



Ottawa, Tuesday, February 8, 2000

Review No.: RR-99-001

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on February 9, 1995, in Inquiry No. NQ-94-001, concerning:

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

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding made on February 9, 1995, in Inquiry No. NQ-94-001.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned finding.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michel P. Granger
Michel P. Granger
Secretary

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

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 22, 1999
Date of Order and Reasons: February 8, 2000

Tribunal Members: Richard Lafontaine, Presiding Member
Pierre Gosselin, Member
Arthur B. Trudeau, Member

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The Canadian Horticultural Council

(Agency representing domestic growers)

Darrel H. Pearson
Peter W. Collins
for Northwest Horticultural Council

(Agency representing Washington growers and exporters)

Chuck Dentelbeck
The Ontario Produce Marketing Association

(Interested Party)

Witnesses:

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Secretary/Statistician
Ontario Apple Marketing Commission

Glen Lucas
General Manager
British Columbia Fruit Growers' Association

G.H. (Greg) Gauthier
General Sales Manager
B.C. Tree Fruits Limited

Mark Powers
Vice-President
Northwest Horticultural Council

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

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PIERRE GOSSELIN, Member
ARTHUR B. TRUDEAU, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*,¹ of the finding made by the Canadian International Trade Tribunal (the Tribunal) on February 9, 1995, in Inquiry No. NQ-94-001,² concerning fresh,³ whole, Delicious and Red Delicious apples originating in or exported from the United States of America, excluding fresh, whole, Delicious and Red Delicious apples imported under the authority of a ministerial exemption⁴ issued pursuant to the *Canada Agricultural Products Act*⁵ and the *Fresh Fruit and Vegetable Regulations*,⁶ as well as excluding imports during the period from July 1 to September 30 in each calendar year.

Pursuant to subsection 76(2) of *SIMA*, the Tribunal initiated a review of the finding and issued a notice of review⁷ on July 14, 1999. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent questionnaires to Canadian growers' agencies, importers and purchasers and one agency representing foreign growers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. In addition, the record of this review consists of all relevant documents, including the 1995 finding, the notice of review and public and confidential replies to the questionnaires. All public

1. R.S.C. 1985, c. S-15 [hereinafter *SIMA*].
2. Tribunal Exhibit RR-99-001-1, Administrative Record, Vol. 1 at 2.
3. Apples for the fresh market are sold for retail, as opposed to apples sold for further processing into juice and other products.
4. Ministerial exemptions are granted when there is a shortage in the domestic market and apples that do not meet minimum grade, labelling or packaging requirements must be imported for processing or repacking.
5. R.S.C. 1985 (4th Supp.), c. 20.
6. C.R.C. 1978, c. 285.
7. C. Gaz. 1999.I.2160.

exhibits were made available to interested parties, while protected exhibits were provided only to counsel⁸ who had filed a declaration and undertaking with the Tribunal.

A public hearing was held in Ottawa, Ontario, on November 22, 1999.

At the hearing, the domestic growers were represented by a representative of The Canadian Horticultural Council (CHC). The CHC submitted evidence and made arguments in support of a continuation of the finding. In addition, a representative of an interested party, The Ontario Produce Marketing Association (OPMA), testified and indicated support for a continuation of the finding.

The Northwest Horticultural Council (NHC), an agency representing U.S. growers, was represented by counsel at the hearing. Counsel submitted that the NHC did not contest a continuation of the finding.

SUMMARY OF THE INJURY FINDING IN INQUIRY NO. NO-94-001

In its finding made on February 9, 1995, the Tribunal concluded that dumped Golden Delicious apples from the United States had not caused, were not causing and were not likely to cause material injury to the production in Canada of Golden Delicious apples. In the case of Delicious and Red Delicious apples (hereinafter collectively identified as Red Delicious apples), the Tribunal determined that dumped Red Delicious apples from the United States had caused, were causing and were likely to cause material injury to the production in Canada of Red Delicious apples.

In assessing whether the domestic industry had suffered or was suffering material injury, the Tribunal focussed on events which took place in a relatively short period of time, i.e. between February 1994 and February 1995, because prior to February 1994, a finding of injury was in place against imports of Red Delicious apples and Golden Delicious apples from the United States and, accordingly, prior to that date, there could not have been any injury from dumping.

With respect to Red Delicious apples, the Tribunal was satisfied that the domestic industry had suffered and was suffering material injury, primarily in the form of price erosion and reduced grower returns. Based on the totality of the evidence, the Tribunal was persuaded that there was a causal link between the dumping following the rescission of the 1989 finding and the price erosion experienced by the domestic industry. This price erosion had a significant impact on B.C. grower returns. As well, in the absence of dumping, Ontario growers would have marketed their apples in a manner that would have generated higher prices for their product.

With respect to the threat of material injury, the Tribunal was of the opinion that the dumping of Red Delicious apples from the United States was likely to cause material injury to the production in Canada of like goods because of: (1) the high production levels of Red Delicious apples in the state of Washington (hereinafter Washington) in relation to Red Delicious apple production in all of Canada; (2) the price and inventory levels of Red Delicious apples in Washington; (3) the fact that Canada would remain an important export destination for Red Delicious apples from Washington due to geographical proximity; and (4) the absence of trade barriers.

The Tribunal also determined that the domestic industry was unable to supply the market with sufficient volumes of Red Delicious apples from July 1 to September 30 in each calendar year. Therefore,

8. For these purposes, subsection 45(4) of the *Canadian International Trade Tribunal Act* defines "counsel", in part, as including any person other than a director, servant or employee of a party.

the Tribunal concluded that anti-dumping duties on imports of Red Delicious apples from the United States should be in force only during the period from October 1 to June 30 in each calendar year.

Also excluded from the finding were Red 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*.

PRODUCT AND ORCHARD OPERATIONS

Red Delicious apples have an elongated shape, narrowing to a five-point base, and are bright red. Since the mid-1980s, Canadian apple growers have planted mainly small trees (known as “dwarf trees”) grown from clonal rootstocks. Dwarf trees begin to bear apples in commercial quantities five to six years after planting. Dwarf trees lend themselves to denser planting than do large trees, and apples can be picked more easily. Dwarf tree orchards also facilitate spraying and pruning, which permit apple growers to improve efficiency and to increase the proportion of high-quality apples. Given the varieties and rootstocks used today, the average useful life of an apple tree is about 20 years. Tree density can vary greatly and can range from 100 to 5,000 trees per acre, with the higher densities achieved in more recent plantings. The quantity and quality of apples produced per acre vary depending on the tree density, tree age, weather and horticultural practices.

