Dumping on Agriculture: Case Studies in Antidumping

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Introduction

As multilateral trade agreements have lowered tariffs and quantitative trade restrictions across the world, the use of other regulatory tools has increased to fill the protection void. One of these "new" forms of protection, antidumping regulation, has the potential to become one of the most significant barriers to world trade. Antidumping regulations allow industries to request that tariffs be imposed upon specific products from specific countries because these products are allegedly being sold at unfairly low prices and causing irreparable harm to the domestic industry. Once the domain of a handful of industrialized countries, since the inclusion of the Antidumping Agreement in the last WTO trade agreement the amount of antidumping trade protection across the world has skyrocketed. Forty-one WTO members filed 2,437 antidumping cases between 1995 and 2003, an almost 40 percent increase over the nine years prior to this period. The United States alone filed 330 antidumping petitions against other countries and was subjected to 139 antidumping cases filed by 20 different countries during the period.

Although the traditional, industrialized users of antidumping primarily use the regulations to protect domestic manufacturing industries, new, developing users file more antidumping cases against agricultural products. Agriculture accounted for 6 percent of AD investigations between 1987 and 1997, but over 10 percent of total investigations among new users such as Brazil and Colombia. Depending on the outcome, even one antidumping case can dramatically limit exports of agricultural products. For example, in 2000 Mexico filed an antidumping case that eventually led to the imposition of a 10.18 percent antidumping tariff on all U.S. exports of rice. The quantity of U.S. exports of rice to Mexico fell nearly 10 percent between 2000 and 2001 alone. Over the past 10 years, producers in the United States have seen exports plummet due to the imposition of antidumping duties as high as 50 percent on exports of such things as apples, beef, chicken, pork, tomatoes, corn, rice, fructose and refined sugar. However, other growers have benefited from the protection afforded to them by U.S. antidumping regulations. U.S. producers have successfully requested antidumping protection from imports of a wide variety of food products, including wheat, raspberries, honey, apple juice, and mushrooms.

Many economists and industry analysts argue that current antidumping regulations result in the imposition of more antidumping protection on agricultural products than others because of the unique characteristics of the industry. For example, because the supply of perishable products cannot be adjusted to price variation in the short-run, selling below the sunk cost of production is completely rational. Moreover, food and fiber products, particularly perishable products, experience more frequent price variations than manufactured goods. Therefore, it is likely that government investigators will determine that products are being sold at unfairly low prices more often in agriculture than manufacturing sectors. Others argue that in addition to this agriculture bias in global antidumping regulations, there may be a bias in the implementation of antidumping regulations against U.S. producers. Specifically, U.S. government officials have stated that developing countries tend to impose higher dumping margins than the United States
due to questionable legal practices. Therefore, U.S. agricultural producers may be especially hard hit by global antidumping protection if both forms of bias exist in global antidumping regulations.

Given the increasing use of antidumping protection in the agriculture sector, and the dramatic impact these regulations have on world trade of food products, it is important to understand to what degree antidumping regulations are biased toward imposing higher levels of protection against agricultural products compared to other goods and whether there is an even larger bias toward imposing antidumping protection on U.S. produced food products. In an effort to address these issues, this research presents case studies of 36 antidumping investigations involving U.S. agricultural producers between 1995 and 2003. Each chapter includes a brief description of the U.S. and foreign industries involved in the antidumping investigation, a discussion of the investigation itself including specific aspects of the final government determination, and the final outcome of the case including the impact of the investigation on trade patterns. The results reveal a number of surprising similarities in the outcomes of these investigations that should be noted both by agricultural producers considering requesting antidumping protection and government officials charged with setting and implementing antidumping regulations.
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. 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. In total there are nearly 27,000 U.S. farms growing apples in 36 states.

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.

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


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 16 percent 1995 and 1997, although exports remained 55 percent lower than the peak reached in 1994. U.S. export prices decreased slightly between 1994 and 1996, falling 12.5 percent.

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Figure 3
U.S. Exports of Apples

Source: U.S. Census Bureau

Figure 4
U.S. Apple Exports to Mexico
Average Export Price per Kilogram

Source: U.S. Census Bureau
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.

