vis the United States.

Since apples move freely between Canada and the United States, the substantially larger production volume in Washington State effectively determines the price in both countries. In fact, since 1984 at least, the prices of Red Delicious apples in Canada and the United States have followed very similar trend lines. After adjusting for inflation, prices trended downward over the period as aggregate supplies increased. At times, the U.S. price displayed greater cyclical swings than the Canadian price, but this was attributed to the effects of internal competition in Washington State generated by about 200 packers selling their product in the open market as compared to the more stable prices established by B.C. Tree Fruits Limited and its counterparts in other provinces.

The average price of Washington Delicious apples, F.O.B. shipping point, in crop year 1986/87 was approximately US\$14 per 42-lb. box. In 1987/88, that price fell to about US\$9. In 1988/89, prices have increased to US\$12 to US\$14 per box.

In crop year 1987/88, Washington State production increased to a record fresh pack of 67 million boxes and, as noted above, prices fell dramatically. Although the 1988/89 fresh pack is only down 4 per cent to 64 million boxes, the evidence is that prices have increased. Average prices for B.C. Delicious apples declined from approximately \$12 per box in 1986/87 to \$7 in 1987/88. In Ontario, prices for the equivalent of a 42-lb. box declined from about \$15 per box to \$12 in 1987/88.

In crop year 1987/88, total revenue to B.C. growers declined by over \$8 million, a decline of approximately 50 per cent. Net grower returns per box declined from a loss of \$1 per box in 1986/87 to a loss of over \$4 per box in crop year 1987/88. This resulted in the B.C. growers total industry loss increasing to approximately \$25 million in 1987/88 from approximately \$3 million in crop year 1986/87.

Since comprehensive statistics on Delicious apples were not available for Ontario from a central source, the Tribunal relied on financial information prepared by the Ontario Apple Marketing Commission based on a survey of 30 per cent of Ontario packing operations. The results of the survey reveal that average selling prices for Ontario Delicious apples to the fresh market declined from approximately

\$15 for the equivalent of a 42-lb. box in 1986/87 to \$12 in the 1987/88 crop year. The average net return to Ontario growers declined from about \$4.40 per box in 1986/87 to \$1.36 in 1987/88. Although the impact on the entire Ontario industry is not known, firms surveyed reduced their payments to growers by \$1.3 million in crop year 1987/88, a decline of approximately 33 per cent. Net grower returns for the sample declined from \$1.9 million in 1986/87 to \$0.6 million in crop year 1987/88.

The evidence adduced at the hearing indicates that B.C. orchard land values have declined. Some growers have been forced to increase their debt burden thereby deteriorating their debt/equity position. Growers have had to resort to securing off-farm employment which can result in deterioration of orchard activities necessary to maintaining the orchards' production volume and fruit quality. Furthermore, there are reported incidents of bankruptcies and the winding up of operations.

In 1987/88, there was a very substantial increase in the volume of B.C. Delicious apples diverted from the fresh market to processing. It was alleged that this was a result of the price suppression. However, the Tribunal is not convinced that other factors, including internal quality problems, did not also contribute to this diversion, particularly given that the fresh price level rarely, if ever, fell below the price obtainable from processors. It was established that the majority of fruit diverted to processing was of the Fancy R.C. Grade which is at the lower end of the Fancy Grade.

Federal and provincial agricultural stabilization payments were issued in response to the financial difficulties suffered by growers of Red Delicious apples in crop year 1987/88. These payments provided price support for sales of both Red and Golden Delicious apples. Counsel for the complainant argued that these payments, which were made pursuant to the National Tripartite Pricing Program for apples and the B.C. Government Income Insurance Program, amounted to material injury in the form of an increase in the burden on government agricultural support programs, pursuant to section 2 of the *Special Import Measures Act*. Section 2 of the Act specifically provides that such an increase in the financial burden on agricultural support programs shall be deemed materially injurious only in respect of the subsidization of an agricultural product. Insofar as the present inquiry relates to the dumping of an agricultural product, section 2 of the Act does not apply.

The tripartite payment issued for the 1987/88 crop was 1.6¢ per lb. for Red Delicious apples. The B.C. government income insurance payment was 2¢ per lb. over the total crop. It was estimated that the fresh allocation amounted to about 1.8¢ per lb. The two special assistance payments (federal and B.C. provincial governments) combined amounted to 2¢ per lb. which again was adjusted to 1.8¢ for the fresh fruit portion. The total assistance then was 5.2¢ per lb. or approximately \$2.18 per 42-lb. box of Red Delicious apples. Adding this assistance to the market return of 2.69¢ per lb. or \$1.13 per box, the total returns to growers on sales of Red Delicious apples in 1987/88 were approximately \$3.31 per box against a total cost of \$5.22 per box (12.43¢ per lb.). On Golden Delicious apples, the combined tripartite and B.C. government insurance payment was \$1.43 per box. Market returns amounted to \$2.03 per box for a combined return of \$3.46 per box against total costs of \$5.22 per box. The Tribunal notes that had it not been for government assistance, the injury incurred would have been even greater.

The Tribunal is satisfied that in crop year 1987/88, Washington State's very large production volume resulted in a dramatic decline in prices in the U.S. market which was passed on to Canada due to the presence of a significant volume of dumped low-priced imports. The suppression of Canadian fresh market prices caused by U.S. imports at dumped price levels (and their availability) resulted in material injury to Canadian production in the form of severe declines in grower returns versus costs. B.C. growers were directly affected by the dumping as they were required to match Washington State dumped prices in order to maintain their position in the market.