After being picked, apples are transported to packing houses, where they are either packed for immediate sale or, more commonly, put into storage. There are three basic types of storage: (1) dry or common storage, which is used only for the short term to protect the apples from the sun and rain; (2) cold or regular storage, which cools the apples using refrigeration; and (3) controlled atmosphere (CA) storage, which provides a modified atmosphere in addition to a rapid cooling of the apples. In cold storage, apples are cooled to approximately 5°C to retard the maturation process. Apples can be kept successfully in cold storage for 3 to 7 months and, in CA storage, for up to 12 months, but the quality of the fruit deteriorates with time. The better quality apples are generally put in CA storage for sale later in the marketing season.

Several approaches are used by packing houses to wash, size, grade and pack apples. In one typical approach, apples are washed and air dried before being sprayed with a thin coating of edible wax to improve their appearance and increase their shelf life. Next, the apples move over a small fruit eliminator, through a singulator and colour sorter, and onto a sorting table where they are sorted by grade. Sorting by size is done by weighing each apple. The most common apple count sizes are 72, 80, 88, 100, 113, 125 and 138.⁹ The graded and sized apples are then either packed in cartons¹⁰ or bags, or placed loose in bins and put back in cold storage.

Red Delicious apples are graded under the *Canada Agricultural Products Act* as Canada Extra Fancy, Canada Fancy and Canada Commercial. British Columbia also has regulations that provide for a B.C. Extra Fancy grade for Red Delicious apples. Similarly, in the United States, Red Delicious apples are graded as U.S. Extra Fancy and U.S. Fancy, with Washington having a Washington premium Extra Fancy grade, a Washington Extra Fancy grade and a Washington Fancy grade. B.C. Extra Fancy and Washington Extra Fancy are perceived as being higher-quality grades than Canada Extra Fancy and U.S. Extra Fancy respectively and generally command higher prices in the marketplace.¹¹

9. The count size refers to the number of apples per carton.

10. In the apple industry, a carton represents 42 lb.

11. Tribunal Exhibit RR-99-001-1, Administrative Record, Vol. 1 at 10.

Weather plays a major role in determining the size and quality of a crop in any given year. Frost, hail or drought can result in high cull rates and affect the quality of marketable apples on the fresh market. Hot, dry weather can push a crop ahead of normal harvest time. Cool weather at bloom time can result in a softer, lower-quality fruit and lower pack-out. At harvest time, cool nights and clear days may help colour and maturity. Growers also have to contend with diseases of various kinds which can affect the quantity and quality of apples harvested. These factors ultimately influence prices in the marketplace.

RED DELICIOUS APPLE PRODUCTION

For crop year 1998,¹² total Canadian apple production of all varieties was approximately 29 million cartons. For that year, the McIntosh apple was the most popular variety of apple, accounting for some 40 percent of total apple production. Red Delicious apples accounted for about 17 percent of Canadian apple production.¹³ Other popular varieties of apples include Spartan, representing 7 percent of total production, and Cortland, Empire and Ida Red, each representing about 4 percent of total production.

Red Delicious apples are grown mostly in British Columbia and Ontario, with British Columbia traditionally being the dominant producer. For the crop years from 1996 to 1998, on average, British Columbia accounted for 54 percent, Ontario for 42 percent, and Nova Scotia, New Brunswick and Quebec together for 4 percent of Red Delicious apple production. The Red Delicious apple is a more important apple variety in British Columbia than it is in Ontario in terms of total apple production. For the crop years from 1996 to 1998, Red Delicious apples represented approximately 31 percent of total B.C. apple production, while they represented 15 percent of total Ontario apple production.

In the United States, the Red Delicious apple was the most popular variety of apple grown over the last five years, accounting for about 40 percent of total apple production. Production of Red Delicious apples increased by 19 percent from the 1997 to the 1998 crop year due to the large crop in the Northwest, where Red Delicious apples represent a large portion of total production. For crop year 1998, the western United States produced 84 percent of all U.S. Red Delicious apples.¹⁴ For the same year, 10 percent was produced in the East and 6 percent in the Midwest. The U.S. Apple Association predicted that the production of Red Delicious apples would decrease from 1998 levels by 21 percent for crop year 1999 and account for only 34 percent of total apple production.¹⁵

DOMESTIC INDUSTRY

The domestic apple industry was represented by the Apple Committee of the CHC, an agency representing the various provincial grower organizations in British Columbia, Ontario, Quebec, Nova Scotia and New Brunswick.

In British Columbia, apple production is centred in the Okanagan, Similkameen and Creston valleys. The British Columbia Fruit Growers' Association (BCFGA) is the principal apple grower organization and currently represents about 66 percent of growers. Since 1996, membership in the BCFGAs has been on a voluntary basis. B.C. growers produce all grades of Red Delicious apples: B.C. Extra Fancy,

12. The crop year runs from September 1 to August 31, and the year refers to the year in which the apples were harvested. For example, the period from September 1, 1998, to August 31, 1999, is referred to as crop year 1998 because the apples were harvested from September to November 1998.

13. For the purpose of its analysis, the Tribunal has assumed that the volume of Red Delicious apple production is equal to the volume of Red Delicious apple sales.

14. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 13.

15. *Ibid.*

Canada Extra Fancy, Canada Fancy and Canada Commercial. B.C. Tree Fruits Limited (BCTFL) markets the majority of the B.C. fresh Red Delicious apple crop.¹⁶

In Ontario, apple growing is concentrated in the southern part of the province and along the Great Lakes. Apples are grown in Ontario in basically the same way as they are grown in British Columbia and other apple-growing regions in North America. Ontario growers, however, depend less on irrigation than do their B.C. and Washington counterparts. As is the general trend in North America, Ontario growers are moving toward the planting of higher-density orchards. All growers in Ontario with orchards of more than 2.5 acres are required to be registered with the Ontario Apple Marketing Commission (OAMC),¹⁷ which is authorized under the Ontario *Farm Products Marketing Act*¹⁸ to organize the marketing of apples in Ontario. There are currently 789 licensed commercial apple growers in Ontario that grow apples on approximately 24,000 acres. The OAMC establishes suggested prices for sales of provincially grown Canada Fancy¹⁹ Red Delicious apples to packers and retailers within the province. Prices are suggested for trays and bags (3 lb., 5 lb., 8 lb. and 10 lb.).

MARKETING AND DISTRIBUTION

The most common distribution chain for domestic Red Delicious apples is for a grower to deliver product to a packing house, which then markets the apples to wholesalers or grocery retail chains. Some apples are sold directly by growers to retailers, or to consumers from roadside stands. A higher percentage of this latter type of distribution is found in Eastern Canada than in Western Canada.