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

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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.
months after the Mexican harvest began, and set a minimum bushel price for U.S. imports of $12.\textsuperscript{10}

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.\textsuperscript{11}

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.\textsuperscript{12} 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.\textsuperscript{13}

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.\textsuperscript{14} Instead of imposing the 101 percent tariff from the original investigation, SE set a final antidumping tariff of 46.58 percent, effective immediately.\textsuperscript{15}

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 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

\textsuperscript{10} Kevin G. Hall, “US serves notice on Mexico over apple spat; Move is response to Mexican decision to impose fines on imports,” \textit{Journal of Commerce}, December 24, 1997.


\textsuperscript{15} Two U.S. companies were exempted from the antidumping duties.
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.

\textbf{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 November 23, 1999, paving the way for the collection of duties on all imports of the product from China. Moreover, during 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

\begin{itemize}
\item \textsuperscript{16} At this time, U.S. exporters from region other than the Pacific Northwest continue to face the 46.58 percent antidumping tariff.
\item \textsuperscript{17} The United States has historically been a net importer of apple juice.
\item \textsuperscript{18} USITC (2000).
\end{itemize}
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.

Figure 5

U.S. Imports of Apple Juice

Source: U.S. Census Bureau

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.

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.

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 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 affected 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

\(^{21}\) 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.
imports from China was significant, and that underselling of the imports depressed the apple juice price prices in the United States.

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<th>Amended Antidumping Margin</th>
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<td>Yantai North Andre Juice Co., Ltd.</td>
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<td>0.00</td>
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<tr>
<td>Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.</td>
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<td>Sanmenxia Lakeside Fruit Juice Co., Ltd.</td>
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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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References


Babyfood

Introduction
In October 1997, H.J. Heinz Company of Canada Ltd. filed an antidumping petition in Canada against the only U.S. exporter of baby food, Gerber Products Company, claiming that Gerber was selling certain prepared baby foods at less than normal value in the Canadian market, and these imports were causing H.J. Heinz material injury. The following year, the agencies charged with investigating Canadian antidumping petitions, Revenue Canada and the Canadian Trade Tribunal, determined that antidumping duties should be imposed upon imports of baby food from the United States. Although the duties were later rescinded in 2002, the U.S. baby food industry exports virtually nothing to Canada to this day.

Background: The North American Baby Food Industry

The antidumping investigation described above centered on jarred baby food containing finely homogenized vegetables, fruit and meat, as well as strained juices. Foods for the youngest infants typically include a single ingredient such as carrots or peas that are strained or pureed so they do not need to be chewed before swallowing. Older infants typically consume baby food that includes a combination of ingredients, such as rice or pasta combined with meat or combinations of fruits and vegetables; these products typically contain small pieces of fruits, vegetables and meat to encourage infants to chew but that are still easy to swallow.

In 1997, the Canadian market for jarred baby food was estimated to be valued at C$60 to C$70 million. Historically, Heinz accounted for about 75 to 80 percent of the Canadian baby food market, with Gerber accounting for the remainder. Although Gerber initially produced baby food in Canada, in 1990 the company closed its Canadian production facilities and began exporting baby food produced in the United States to Canada through a Canadian subsidiary, Gerber (Canada) Inc. At the time, Gerber sold baby food for as little as C$0.33 per jar, about 10 cents less than Heinz.23

Gerber U.S. was, and continues to be, the largest baby food producer in North America, accounting for approximately 65 percent of the U.S. market in 1997. Two other companies, Heinz U.S. and Beech-Nut Nutritional Corporation, accounted for most of the remaining U.S. market share at this time. In 1997, Gerber had three U.S. plants producing baby food, although all of the products exported to Canada were produced in Fremont, Michigan.

In the mid-1990s, the Canadian market for jarred baby food began to shrink; Heinz estimates that the baby food market shrank six percent between 1996 and 1998. Canada was not only experiencing declining birth rates, but more consumers were preparing their own baby food following an announcement by the Canadian Centre for Science in the

Public Interest which questioned the nutritional value of baby food. Organic baby food, which was not targeted by the antidumping petition, was also realizing growing market shares in the mid to late 1990s. Heinz filed the antidumping petition in the face of declining profitability and production levels, claiming that Gerber could be blamed for at least a portion of the company’s poor financial situation.

