CASE STUDY: APPLES

Introduction

U.S. apple growers are among a small group of U.S. agricultural producers that have been both defendant and plaintiff in antidumping actions. In March of 1997, apple growers in Mexico filed an antidumping petition claiming that U.S. producers were exporting red and golden delicious apples at below normal values, and these imports were materially injuring Mexican apple producers. The petition eventually resulted in a suspension agreement that is in effect today. Under this agreement, U.S. producers agreed to raise prices to a reference price negotiated between the Mexican government and U.S. apple growers.

Two years later, a group of U.S. apple juice processors filed an antidumping petition against Chinese producers of non-frozen concentrated apple juice. The two agencies charged with administering U.S. antidumping law, the U.S. International Trade Commission (ITC) and Department of Commerce (DOC), found that imports sold at below normal value were causing material injury to apple juice manufacturers, and dumping duties were imposed on imports of non-frozen apple juice concentrate from China. The duties continue to this day.

Background: U.S. Apple Industry

The United States is currently the second-largest producer of apples in the world, following China.\(^1\) Washington currently accounts for approximately half of total U.S. apple production, and 65 to 75 percent of apples sold in the fresh market. Other leading U.S. producers include New York, Michigan, California and Pennsylvania; together these four states supply 15 to 20 percent of the fresh apple market and 40 to 50 percent of the processed apple market.\(^2\) In total there are nearly 27,000 U.S. farms growing apples in 36 states.\(^3\)

There are nearly 100 varieties of apples produced in the United States. Red and golden delicious are the most popular types and are expected to account for 27 percent and 13 percent, respectively, of total apple production in 2005. However, other varieties have seen strong growth as the relative popularity of red and golden delicious apples has fallen. For example, production of Gala apples has increased five fold since the early 1990s. Despite the increase in varieties, U.S. demand for fresh apples has remained fairly stagnant over the past 30 years. Today, approximately one of every four apples harvested in the United States is exported. Leading export markets include Mexico, Taiwan, Canada and Hong Kong. However, the United States has lost global market share to China and the European Union in recent years.

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\(^1\) Rapid expansion in the 1990s has resulted in Chinese apple production to far outstrip any other country; China currently accounts for one-third of total world apple production.

\(^2\) Fruit and Tree Nuts Outlook, March 31, 2005.

\(^3\) Ibid.
In the 2000-2003 period, approximately 62 percent of U.S. apples were sold into the fresh apple market, up from only 55 percent in the late 1980s and 1990s. Apple juice accounts for the use of approximately half of U.S. apples sold into processing, while other processed apples are canned, frozen or dried. Some processors do not intentionally grow apples intended for processing, but rather cull apples unsuitable for the fresh market from the total apple harvest. The number culled for processing is thus sensitive to weather conditions and disease. Growers were typically paid 10 to 14 cents per pound more for fresh market apples in the 1980s and 1990s compared to processed apples, but in recent years the price differential has increased to as much as 18 cents per pound.

Annual apple production is typically based on production decisions made as much as seven years earlier, as it takes time for new varieties planted to come into production and reach their full production potential. Apples are typically harvested between August and early November. As can be seen in Figures [1] and [2], following slow production growth in the mid-1990s, apple production reached its peak in the United States in 1998 resulting in dramatically lower prices. Acreage bearing apples has since declined, in part due to growers exiting the industry, resulting in lower production and higher prices. Within the last year, higher production yields have resulted in an increase in production levels once again.

Figure 1

U.S. Apple Production


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4 Ibid.
5 Ibid.
An industry profile by the U.S. Apple Association claimed in 2005 that apple growers suffered losses totaling nearly $1.7 billion between 2000 and 2005, including $700 million in 2001 alone. The association blamed the loss on unfairly priced apple juice concentrate imports, regulatory costs, stagnant domestic consumption, food retail consolidation, subsidized foreign competition, diminished export demand, and global overproduction. Below is a description of how two antidumping petitions have impacted the U.S. apple industry.