Commercial apple growers in all provinces, with the exception of Nova Scotia, are generally registered with their provincial marketing board. Some of the marketing boards exercise their authority to set prices (such as those in New Brunswick and Quebec), but these powers apply only to the crop grown and marketed within the province for which the particular marketing board has jurisdiction. Apples imported from other provinces and countries are not subject to any pricing order.

In British Columbia, BCTFL is responsible for marketing apples and other fruits in the fresh and processing markets in Canada and other countries. BCTFL sells apples for four principal packers, which are cooperatively owned, and markets between 75 and 80 percent of the province's crop. Two other packing houses are privately owned and market their apples through Pro-Fresh International Marketing. In excess of 90 percent of the B.C. fresh Red Delicious apple crop is packed in trays or cell cartons in up to 14 count sizes. Approximately 55 percent of B.C. Red Delicious apples have been destined for export markets in recent years.

The marketing of Ontario apples is done by approximately 50 licensed packers, some of which are also growers, and the majority of which are privately owned. One of the largest packers, the Norfolk Fruit Growers' Association, operates as a cooperative and handles approximately 20 percent of Ontario's apple production destined for the fresh market. Another large independent packer, Knight's Appleden, also handles approximately 20 percent of the apples destined for the fresh market. The remaining fresh apples are packed and marketed by various smaller packing houses. The majority of Ontario Red Delicious apples are packed and marketed in polyethylene bags, which may contain a mixture of sizes. Bagged apples are

16. BCTFL is a cooperative owned by the four packers for which it sells. It has been independent from the BCFGA since 1996.

17. Tribunal Exhibit RR-99-001-24.2, Administrative Record, Vol. 1A at 52.

18. R.S.O. 1990, c. F.9.

19. In recent years, 95 percent of the Ontario Red Delicious apple crop has been Canada Fancy.

generally of smaller size and of Canada Fancy grade. In recent years, an increasing percentage of Red Delicious apples have been packed in 40-lb. trays. A third avenue for sales of Red Delicious apples in Ontario is the use of a half-bin as a shipping and display container.

Importers usually purchase Red Delicious apples directly from shippers/packing houses. Importers of Red Delicious apples are mostly large grocery chains, which purchase on their own behalf, and wholesalers, which sell to smaller chains, independents and specialty stores. Retail chains will occasionally use the services of a broker.

ENFORCEMENT OF THE FINDING

The current normal values were determined in January 1995 at US\$12.99 per carton for all grades of CA storage apples and in August 1995 at US\$12.49 per carton for all grades of regular storage apples. The Department of National Revenue (Revenue Canada) (now Canada Customs and Revenue Agency) reported that a continuous monitoring of the industry, along with ongoing consultations with representatives of the apple industry, indicated that a review of normal values was not required.

Since the Tribunal's 1995 injury finding, the amount of anti-dumping duties collected by Revenue Canada has been less than \$50,000 annually. Anti-dumping duties collected represent less than 1 percent when compared to the annual value of U.S. imports.²⁰

POSITION OF PARTIES

Parties in Favour of a Continuation of the Finding

CHC

The CHC submitted that, in the absence of an injury finding, dumping is likely to resume and cause material injury to the members of the CHC that produce Red Delicious apples and that, therefore, the finding should be continued.

With respect to the likelihood that, in the absence of an injury finding, dumping will continue or resume, the CHC stated that Washington production is so large that it could easily supply the entire North American market for Red Delicious apples. Washington Red Delicious apples are always available. The CHC also submitted that the high production levels in 1987 that prompted the initial dumping complaint were not an aberration but the beginning of a trend toward increasing overproduction of Red Delicious apples. In all but three of the years since 1987, Washington shipments to the fresh market have met or exceeded the 1987 level.

The CHC submitted that the overproduction of U.S. Red Delicious apples has caused and will cause low prices for several years in the future. It quoted Dr. Desmond O'Rourke, Professor of Agricultural Economics at Washington State University, who forecast that Washington's high production levels would continue into the future. Dr. O'Rourke also predicted that these high apple production levels would cause grower returns to be depressed throughout the 1990s, especially in years of above-average yield. This would be particularly true for Red Delicious apple prices. The CHC concluded that Washington's overproduction problems and consequential low prices are not over but are likely to become more serious in the future.

20. Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 148 and 155.

The CHC submitted that, between 1993 and 1999, average prices were below normal values in 44 out of 72 months. The CHC submitted that this occurred despite attempts to expand Washington's export markets and storage facilities. The CHC stated that more storage facilities do not substantially relieve the pressure on prices, since Washington growers still must sell all the apples from one crop year within that marketing year to make room for the coming year's crop. The CHC also submitted that the high prices experienced in 1995-96 were due to the small crop in Washington, good export volume and high processing prices; this was, according to the CHC, an atypical year.

The CHC submitted that the average prices for crop year 1998 had produced the lowest market returns for Washington Red Delicious apples since 1987. These 1998 crop prices were substantially below Washington's cost of production. According to the CHC, average market returns, before deduction of marketing, advertising and freight allowances, were US\$9.18 per box for regular storage and US\$9.39 per box for CA storage Red Delicious apples (as of August 23, 1999). The CHC submitted that, even though average prices for 1998 were at the same level as in 1987, Washington grower returns were down by a further US\$1.75 per box due to higher costs of production in 1998.

Due to the lowest prices in more than a decade, and with packing and marketing costs showing an increase of 33 percent, industry officials in Washington have estimated that the 1998 market returns will result in cash operating losses to Washington tree fruit growers of more than US\$200 million. The farm aid package approved by the U.S. Senate on August 4, 1999, allocated US\$50 million to apple and other specialty crop growers. It also directs the Farm Service Agency to review its loan programs to apple growers in light of their financial problems.

The CHC submitted that low-priced surplus apples are unlikely to be consumed domestically, as the United States has a relatively low per capita consumption rate of approximately 19 lb. per person. This rate is virtually unchanged from 1980. The CHC added that consumption levels are not affected by lower prices or increased supply, as the demand for apples is relatively inelastic. Therefore, U.S. apple growers and marketers must try to sell the surplus into other markets, even at prices below the cost of production.

According to the CHC, with an average fresh apple consumption rate of 26.45 lb. per person, Canada is an obvious target for U.S. apple growers and marketers. Canadian markets are open to U.S. Red Delicious apples, unlike many other countries which have sanitary and phytosanitary standards that prevent access to their markets. Canada is geographically close to the United States and, consequently, it costs relatively less to sell surplus apples in Canada compared to other export markets. The CHC added that Canada's relatively stable currency and fewer collection problems makes it a preferred market for U.S. exports. For these reasons, the CHC stated that, in the absence of an injury finding, there is a likelihood that dumping will continue or resume.