**The Antidumping Petition**

Heinz initially filed the antidumping petition against Gerber on October 3, 1997. Heinz claimed that if not for the large dumping margins, Gerber would be unable to compete in the Canadian market. Moreover, dumping by Gerber had allowed Gerber to win significant contracts, thus reducing the size of the market held by Heinz. Moreover, pricing practices by Gerber had prevented Heinz from increasing their own price, thus limiting profit margins.

The agency charged with determining the degree of dumping, Revenue Canada, announced its preliminary decision on December 30, 1997, imposing a dumping margin of 68.7 percent on Gerber products. The final margin was revised slightly to 59.76 percent on May 30, 1998. In calculating this margin, Revenue Canada defined the normal value as Gerber’s weighted average selling price to selected U.S. customers, or those customers that bought a comparable quantity of baby food as the Canadian importer, Gerber Canada. This normal value was then compared to the adjusted export price, calculated as the importer’s resale price of the goods in Canada less import and other sales expenses plus a profit margin.24

On April 29, 1998, the agency charged with determining whether the domestic industry has been materially injured due to imports, the Canadian International Trade Tribunal (Tribunal), made an affirmative decision, paving the way for the permanent imposition of dumping duties of 59.76 percent to be imposed on Gerber’s imports. The Tribunal noted that while there were other significant causes of injury to Heinz during this time period, the dumping by Gerber resulted in significant price erosion and a decrease in the market share enjoyed by Heinz. At the time of the decision, Gerber (Canada) Inc. said it was “shocked” at the ruling, and warned that Gerber products may double in price or it may be forced to pull out of the Canadian market all together.25

**The Case Outcome**

In fact, Gerber did stop selling baby food in Canada soon after the final decision, an outcome that had been feared by the Consumers Association of Canada and the Canadian Institute of Child Health.26 In a peculiar turn of events, the Canadian agency charged with regulating business conduct, the Canadian Competition Bureau, requested that a

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24 Canadian antidumping law specifies that the export price is defined as the lower of this method or the exporter’s declared selling price less export charges.
North American Free Trade Agreement (NAFTA) panel review the antidumping decision. However, the NAFTA panel upheld Canada’s decision on November 17, 1999.

In response to Gerber’s withdrawal from the Canadian market, the Tribunal instituted a public interest investigation regarding the antidumping duties on July 3, 1998. As a result of this investigation, on June 23, 1999 the Minister of Finance reduced the antidumping duties on Gerber products by two-thirds. However, the reduction in duties was not enough to induce Gerber to re-enter the Canadian market. Gerber closed its Asheville, North Carolina plant in 1998, reducing its production capacity for baby food by approximately one-third. It also disposed of all equipment in the Fremont, Michigan plant that produced baby food that met Canadian requirements for jar size.

By 2002, Heinz Canada continued to be the only producer and provider of baby food in Canada. Heinz gained about half of the sales volume held by Gerber, as the Canadian baby food market continued to decline due to decreasing birth rates and increasing consumption of organic and frozen baby food. The Tribunal estimated that the Canadian baby food market decreased by almost 25 percent between 1998 and 2003.

Meanwhile, Gerber remained the largest baby food producer in North America, accounting for approximately 70 percent of the U.S. market, followed by Heinz U.S. and Beech-Nut Nutrition Corp. In contrast to Canada, the size of the U.S. baby food market remained stable due to stable birth rates as well as innovations introduced primarily by Gerber in packaging and baby food products.

As required under the World Trade Organization (WTO), Canada initiated a sunset review of the antidumping duties on August 19, 2002. Although the Commissioner of Customs and Revenue determined that the elimination of duties would likely result in the resumption of dumping by Gerber, the Tribunal determined on April 28, 2003 that the elimination of the duties would not result in material injury of domestic producers, and the order was suspended.

Despite the elimination of dumping duties, it is not certain that Gerber will try to re-enter the Canadian market. At the time of the sunset review, Gerber noted that it would have to purchase and install equipment to produce the containers and labels necessary for export to the Canadian market. Moreover, it would have to hire staff and conduct new market research to develop products that meet Canadian regulatory requirements. As of 2004, Gerber had still not re-entered the Canadian market.