**First Antidumping Case: Mexico Files Against U.S. Fresh Apple Producers**

On March 6, 1997, the Secretariat of Commerce (SECOFI) of Mexico announced that it had accepted an antidumping petition filed by the Regional Fruit Growers Association of the State of Chihuahua (RFGA). The petition claimed that U.S. producers of red and golden delicious apples were selling apples at less than fair value in the Mexican market, and these imports caused injury to domestic growers during the 1994-1996 growing seasons. As can be seen in Figures [3] and [4], U.S. apple exports to Mexico grew

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After a three month preliminary investigation, SECOFI found that pricing on imported U.S. apples were causing damage to Mexico’s national apple industry. The injury determination was based on evidence of an increase in U.S. apple imports and a decrease in import prices which prevented a reasonable rise in Mexican apple prices. Following this determination, U.S. apple growers were given 30 business days to respond to a set of questionnaires regarding U.S. prices and production costs. Mexican importers were asked to respond to a similar set of questionnaires.

On September 1, 1997, SECOFI announced its preliminary determination, imposing an antidumping duty of 101.1 percent on U.S. imports of red and golden delicious apples at the beginning of the Mexican apple harvest but near the end of the fall U.S. shipping season. U.S. apple exporters were shocked, and denied that they sold apples in Mexico at unfair prices. U.S. growers stated throughout the investigation that drought, macroeconomic conditions, and high credit costs were the real blame of the status of the Mexican apple industry.

However, during the investigation Mexican government officials found it impossible to reconcile the invoices provided by U.S. producers and those provided by one of the Mexican importers. Press reports at the time noted that Mexican importers commonly generated false invoices in order to reduce import duties, which was the likely cause of the discrepancies. As a result, the Mexican government disregarded the information provided by both U.S. producers and Mexican importers, and based the preliminary antidumping margin on the best facts available, or those provided by Mexican producers in the original petition.

On September 26, the Northwest Horticultural Council (NWHC) of the United States filed a motion in Mexico’s civil court seeking an injunction against the imposition of the dumping duty. On October 7, the court denied the ruling. Meanwhile, the NWHC sought legal and political help in stopping the imposition of the duties. U.S. Trade Representative (USTR) and Department of Commerce (DOC) officials met with SECOFI officials throughout October to discuss the investigation. As a result, SECOFI officials traveled to Washington in early November to verify the information in the U.S. producer’s original questionnaires. On November 24, the NWHC publicized the results of the Mexican audit, which according to the association showed that no dumping was occurring. However, Mexican trade officials said only that a decision would be forthcoming and the investigators continued to analyze the data.

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7 “Mexico imposes compensatory duties for apples,” U.S. Department of Agriculture Trade Reports, September 10, 1997.
8 Kevin G. Hall, “Apple probe suggests process may be rotten; Mexican inquiry raises doubts over paperwork,” Journal of Commerce, September 8, 1997.
Throughout December, the Northwest Fruit Exporters of Yakima Washington met with
the Mexican producers to discuss a potential compromise. In newspaper advertisements
in U.S. papers, Mexican growers reported that they wanted to ban U.S. imports for six
months after the Mexican harvest began, and set a minimum bushel price for U.S.
imports of $12.  

Negotiators failed to reach a compromise before the January shipping season began, and
the antidumping duties took their toll on U.S. exports. Between September 1 and January
30, U.S. apple exports plummeted over 300 percent from the same period the year
before.  

SECOFI was scheduled to release its final ruling on the antidumping petition in the first
two weeks of March in 1998. However, under pressure from the U.S. government, U.S.
industry officials met with SECOFI officials and successfully negotiated a suspension
agreement on March 23. Under the agreement, the U.S. agreed to set a minimum price of
$13.72 per standard 42-pound carton of apples, or 32.67 cents per pound, for all exports
of red and golden delicious apples to Mexico. The minimum price was based on the
three year average price between 1995 and 1998, and would remain in effect until
October 31, 1999. From that period forward, the minimum price would be adjusted every
November 1 to reflect the average price of the three preceding crop years.  

Although U.S. producers were happy to reach the agreement that prevented the imposition of
antidumping duties, an official with the Horticultural Council in Yakima, Washington
noted “the bad news is it precludes our ability to offer Mexico’s consumers the full range
of products we produce” such as smaller and less expensive apples.  

Case Outcome: U.S. Apple Exports to Mexico

Under the agreement, U.S. exports to Mexico grew significantly between 1998 and 2001,
as can be seen in Figure [3] and, by construction, prices remained fairly steady. However
on August 9, 2002 Mexico’s Secretariat of Economy (SE) announced its decision to
cancel the suspension agreement and reinitiate the antidumping investigation. The action
came in response to increased shipments of U.S. golden delicious apples during Mexico’s
peak marketing season. Instead of imposing the 101 percent tariff from the original
investigation, SE set a final antidumping tariff of 46.58 percent, effective immediately.