With respect to the likelihood that resumed dumping will cause material injury to the domestic industry, the CHC submitted that dumped imports from Washington would immediately cause material injury to Canadian apple growers, as was the case when the Tribunal rescinded its finding in Review No. RR-93-002.²¹ The CHC argued that, as soon as anti-dumping protection was removed in 1994, Canadian prices dropped dramatically to compete with the low prices of dumped U.S. imports. Market returns for BCTFL, from February 8 to August 31, 1994, as compared to average returns prior to February 8, 1994, were CAN\$3.25 per carton lower for B.C. Extra Fancy CA storage Red Delicious apples and CAN\$5.52 per carton lower for Canada Extra Fancy CA storage Red Delicious apples.

21. *Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Order and Statement of Reasons* (7 February 1994).

The CHC submitted that the delivered price of Washington Red Delicious apples effectively determines the price of Red Delicious apples in all regions of Canada and the United States and that Canada is still a “price taker” in the North American market. The CHC contended that, if Canadian prices are above the landed price of Washington Red Delicious apples, Canadian buyers increase the amount imported from Washington and decrease the amount purchased from Canadian growers. While Canadian growers are ready to compete with fairly priced imports, they cannot compete with imports that are dumped in Canada at prices substantially below the cost of production. The CHC concluded that, in the absence of anti-dumping protection, Canadian growers will suffer serious and potentially catastrophic injury.

The CHC submitted that, in the absence of an injury finding, prices charged F.O.B. packing house by U.S. shippers to Canadian customers are the same as those charged to U.S. customers for identical grades and sizes. Thus, in 1998, Red Delicious apple import prices would have been approximately US\$3.65 per box lower than they were, and therefore, pricing by Canadian growers would have had to decline by an equal amount in order to market the Canadian crop. Based on the estimated 3 million boxes produced domestically, the CHC concluded that a loss of US\$11 million (or CAN\$16.5 million) would have resulted. This would have been a reduction of 52.8 percent in the growers’ gross income, putting it well below the cost of growing Red Delicious apples in either Canada or the United States.

The CHC submitted that the dumping of U.S. Red Delicious apples will have negative effects on domestic industry development and production efforts in the following additional ways: (1) orchard and production decline; (2) underutilization of resources; (3) decreased employment; and (4) increased capitalization of operating debt. The CHC also submitted that, if the finding were rescinded, lower-grade product with corresponding low prices would enter Canada and lead to reduced consumer consumption and satisfaction.

In conclusion, the CHC submitted that the finding should be continued, given that, in its absence, dumping is likely to resume and cause material injury to its members that grow Red Delicious apples.

NHC

The NHC did not contest the continuation of the finding. It did not provide any written submissions nor did it provide any argument at the hearing.

OPMA

The position of the OPMA was that it supported the ability of all commercially active apple growers in Canada to market their product and receive a fair return. The OPMA did not support the implementation of technical or non-technical trade barriers in a market driven by consumer demand for a quality product. However, the OPMA’s representative stated at the hearing that the organization was in favour of a continuation of the finding.²² The OPMA did not provide any written submissions nor did it provide any argument at the hearing.

ECONOMIC INDICATORS

The following table provides a summary of the key market indicators for the Canadian Red Delicious apple industry for the crop years from 1996 to 1998.

22. *Transcript of Public Hearing*, 22 November 1999, at 211.

Table 1
Key Economic Indicators
Canadian Red Delicious Apple Industry¹
(000 cartons)

	1996-97	1997-98	1998-99
	<u>From October to June</u>		
Total Production - Fresh and Processing Apples	4,228	3,760	5,173
Production	3,637	3,064	3,709
Exports	1,345	802	1,379
Imports	663	544	456
Domestic Sales by Domestic Growers	2,213	2,241	2,305
Domestic Market	2,876	2,785	2,761
Market Shares (%)			
Domestic growers	77	80	84
Imports	23	20	16
Storage at November 1	2,240	1,770	2,395
Unit Value of Imports (CAN\$/carton)	19.00	20.18	20.15
Normal Value ² (CAN\$/carton)	17.37	18.09	19.30
Net Returns to Growers (CAN\$/lb.)			
British Columbia ³			
Ontario	(0.05)	(0.03)	(0.09)
		<u>Total Crop Year</u>	
Total Production - Fresh and Processing Apples	4,228	3,760	5,173
Production	3,637	3,064	3,709
Exports	1,354	802	1,379
Imports	1,057	864	776
Domestic Sales by Domestic Growers	2,284	2,262	2,330
Domestic Market	3,341	3,126	3,106
Market Shares (%)			
Domestic Growers	68	72	75
Imports	32	28	25
Unit Value of Imports (CAN\$/carton, average annual)	18.26	19.15	18.74

1. Unless otherwise indicated, all data pertain to fresh apples.

2. The normal value represents an average of the normal values established by Revenue Canada for regular storage and CA storage for all grades. The normal value fluctuated over the period due to variations in the exchange rate.

3. Net returns to B.C. growers are confidential.

Source: Replies to Tribunal questionnaires, and Tribunal Exhibit RR-99-001-4, Administrative Record, Vol. 1 at 132.

British Columbia and Ontario accounted for over 95 percent of Red Delicious apple production during the review period. Total Canadian production of Red Delicious apples (including fresh and for processing) decreased from 1996 levels by 11 percent in crop year 1997 and increased from 1997 levels by 38 percent in crop year 1998. Fresh production of Red Delicious apples followed a similar trend, decreasing

from 1996 levels by 16 percent in crop year 1997 and increasing from 1997 levels by 21 percent in crop year 1998.

Exports of Red Delicious apples represented about 34 percent of total fresh production of Red Delicious apples over the period of review. Over the same period, British Columbia accounted for about 89 percent of total exports, and Ontario accounted for the remainder.

For the period from October to June, the volume of total apparent imports decreased by 18 percent in 1997 as compared to 1996, and by a further 16 percent in 1998. On average, 62 percent of the fresh Red Delicious apples were imported during the 9-month period during which they were subject to anti-dumping duties and 38 percent during the other three months. Between 1996 and 1998, the United States accounted for virtually all the imports of Red Delicious apples into Canada. On average, for the period from October to June, Ontario received 57 percent of all imports, British Columbia, 37 percent and other provinces, 6 percent.²³

For the period from October to June, the average unit value of imports increased by 6 percent in 1997 over 1996 and remained stable in 1998. For the other three months, the average unit value of imports varied by less than 2 percent between 1996 and 1998.

Between October and June, the total apparent market for the subject apples decreased by 3 percent in 1997 and by 1 percent in 1998. The market share of domestic growers grew from 77 percent in 1996 to 84 percent in 1998. Conversely, the market share of imports decreased by 7 percentage points for the same period.

For each of the crop years 1996, 1997 and 1998, B.C. and Ontario net returns to growers were negative.