References


Beef

Introduction

The U.S. cattle industry has not been successful in using U.S. antidumping provisions to protect the domestic industry from imports. In November of 1998 the Ranchers-Cattlemen Action Legal Foundation filed an antidumping petition with the U.S. government claiming that Canadian and Mexican cattle producers were dumping cattle in the U.S. market, and these imports were causing injury to the domestic industry. Two months later the International Trade Commission (ITC), the agency charged with determining whether imports are causing injury, made a preliminary determination that imports from Mexico were not causing injury, thus terminating the antidumping investigation immediately. In contrast, preliminary dumping duties were imposed on imports of cattle from Canada until the ITC made a negative final determination on October 12, 1999 that imports from Canada were also not causing injury to the domestic industry.

In contrast, one country has used similar antidumping statutes to retard U.S. beef exports. On June 30, 1998, a group of Mexican cattle producers requested that an antidumping investigation be initiated because U.S. producers were dumping both live cattle and beef on the Mexican market, to the detriment of the Mexican industry. The Mexican government initiated an official investigation on October 21, 1998, virtually the same time that U.S. producers were targeting the Mexican cattle industry with its antidumping petition. Mexico’s Secretariat of Commerce and Industrial Development (SECOFI), the agency charged with investigating antidumping complaints, determined that dumped U.S. imports of certain beef products were causing injury to the domestic industry; as a result, U.S. imports of beef faced in some cases prohibitive Mexican import duties beginning in August 1999. The United States challenged the results of the investigation at both the World Trade Organization and under the North American Free Trade Agreement (NAFTA) dispute settlement process. Despite a March 2004 ruling by a NAFTA dispute settlement panel that Mexico improperly imposed antidumping duties, antidumping duties remain on many U.S. beef exports to Mexico.

Background: The North American Cattle Industry

The United States is the largest producer of beef in the world; the sale of cattle and calves is the largest single segment of the U.S. agriculture industry accounting for almost one-fifth of U.S. farm and ranch cash receipts. The cattle industry accounts for 16 percent of total U.S. gross national product. In January of 2003, the U.S. had an inventory of over 96.1 million head of cattle; 35.4 million head of cattle were slaughtered for beef.

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27 The petition was identical to one filed by the group on October 1, 1998 that was temporarily withdrawn on November 10. The U.S. cattle industry also filed a countervailing duty petition at this time claiming that subsidized imports from Canada were causing injury to the domestic industry. This case study, however, focuses solely on the antidumping portion of the investigation.

28 SECOFI made its preliminary determination on August 2, 1999 and a final determination on April 27, 2000.
production in 2003. Although beef cattle are produced in all 50 states, the leading cattle producers in the country were Texas, Kansas and Nebraska which accounted for 27 percent of the total U.S. cattle herd. In total there were 1.05 million independently owned farms and ranches producing beef cattle in 2002.

The production of cattle is highly segmented, although many farmers and ranchers retain ownership of the cattle through many of the stages described below.\(^{29}\) Production of cattle for beef starts with the beef cow, which is retained for breeding and nursing for her entire fertile life of between eight and ten years. Bulls are turned in with the cows for fertilization—at this time approximately 80 to 90 percent of the cow herd is successfully bred. The cow then gives birth after nine months to a single calf; most calves are born in the spring and sold in the fall. The average calf weighs between 80 and 85 pounds at birth and lives on a diet of grass and its mother’s milk for six to eight months at which time the calf is weaned.\(^{30}\) At this point the calf, which weighs between 500 and 550 pounds and is known as a stocker, may either be sold to a feedlot directly if it is large enough or continue to feed on grass until it weighs approximately 800 pounds, at which time it is then sold to a feedlot. At the feedlot, cattle are kept in pens and fed grain, by-products, and hay for approximately 110 to 150 days until they weigh approximately 1,250 pounds.\(^{31}\) The United States is unique in its feed-lot operations; virtually all other countries rely solely on grazing to produce cattle. However, grain-fed cattle have a unique taste and typically contain more fat than their grass-fed counterparts. The entire production process, from breeding to slaughter, takes approximately 2 to 3 years. Once they reach an appropriate weight, cattle are sold to slaughter houses for packing and cutting into cuts of beef. The meat packing industry is highly concentrated; four packers process over 80 percent of U.S. beef production.