The antidumping duty of 46.58 percent remained in effect through January 2005, while
U.S. and Mexican negotiators attempted to reach a new suspension agreement. As can be

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10 Kevin G. Hall, “US serves notice on Mexico over apple spat; Move is response to Mexican decision to
11 Kevin G. Hall, “Dumping fines, Asian crisis fall hard on apples,” Journal of Commerce, February 9,
1998.
12 Mary Sutter, “Mexico, US apple growers settle; Agreement ends dumping dispute that pared exports,”
15 Two U.S. companies were exempted from the antidumping duties.
seen in Figure [3] the dumping duties caused a dramatic reduction in U.S. apple exports to Mexico. On January 4, 2005, the Mexican government announced the suspension of the antidumping duty and the implementation of a new reference price agreement for members of the Northwest Fruit Exporters (NFE).\textsuperscript{16} The agreement, which took effect at the end of February, is scheduled to be in effect through 2010, although if the agreement is violated the antidumping tariffs may be reinstated.

**Second Antidumping Case: United States Files Against Chinese Apple Juice Producers**

On June 7, 1999, five of the largest apple juice processors in the United States filed an antidumping petition claiming that the domestic industry was materially injured and threatened with material injury due to less than fair value imports of non-frozen concentrated apple juice from China. Non-frozen, concentrated apple juice is a single strength apple juice with most of the water removed. The product is sold to intermediate and industrial end users for further processing; typically one gallon of concentrated apple juice can make 7.5 gallons of reconstituted apple juice or cider, although the product is also used in other juice drinks such as blended fruit juices. At the time of the investigation, approximately 16 U.S. firms produced non-frozen concentrated apple juice using apples designated for juicing. About half of the production by these firms was processed further by these same firms into retail products, with the other half sold to outside processors.

As can be seen in Figure [5], U.S. imports of apple juice in all forms from China increased significantly between 1996 and 1998, growing over 200 percent in three years. Statistics indicate that the surge in Chinese imports primarily replaced imports from other countries rather than domestic production; the U.S. market share actually increased from 18.5 percent in 1997 to 24.6 percent in 1999.\textsuperscript{17} However, during this same period the unit price of Chinese imports fell 180 percent, as can be seen in Figure [6]. In the United States, the price for single strength apple juice fell by 12.6 percent between January 1997 and December 1999.\textsuperscript{18} Chinese producers argued that the price of non-frozen, concentrated apple juice was tied to the number of apples grown each year, and as noted above U.S. apple production peaked in 1998. However, U.S. processors debated this contention, stating that price fluctuations are explained by the world supply of processing apples and demand for apple juice. They further argued that juice apple prices were driven by the falling price of apple juice concentrate.

The DOC initiated the investigation on July 6, and on July 22 the Commission made a preliminary determination that there was sufficient evidence that the domestic industry had been materially injured due to imports from China. The Department of Commerce released its preliminary estimates of dumping margins on July 22, 1999, paving the way for the collection of duties on all imports of the product from China. Moreover, during

\textsuperscript{16} At this time, U.S. exporters from region other than the Pacific Northwest continue to face the 46.58 percent antidumping tariff.

\textsuperscript{17} The United States has historically been a net importer of apple juice.

\textsuperscript{18} USITC (2000).
Figure 5

U.S. Imports of Apple Juice

Source: U.S. Census Bureau

Figure 6

Average Unit Price of Imports of Apple Juice from China
Dollars per Liter

Source: U.S. Census Bureau
their investigation the DOC found evidence of critical circumstances in conjunction with imports from all but two Chinese firms. As a result, imports from most Chinese firms were subject to the imposition of retroactive tariffs starting 90-days before the preliminary dumping margin determination. Press reports indicated at the time that the preliminary duties caused imports from China to fall sharply and, as a result, apple growers received $49 million more from their 1999 juice apple crop compared to a year earlier.

Under U.S. antidumping law, all cases involving China are treated under special procedures governing non-market economies. Under these procedures, the factors of production used by the Chinese producers are valued in a surrogate market economy. The DOC chooses a surrogate economy at a similar level of development to China that produces the product in question. In this case, the DOC chose India as the surrogate economy to evaluate costs. It should be noted that Chinese producers argued that Turkey would be a more appropriate surrogate country because India was not a significant producer of non-frozen concentrated apple juice; moreover, juice apples in India were heavily subsidized, thus artificially lowering the calculated costs of production.