ANALYSIS

Section 76 of *SIMA* provides that, on completion of a review, the Tribunal shall rescind or continue an order or a finding, with or without amendment. In making this decision, the Tribunal addresses two fundamental questions. First, it determines whether there is a likelihood of continued or resumed dumping if the finding is rescinded. If the Tribunal concludes that there is a likelihood of continued or resumed dumping, it then determines whether such dumping is likely to cause material injury to the domestic industry.

In determining whether there is a likelihood of resumed dumping and, if so, whether such dumping is likely to cause material injury to the domestic industry, the Tribunal has focused on circumstances that can reasonably be expected to exist in the near or medium term.

Likelihood of Resumed Dumping

In examining whether there is a likelihood of resumed dumping, the Tribunal may consider a broad range of factors. In this review, the Tribunal considered the following factors with respect to the United States: (1) whether there has been dumping of goods while the finding has been in effect; (2) the volume of Red Delicious apple imports into Canada; (3) the volume of U.S. exports to other countries and the existence of anti-dumping actions against U.S. Red Delicious apple imports in other jurisdictions; (4) the

23. These numbers reflect unloads (imports) into a province, but may not reflect what is actually consumed, as some quantities may be shipped to other provinces.

developments in U.S. production capacity and inventory levels of Red Delicious apples and other varieties of apples; (5) the quality and competitiveness of U.S. Red Delicious apples as compared to Canadian Red Delicious apples; (6) the pricing of U.S. Red Delicious apples; and (7) the likely future performance in terms of U.S. production capacity, prices and exports of Red Delicious apples.

The following table summarizes the key economic indicators for the apple industry, first, for the United States as a whole and second, for Washington.

Table 2				
Key Economic Indicators				
U.S. and Washington Apple Industry				
(000 cartons)				
	1996-97	1997-98	1998-99	Projected 1999-2000
United States				
Total Production (All Varieties)	247,188	245,805	271,129	251,495
Total Production of Red Delicious Apples	104,026	90,284	107,208	84,466
Ratio of Red Delicious Apples to Total Production (%)	42	37	40	34
Washington				
Total Production (All Varieties)	130,952	119,048	152,381	123,690
Production of Fresh Red Delicious Apples ¹	56,197	44,430	52,222	41,233
Total Exports of Fresh Red Delicious Apples	21,266	12,757	18,613	N/A
Ratio of Exports of Fresh Red Delicious Apples to Total Fresh Production (%)	38	29	36	N/A
Washington Exports of Fresh Red Delicious Apples to Canada ²	1,140	1,138	1,049	N/A
Washington Weighted Average Selling Prices of Fresh Red Delicious Apples ³ (CAN\$/carton)				
All Grades	17.66	18.52	13.92	19.09 ⁴
Washington Extra Fancy	18.21	19.66	14.70	19.97 ⁴
<ol style="list-style-type: none"> 1. Data for 1998-99 are estimates provided by Wenatchee Valley Traffic Association, and data for 1999-2000 are estimates provided by the U.S. Apple Association in August 1999. 2. These export data were provided by the NHC. The volumes, especially for 1997-98 and 1998-99, are greater than those reported by Statistics Canada for U.S. imports. 3. Washington's weighted average selling prices have been calculated by the Tribunal's staff using the Apple Price Summary published by the Washington Growers Clearing House Association. 4. Washington's weighted average selling prices for 1999-2000 are the average selling prices for September and October 1999 only. 				
N/A = Not available.				
Sources: Replies to Tribunal questionnaires, CHC submissions, NHC replies to requests for information and evidence provided at the hearing.				

Imports into Canada and Anti-dumping Duties Paid

Imports of Red Delicious apples into Canada come almost exclusively from the United States.²⁴ Between October and June of the period of review, imports and the market share of U.S. Red Delicious apples declined steadily. For the three months that are not covered by the finding, imports decreased by 19 percent in 1997, as compared to 1996, and remained stable in 1998.²⁵ Washington is, by far, the most important supplier of Red Delicious apples to Canada, and it ships year-round. Data provided by the NHC show that, between 1996 and 1998, notwithstanding the anti-dumping measures, Washington exported about one million cartons of Red Delicious apples to Canada annually.²⁶ Although the Tribunal does not have direct evidence of the export volumes to Canada from Michigan and New York for the period under review, the reasons for the previous Tribunal order²⁷ and evidence on the record indicate that these states, the second- and third-largest producing states of Red Delicious apples respectively, are not significant factors in the Canadian marketplace.²⁸ The Tribunal also heard a witness from National Grocers Co. Ltd. (National Grocers), which has, according to its estimates, a 38 percent share of the grocery market in “Ontario east”,²⁹ testify that National Grocers does not import from Michigan or New York.³⁰

The Tribunal notes that the enforcement data provided by Revenue Canada indicate that very little dumping has occurred since the finding was issued.³¹ Indeed, the evidence on the record indicates that between 1996 and 1998, the average unit value of U.S. Red Delicious apple imports from October to June was at or above average normal values.³² Although the average value of Red Delicious apple imports from July to September of the review period was sometimes below the average normal value, it is the Tribunal’s opinion that these prices were lower because they represent an average of prices while Red Delicious apples are at the bottom of the market cycle for most of the period.³³

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24. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 161 and 162.
 25. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 157.
 26. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 49.
 27. *Supra* note 21.
 28. The OAMC submitted a study indicating that imports of all apples into Ontario from “other” sources, which included Michigan and New York, accounted for about 5 to 10 percent of the market between 1991 and 1997. Manufacturer’s Exhibit A-7 at 10, Administrative Record, Vol. 11.
 29. *Transcript of Public Hearing*, 22 November 1999, at 212-14, 243 and 244.
 30. *Transcript of Public Hearing*, 22 November 1999, at 222 and 223.
 31. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 148.
 32. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 156. See also Table 1 herein.
 33. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 216. The quality of Red Delicious apples is at its lowest level at the end of the crop year, and this is reflected in prices. *Transcript of Public Hearing*, 22 November 1999, at 161. See also the section on “Prices of Red Delicious Apples” for an explanation of the market cycle.