On the basis of the evidence, the Tribunal concludes that the dumping of the subject Delicious apples as found by the Deputy Minister has caused and is causing material injury to the production of the subject goods in British Columbia, which accounts for 70 per cent of production in Canada of like goods.

The degree of injury incurred in Ontario in 1987/88 was less than that experienced in British Columbia. The primary reasons for this are the somewhat insulated nature of the Ontario market due to transportation costs from the west, the consumer preference for locally grown fruit, the general grade level of Ontario apples which tends to be the Fancy rather than the Extra Fancy Grade and the marketing of Ontario apples in bags of mixed grade and count size rather than by tray packed cartons. The latter two features severely reduce the degree of direct competition between Ontario Delicious apples and Washington State or B.C. Delicious apples in the Ontario marketplace. However, the presence of a large volume of U.S. imports at dumped prices had a depressing effect on the prices of Ontario apples and the return to Ontario growers. The Tribunal concludes that the injurious effect of the dumping on Ontario growers has been less than in British Columbia but is nonetheless material.

The fact of national marketing which is engaged in by both British Columbia and Washington State places B.C. Delicious apples in direct competition with dumped Washington State apples in the Ontario market. This precludes the Tribunal from excluding Ontario or any other region of Canada from the application of any finding of either past, present or future material injury.

The future of the Canadian industry is very uncertain because imports of Washington State Delicious apples are the main competitor to British Columbia Delicious apples in the Canadian fresh market. Approximately 200 shippers are engaged in marketing Washington's production which far exceeds that of British Columbia. The ability to draw from such a large production volume enables Washington to be even more marketing oriented than British Columbia in serving the fresh market. Washington divides its Extra Fancy Grade into Washington Extra Fancy (Top Grade) and U.S. Extra Fancy. In addition, Washington shippers can draw tray packed fruit by brand from specific orchards. These features of the Washington industry together with its production volume enable shippers to give the assurance that the highest quality apples can be provided to customers consistently throughout the marketing year. It is not possible for Canadian production to expand to a level which will yield Extra Fancy Grade apples in volumes sufficient to supply the entire Canadian market. Consequently, there will always be imports of the subject goods available in Canada.

Washington State production has arrived at a new plateau as tree plantings in the late 1970s and early 1980s approach their peak bearing age. There have been additional plantings since 1984 which are currently bearing fruit at the lower limit of their yield capability. In the current (1988/89) crop year, it is understood that a very large proportion of the harvested production came from trees which are nine years old or younger.

In crop year 1987/88, the new production plateau was exceeded because of the special circumstance of an unusual combination of weather conditions. The 1988/89 crop is down from the previous year, but is second only to 1987/88 in volume, and the fresh pack is only 4 per cent below the 1987/88 fresh pack of 67 million boxes. As U.S. domestic consumption is estimated to be in the area of 50 million boxes, this leaves over 15 million boxes of excess production.

The impact on crop size of tree plantings in the early 1980s and post 1984 is beginning to occur. All expert projections of ever increasing crop size are being borne out and it is apparent that, barring orchard disasters of catastrophic proportion, Washington State growers will be producing crops that meet or exceed the 1987/88 fresh pack during the 1990s. The conclusion of expert witnesses to the effect that marketing not supply will be the challenge for Washington State in the future is indisputable. This fact, in the context of the established historical link between crop size and price, raises the spectre of Washington State apples entering Canada at dumped price levels during the 1990s.

In considering the likelihood of material injury recurring, the Tribunal finds the evidence of steadily increasing production levels in Washington State compelling. Tree plantings in the early and mid-1980s have yet to reach their peak yield levels and will do so during the 1990s. Washington State is and will be producing in excess of U.S. demand. The evidence respecting the development of marketing strategies to attempt to create new domestic and export demand, together with investments to

expand storage capacity are clearly preparatory steps intended to enable Washington to market the inevitably rising production. These efforts, however, do not provide an assurance that sufficient additional markets, particularly export markets, will be available to Washington shippers as production levels rise in the face of negligible growth in U.S. domestic demand. It is the Tribunal's view that, under these circumstances of uncertain or speculative success in export markets, Washington State apple production would likely lead to depressed prices in the U.S. market and, consequently, in Canada. Even average crop levels are in excess of domestic demand and will have a depressing effect on price levels both in the United States and Canada. Consequently, the Tribunal is convinced that, in the absence of anti-dumping measures, Canadian growers of the subject Delicious apples will continue to suffer material injury from dumped imports from the United States.

The Tribunal recognizes that certain adjustments may occur to offset the potential financial injury to Washington growers of such large crops. Some of the factors which may affect the adjustment process are the four- to nine-year cycle from new plantings through the maturing to bearing age and peak yield, the possibility of very large crops once in every six years and of relatively short crops once in six years, and the impact of marketing efforts which are currently unknown. Also in the current crop year, there has been a degree of improvement in price levels. Accordingly, the Tribunal will monitor the industry with a view to tracking adjustments which may occur to determine whether a review of this finding may be warranted prior to its statutory expiry date.

CONCLUSION

In light of the evidence, the Tribunal finds that the dumping in Canada of fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America, excluding Delicious, Red Delicious and Golden Delicious apples imported in non-standard containers for processing has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Presiding Member

I concur: Raynald Guay
Raynald Guay
Member

I concur: Arthur B. Trudeau
Arthur B. Trudeau
Member

Witnessed: Robert J. Martin
Robert J. Martin
Secretary