<table>
<thead>
<tr>
<th>Manufacturer</th>
<th>Final Antidumping Margin</th>
<th>Amended Antidumping Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yantai North Andre Juice Co., Ltd.</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.</td>
<td>12.90</td>
<td>0.00</td>
</tr>
<tr>
<td>Sanmenxia Lakeside Fruit Juice Co., Ltd.</td>
<td>28.54</td>
<td>0.00</td>
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<tr>
<td>Shandong Zhanglu Co., Ltd.</td>
<td>9.40</td>
<td>0.00</td>
</tr>
<tr>
<td>Yantai Oriental Juice Co., Ltd.</td>
<td>9.96</td>
<td>0.00</td>
</tr>
<tr>
<td>Qingdao Nannan Food Co., Ltd.</td>
<td>26.43</td>
<td>0.00</td>
</tr>
<tr>
<td>Xian Asia Zin Fruit Co., Ltd.</td>
<td>15.36</td>
<td>3.83</td>
</tr>
<tr>
<td>Xian Yang Fu An Juice Co., Ltd.</td>
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<td>3.83</td>
</tr>
<tr>
<td>Changsha Industrial Products &amp; Minerals</td>
<td>15.36</td>
<td>3.83</td>
</tr>
<tr>
<td>Shandong Foodstuffs Imports &amp; Exports</td>
<td>15.36</td>
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</tr>
<tr>
<td>PRC-wide rate</td>
<td>51.74</td>
<td>51.74</td>
</tr>
</tbody>
</table>

The DOC analyzed costs of the 10 largest apple juice processors in China; normal values were calculated for the ten largest producers by valuing the factors of production used by these firms using prices in the surrogate countries. These normal values were then compared to the U.S. export prices. On April 13, 2000, the DOC released the slightly

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19 Normally, antidumping duties are not imposed until the preliminary dumping duty determination. However, retroactive duties may be collected if the DOC finds evidence of “critical circumstances.” Critical circumstances exist if there is a reasonable basis to believe that: (A) there is a history of dumping of the product and material injury in the United States (or elsewhere), or the person by whom the merchandise was imported knew that the exporter was dumping the subject merchandise; and, (B) there have been massive imports of the product over a relatively short period.

revised final margins, which are presented in Table 1. Typically, the country-wide antidumping rate, which is applied to imports from all companies without a company-specific rate, is calculated as a weighted average of the company-specific antidumping rates. In this case, one of the leading Chinese producers of apple juice failed to cooperate with the investigation. As a result, the DOC chose to use the best “facts available,” or the margin requested in the original antidumping petition, to calculate the country-wide antidumping margin.

On May 15, 2000, the ITC made a final determination that the domestic industry was materially injured from the dumped imports of non-frozen concentrated apple juice from China, paving the way for the permanent imposition of antidumping duties. In their determination, the ITC excluded apple growers from their definition of the effected industry, in part because only a small share of total U.S. apple production was used in juice production.\(^{21}\) In their determination, the Commissioners noted that the volume of imports from China was significant, and that underselling of the imports depressed the apple juice price prices in the United States.

**Case Outcome: U.S. Apple Juice Imports from China**

Chinese apple juice concentrate producers appealed the decision to the U.S. Court of International Trade (CIT) in July of 2000. The CIT directed the DOC to reconsider a number of issues, primarily relating to the use of India as the surrogate country. In its review of the case, the DOC decided that Turkey was a more appropriate surrogate country and made other adjustments. The amended antidumping duties, which were changed in November 2002 and again in May of 2003, were much lower than the original duties as can be seen in Table 1. Note that the country-wide rate was not impacted by the decision.

As can be seen from Figure [3], with the much lower antidumping duties imports of concentrated apple juice from China increased significantly between 2003 and 2005. U.S. apple juice production has declined, which U.S. Department of Agriculture analysts blame on reduced supplies of processing apples, lower prices, and increased imports. Moreover, domestic prices of apple juice remained at approximately the same level as before the antidumping duty was put into place.\(^{22}\) A five-year review of the case was initiated in 2005 as required under World Trade Organization (WTO) rules. The ITC determined on August 5 that it would institute an expedited review, as there was not sufficient interest from domestic producers to warrant a full review of the case. The investigation is still pending.

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\(^{21}\) In agriculture cases, the ITC must decide whether to include growers of the raw agriculture input in the definition of the domestic industry. The growers are included if the processed product is produced from the raw product in a single continuous line of production and there is a “substantial coincidence” of economic interests between growers and processors.

References