The record shows that, during the review period, the majority of Red Delicious apples being imported into Canada were of the Washington Extra Fancy grade. The witness for BCTFL confirmed that the lower grades are not coming from Washington.³⁴ Furthermore, the witness from National Grocers indicated that, during the period of review, National Grocers was importing only Washington Extra Fancy apples.³⁵ There is evidence that the landed price of lower grades of U.S. apples, had they been imported, would have been below the normal values established by Revenue Canada and would have attracted anti-dumping duties.³⁶ However, the Tribunal believes it unlikely that these apples will be imported into Canada in the near future because, for the two most recent crop years, at least 80 percent³⁷ of Washington's production of fresh Red Delicious apples was of the Washington Extra Fancy grade. Moreover, there are plentiful supplies of very competitively priced lower-grade apples available from domestic growers. The witness from National Grocers did not think that Washington growers could sell lower-grade apples at the low price available from domestic growers nor did he think that Washington growers had the volume.³⁸

U.S. Exports to Other Countries and the Existence of Anti-dumping Actions Against Imports of U.S. Red Delicious Apples in Other Jurisdictions

Throughout the review period, on average, more than one third of Washington's fresh production was exported. Between 1996 and 1998, the Canadian market accounted for, on average, 6.3 percent of these exports. The export volume of Red Delicious apples fluctuated between 1996 and 1998; it decreased significantly in 1997 as compared to 1996 and increased in 1998.³⁹ Washington Red Delicious apple exports to the Asian and South Pacific markets declined because of the Asian financial crisis in 1997-98 and because of increased demand for other apple varieties.⁴⁰ However, the Tribunal observes that, during the same period, Washington exports to the Middle East, Africa and Europe increased significantly.⁴¹ The Tribunal also considers that recent and prospective developments in the Asian economy could re-establish, at least partially, the volume of Red Delicious apples that Washington traditionally exported to Asia. Moreover, there is evidence that Washington growers are seeking to expand their existing export markets and gain access to new markets for their Red Delicious apples.⁴² This should help apple growers in Washington achieve a better balance between supply and demand.

The Tribunal notes that anti-dumping measures were put in place in Mexico against U.S. Red Delicious apples in September 1997 and that this had a significant negative impact on U.S. Red Delicious apple exports to that country.⁴³ In March 1998, the 101 percent Mexican anti-dumping duty was replaced by a minimum export price of US\$13.72 per carton, which caused the volume of U.S. exports to Mexico to

34. *Transcript of Public Hearing*, 22 November 1999, at 148.

35. *Transcript of Public Hearing*, 22 November 1999, at 213 and 214.

36. *Transcript of Public Hearing*, 22 November 1999, at 140; and *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 170.

37. Compared to 65 percent and 64 percent respectively for the crop years 1996 and 1997. Tribunal Exhibit RR-99-001-6B (protected), Administrative Record, Vol. 2 at 100.010.

38. *Transcript of Public Hearing*, 22 November 1999, at 221 and 229.

39. See Table 2 herein.

40. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 49; and *Transcript of Public Hearing*, 22 November 1999, at 165.

41. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 49.

42. Manufacturer's Exhibit AA-2 (protected), Appendix N, Administrative Record, Vol. 12.

43. Manufacturer's Exhibit AA-1 at 14, Administrative Record, Vol. 11; and Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 49.

almost return to previous levels.⁴⁴ Since November 1, 1999, the minimum price for imports of U.S. Red Delicious apples into Mexico has been further reduced to US\$11.29.⁴⁵ The Tribunal is of the view that this recent reduction in the floor price will further enhance the ability of U.S. growers to sell Red Delicious apples in Mexico and, hence, lessen the pressure on them to ship to Canada.

Developments in Production Capacity and Inventory Levels of Red Delicious Apples and Other Varieties of Apples

For crop year 1999, the U.S. Red Delicious apple crop is estimated at 84.5 million cartons, which is 21 percent smaller than the 107.2 million cartons in 1998,⁴⁶ and is projected to account for 34 percent of total U.S. apple production, as compared to 43 percent in 1994-95.⁴⁷ The decrease in U.S. Red Delicious apple production is mainly a result of production declines in Washington, which accounts for a large proportion of Red Delicious apple production in the United States.⁴⁸ In fact, Washington's production of fresh Red Delicious apples is estimated at 41.2 million cartons in 1999-2000, versus 52.2 million cartons in 1998-99. The Tribunal notes that this estimated crop is the lowest volume produced in the 1990s and is 19 percent below the 10-year average for Washington.⁴⁹

The other major Red Delicious apple-producing states are Michigan and New York, which represented, on average, 4 and 2 percent respectively of the U.S. Red Delicious apple storage holdings during the review period.⁵⁰ The Tribunal heard testimony that the crop east of the Mississippi would be large in 1999.⁵¹ However, given the low share of total U.S. Red Delicious apple production from the eastern states, a larger crop in the east would not have a significant impact on total U.S. Red Delicious apple production.

In its written submission, the CHC briefly quoted a report authored by Dr. Desmond O'Rourke, which suggested that Washington grower returns would be depressed throughout the 1990s due to high production levels. The report was not filed with the Tribunal. As the Tribunal was not provided with the context of or basis for this statement, it is not persuaded that the statement is a reliable indicator of current and future production levels in Washington.

In previously published Tribunal reasons for decision⁵², it is indicated that extensive tree plantings during the late 1970s and early 1980s in Washington, which, according to the CHC, were encouraged by tax incentives and government irrigation projects, have resulted in large production volumes of Red Delicious apples. In crop year 1987, Washington experienced a record harvest. High volumes of Red Delicious apples have been produced subsequently and crop year 1994 saw another record crop. However, in the Tribunal's

44. Manufacturer's Exhibit AA-1 at 14, Administrative Record, Vol. 11; Tribunal Exhibit RR-99-001-34A, Administrative Record, Vol. 1B at 41; and Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 49.

45. Tribunal Exhibit RR-99-001-34A, Administrative Record, Vol. 1B at 41.

46. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 13.

47. *Ibid.*

48. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 13 and 15.

49. Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13.

50. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 193.

51. *Transcript of Public Hearing*, 22 November 1999, at 40 and 41.

52. *Supra* note 21; and *Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Originating in or Export from the United States of America*, CIT-3-88, *Order* (3 February 1989), *Statement of Reasons* (20 February 1989).

opinion, production of fresh Red Delicious apples in Washington reached a peak in 1994-95, as evidenced by storage holdings of 62.3 million cartons.⁵³ Comparatively, the 1999-2000 production is estimated at 41.2 million cartons.⁵⁴

There is evidence on the record that leads the Tribunal to believe that the volume of Red Delicious apple production in the United States has been on a declining trend since the mid-1990s and that this is likely to continue in the near future.⁵⁵ First, the acreage devoted to Red Delicious apples in Washington has been reduced in recent years.⁵⁶ In a written reply at the hearing, the NHC's representative quoted *Good Fruit Grower* magazine, which reported that between 3,000 and 10,000 acres of Red Delicious apple trees would be pulled out of production in 1999.⁵⁷ Other evidence on the record indicates that more acreage will be taken out of production over the next two or three years.⁵⁸ The NHC's representative also submitted that additional Red Delicious apple orchards are being left unattended, or cut down and utilized for other non-agricultural purposes.⁵⁹ The Tribunal notes that, while there are still an estimated 200,000 acres devoted to the production of Red Delicious apples in Washington, implementation of the projected reductions of acreage will lead to further declines of production in the near future.⁶⁰ Second, the witness for the NHC submitted that older, non-productive Red Delicious apple orchards are being replanted with cherries, pears, grapes and other varieties of apples, as well as with newer varieties of Red Delicious apples.⁶¹ Since the mid-1980s, high-density plantings in new apple varieties, such as Fuji, Gala, Jonagold and Braeburn, have resulted in a significantly increased volume of production for these varieties.⁶² In fact, evidence was offered that Washington's fresh apple shipments of non-Red Delicious varieties, as a percentage of total fresh shipments, increased from 12 percent in 1990 to 31 percent in 1998.⁶³

The Tribunal recognizes that, between 1996 and 1998, fresh Red Delicious apple production in Washington was about 15 times greater than fresh Red Delicious apple production in Canada and that Red Delicious apples will remain the dominant variety in Washington for some years to come. However, the Tribunal is of the view that reduced crops in recent years are not only due to a combination of uncontrollable factors, including climatic conditions, but also due to deliberate grower decisions to remove substantial Red Delicious apple acreage from production by, for example, switching to new varieties. This suggests to the Tribunal the likelihood of a more reasonable balance between the supply of and demand for Red Delicious apples from Washington.

53. Tribunal Exhibit RR-99-001-8, Administrative Record, Vol. 1.1 at 83.

54. Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13.

55. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 13.

56. Tribunal Exhibit RR-99-001-11.2, Administrative Record, Vol. 3 at 55 and 56.

57. Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13.

58. Tribunal Exhibit RR-99-001-11.2, Administrative Record, Vol. 3 at 56.

59. Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13.

60. Tribunal Exhibit RR-99-001-11.2, Administrative Record, Vol. 3 at 56.

61. Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13.

62. Manufacturer's Exhibit AA-2 (protected), Appendix F, Administrative Record, Vol. 12.

63. Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13; and further evidence of this trend is found in Manufacturer's Exhibit AA-2 (protected), Appendix F, Administrative Record, Vol. 12.

The Quality and Competitiveness of U.S. and Canadian Red Delicious Apples

There is ample evidence on the record indicating that Washington growers are able to consistently produce high-quality fresh Red Delicious apples because of the quality of their soil, climate and irrigation system.⁶⁴ The evidence indicates that the vast majority of production from Washington is in grades that are superior to those of British Columbia and Ontario.⁶⁵ As stated earlier, at least 80 percent of Washington's production of fresh Red Delicious apples was of the Washington Extra Fancy grade for the last two crop years.⁶⁶ By comparison, for the same crop years, on average, less than half of the B.C. fresh market sales of Red Delicious apples were B.C. Extra Fancy grade.⁶⁷ B.C. Extra Fancy grade is British Columbia's finest grade, but the witness for the OPMA testified that it is inferior to the Washington Extra Fancy grade.⁶⁸ The highest grade produced in Ontario is the Canada Extra Fancy grade, a lower grade than the B.C. Extra Fancy grade. Canada Extra Fancy represents only 5 percent of Ontario's fresh market sales.⁶⁹

The Tribunal heard testimony from the witnesses for the OPMA and from National Grocers that Washington Extra Fancy Red Delicious apples are in a class by themselves and do not compete directly with the best grades from British Columbia or Ontario.⁷⁰ The witness from National Grocers testified that premium Washington Extra Fancy Red Delicious apples compete with premium apples such as Royal Gala, Granny Smith and Golden Delicious, but do not compete with Canadian Red Delicious apples.⁷¹ There is also evidence on the record indicating that Red Delicious apples from Washington command higher prices than do Canadian apples.⁷² The witness from National Grocers testified that premium Washington Extra Fancy Red Delicious apples are sold in National Grocers upscale stores from \$1.29 to \$1.49 per pound, as compared to \$0.79 to \$0.99 per pound for discount Red Delicious apples that are from either British Columbia or Ontario.⁷³ This quality and pricing testimony suggests to the Tribunal that a large proportion of Washington's fresh Red Delicious apple sales compete at the higher end of the market, while Canadian fresh Red Delicious apple sales generally compete at the lower end of the market.

Prices of Red Delicious Apples

The evidence on the record is that the size and quality of the Washington Red Delicious apple crop, which accounted, on average, for the majority of U.S. Red Delicious apple production during the review period, are the dominant factors influencing prices for all grades and sizes of Red Delicious apples in the United States and Canada.⁷⁴ The Washington crop is the first that is available on the market each year and, thus, sets the tone for prices in North America.⁷⁵ The Washington crop level information is available upon

64. *Transcript of Public Hearing*, 22 November 1999, at 107; and Manufacturer's Exhibit A-4 at 1, Administrative Record, Vol. 11.

65. Tribunal Exhibit RR-99-001-6B (protected), Administrative Record, Vol. 2 at 100.010; Tribunal Exhibit RR-99-001-34A, Administrative Record, Vol. 1B at 40; and *Transcript of Public Hearing*, 22 November 1999, at 81, 203, 204, 210, 211, 214, 216 and 220.

66. Tribunal Exhibit RR-99-001-6B (protected), Administrative Record, Vol. 2 at 100.010; and Tribunal Exhibit RR-99-001-34A, Administrative Record, Vol. 1B at 40.

67. Tribunal Exhibit RR-99-001-6B (protected), Administrative Record, Vol. 2 at 100.010.

68. *Transcript of Public Hearing*, 22 November 1999, at 204 and 210-11.

69. Tribunal Exhibit RR-99-001-11.3, Administrative Record, Vol. 3A at 8.

70. *Transcript of Public Hearing*, 22 November 1999, at 81, 203, 204, 210, 211, 214, 216 and 220.

71. *Transcript of Public Hearing*, 22 November 1999, at 216.

72. *Transcript of Public Hearing*, 22 November 1999, at 81 and 217.

73. *Transcript of Public Hearing*, 22 November 1999, at 213-14.

74. *Transcript of Public Hearing*, 22 November 1999, at 81, 140 and 163.

75. *Transcript of Public Hearing*, 22 November 1999, at 62-63 and 159-60.

the publication of the November 1 U.S. inventory holdings. Because Canadian production levels are relatively small, Canadian production has little influence on price levels, if any.

Generally, prices follow a similar trend from year to year. This trend is known as the “W” effect.⁷⁶ Prices start out high at the beginning of the season with the fresh produce, decline by the end of December, rise again when higher-quality CA storage apples are introduced in January, decline slowly until the end of the marketing season and then rise again due to the low volume available.⁷⁷ Fluctuations within a particular year will then depend primarily upon inventory, e.g. availability of different grades and count sizes, developments in foreign markets, e.g. changes in export demand, availability and substitutability of other fruits and the shelf life of the product.

The CHC submitted that, in recent years, average selling prices in Washington, as reported in the *Washington Growers Clearing House Bulletin*, were frequently below the normal values established by Revenue Canada. However, the Tribunal observes that the normal values do not reflect differences in grade, quality and count size, all of which have an important bearing on prices. The evidence indicates that, between September 1996 and October 1999, the Washington Extra Fancy grade apples were almost always sold above the normal value, except for the marketing year 1998-99 when prices were at their lowest level in many years because of the very large crop in Washington.⁷⁸ The Tribunal notes that, even then, it would appear that Canadian purchasers bought apples at the top of the price range to get the high-quality apples that they sought.⁷⁹ The Tribunal also notes that between 1996 and 1998, for the three months not covered by the finding, prices remained relatively stable, despite greatly varying U.S. production levels.⁸⁰ The Tribunal recognizes that Washington weighted average prices for grades lower than Washington Extra Fancy were below the normal value for most of the review period.⁸¹

Likely Future Performance in Terms of Production Capacity, Prices and Exports of Red Delicious Apples

The CHC submitted that, if the finding were rescinded, lower-grade product with corresponding lower prices would enter Canada and lead to reduced consumer consumption and satisfaction. The witness from National Grocers testified that, in his opinion, rescinding the finding would not have any impact in the market.⁸² The Tribunal recognizes that the normal values have set the same floor price for all grades of CA storage Red Delicious apples and the same floor price for all grades of regular storage Red Delicious apples. In that sense, if the finding were rescinded, certain low grades of Red Delicious apples may be offered in Canada at prices below the current normal values. However, as mentioned above, Washington

76. Tribunal Exhibit RR-99-001-1, Administrative Record, Vol. 1 at 18.

77. Tribunal Exhibit RR-99-001-6 (protected), Administrative Record, Vol. 2 at 89-96; and *Transcript of Public Hearing*, 22 November 1999, at 175-76.

78. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 170. See also Tables 1 and 2 herein.

79. The witness from National Grocers indicated that, exceptionally, the company purchased a limited quantity of smaller sizes of Washington apples in the summer of 1999, at about US\$10.50 F.O.B., at a time when there were no local Red Delicious apples available. *Transcript of Public Hearing*, 22 November 1999, at 218 and 219.

80. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 216.

81. *Public Pre-hearing Staff Report*, 12 October 1999, Tribunal Exhibit RR-99-001-5, Administrative Record, Vol. 1 at 170.

82. *Transcript of Public Hearing*, 22 November 1999, at 229 and 230.

growers have produced a preponderance of high-grade Red Delicious apples in recent years.⁸³ Moreover, with freight costs of about US\$3 per carton⁸⁴ between Washington and Ontario, the major Canadian import market, and the current exchange rate differential in excess of 40 percent, it is unlikely that Washington growers would sell those lower-grade apples. All things considered, the Tribunal is of the view that lower-grade apples would not be imported in significant volumes, as they are readily available locally in Ontario and British Columbia in large volumes at very competitive prices.

The Tribunal notes that, in October 1998, Washington apple growers increased their promotional assessment to the Washington Apple Commission from US\$0.25 per carton to US\$0.40 per carton, an increase of 60 percent.⁸⁵ The Tribunal is of the view that such initiatives will stimulate the development of new domestic markets and probably increase the per capita consumption of apples in the United States. The Tribunal also notes that, while 1998-99 produced a very good crop in the United States and influenced the prices of Red Delicious apples downwards, it did not result in an increase in shipments to Canada.⁸⁶

CONCLUSION

An analysis of the events of recent years leads the Tribunal to the conclusion that U.S. growers are not likely to export significant quantities of Red Delicious apples to Canada at dumped prices if the finding is rescinded. The Tribunal is of the view that there is unlikely to be a resumption of dumping from the United States in this crop year due to the small 1999 crop in Washington and the price trends on the market that have prevailed since last September.⁸⁷ The Tribunal observes that the inventory levels in Washington at the end of August 1999 have not exerted undue pressure on prices. For the current crop year, Washington growers are likely to continue to ship high-quality and high-value product to Canada.

The Tribunal is also of the view that imports of Red Delicious apples from the United States will continue to be of high quality and at premium prices beyond the current crop year. Given the premium which growers are able to extract from the market for higher-quality Red Delicious apples, the Tribunal is of the view that these apples are unlikely to be dumped. The Tribunal notes that decreasing Red Delicious apple acreage in the United States, the significant level of exports to other countries and efforts to increase U.S. domestic consumption of Red Delicious apples are combining to better balance supply and demand conditions in the United States for Red Delicious apples. Moreover, the Tribunal is of the view that the rapid growth of new and higher-priced apple varieties is an additional factor that is likely to alleviate the pressure on prices. The Tribunal also notes that very little dumping has occurred since the finding was issued. Therefore, the Tribunal finds that it is unlikely that, absent an abnormally large crop, Red Delicious apples from the United States will be dumped, in any significant quantity, in the near future.

Historical levels of production of Red Delicious apples in Washington, in recent years, indicate that crop volumes significantly above average levels occur once every five or six years.⁸⁸ These abnormally high volumes can cause prices to fall to a level close to, or even below, costs of production for part of that year. However, the Tribunal is of the view that a likelihood of resumed dumping cannot be established solely on

83. Tribunal Exhibit RR-99-001-6B (protected), Administrative Record, Vol. 2 at 100.010; and Tribunal Exhibit RR-99-001-34A, Administrative Record, Vol. 1B at 40.

84. *Transcript of Public Hearing*, 22 November 1999, at 234.

85. Exporter's Exhibit B-1 at 2, Administrative Record, Vol. 13.

86. Tribunal Exhibit RR-99-001-20.1, Administrative Record, Vol. 5.1 at 49.

87. *Transcript of Public Hearing*, 22 November 1999, at 173 and 215; and Exporter's Exhibit B-1 at 1, Administrative Record, Vol. 13.

88. Manufacturer's Exhibit AA-1, Appendices G1 and G2, Administrative Record, Vol. 11.

the basis of the likely price effects should there be an abnormal crop year, which may or may not occur in the near term.

For the foregoing reasons, the Tribunal concludes that dumping is not likely to resume in the foreseeable future and hereby rescinds its finding concerning fresh, whole, Delicious and Red Delicious apples originating in or exported from the United States of America. In light of this conclusion, it is not necessary for the Tribunal to consider the issue of the likelihood of injury.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

Arthur B. Trudeau

Arthur B. Trudeau
Member