Like many other agricultural commodities, U.S. cattle production and returns fluctuate in cycles. When cattle prices begin to rise ranchers tend to retain more cows and heifers for breeding, thus reducing the number of cattle available for slaughter and further raising cattle prices. This expansionary phase lasts approximately six to seven years. However, eventually all the offspring of these cows and heifers are available for slaughter; this increased supply of cattle available significantly reduces the market price. With lower market prices, ranchers are less willing to retain cows and heifers for breeding purposes, further increasing the supply of cattle for slaughter and reducing prices. This liquidation phase lasts approximately three to four years. This decision to reduce breeding stock will eventually reduce the number of cattle produced, so prices begin to rise once again in the consolidation phase that lasts about one to two years. In total, the cattle cycle lasts approximately 10 to 12 years. Although biological factors certainly play a role in these cycles, other factors that may influence the length and timing of the cycle include weather, grain exports, and government programs.

\(^{29}\) Cattle may also be raised for breeding purposes or dairy production. This description, however, focuses solely on the process of raising cattle for beef production.

\(^{30}\) Note that some calves are singled out at this point for the veal market and raised entirely on their mother’s milk.

\(^{31}\) Beef-cattle ready for slaughter are known as slaughter cattle, while those that will be slaughtered after a period of feeding are known as feeder cattle.
U.S. consumption of beef decreased significantly in the 1980’s, from a high of 95 pounds per person in 1975 to approximately 62 to 65 pounds per person today. Many consumers, looking for lower-fat alternatives to beef, increased chicken consumption at the expense of the demand for beef. Demand for beef also declined in the 1990s due to outbreaks of e. coli bacteria and concern over bovine spongiform encephalopathy (BSE), more commonly known as mad cow disease.

Although U.S. consumers reduced their consumption of beef in the 1980s and 1990s, U.S. exports of beef during this period increased dramatically, as illustrated in Figure [I]. Between 1981 and 1998, export values increased from $1.1 billion to $4.4 billion, representing nine percent of the total value of U.S. beef production. Analysts estimate that between 10 to 12 percent of the value of every steer produced in the United States is due to the added demand from international markets. The United States produced 24.9 percent of the world’s beef supply in the 1990s.\(^{32}\) Before 2004, the largest markets for U.S. beef included Japan, Mexico, South Korea and Mexico. Exports to Mexico increased nearly 47 percent in 1994, the first year of the North American Free Trade Agreement (NAFTA) which liberalized Mexican trade policies for beef and cattle, and it has remained an important market since that time. Note that U.S. exports fell dramatically in 2004 due to the discovery of BSE in two areas of the country. While Japan and South Korea ceased virtually all imports of U.S. beef, Mexico reopened its

markets relatively quickly. As a result, Mexico was the leading destination for U.S. beef in 2004. Despite the fact that the United States is a large producer and exporter of beef, the country is actually a net importer of beef products. The United States imports large-quantities of grass-fed beef from Australia, Canada, and New Zealand that is typically used in the production of ground beef. Imports from Canada have recently been barred to the presence of BSE.

The North American cattle industry is highly integrated, and virtually all U.S. cattle imports are from Canada and Mexico as can be seen in Figure [II]. Traditionally the United States imports beef calves from Northern Mexico that are then raised on U.S. pastures and in U.S. feed lots prior to slaughter. In contrast, Canada has a very similar beef production system to the United States, and U.S. imports of cattle from Canada tend to be animals ready for immediate slaughter. In 2003, however, the United States banned imports of Canadian cattle due to the presence of BSE. Although the United States is a net importer of cattle from Canada and Mexico, it also exports cattle to both countries. Most of these exports are cattle ready for slaughter, although U.S. exports of feeder cattle to Canada have recently increased.

Figure II
U.S. Imports of Live Cattle

Source: U.S. Census Bureau.

Antidumping and U.S. Imports of Live Cattle

On October 1, 1998, the Ranchers-Cattlemen Action Legal Foundation (Foundation) filed an antidumping petition claiming that Mexican and Canadian producers were exporting
live cattle to the United States at less than normal values, thus causing material injury to the domestic cattle industry. The Foundation was a non-profit organization designed to strengthen the profitability of the American cattle industry; more than 1,800 individual cattle ranchers contributed financially to the Foundation’s efforts and 7,730 cattle ranchers signed a petition declaring their support for the Foundation’s antidumping petition. Although the government initiated an investigation soon after the petition was filed, the Foundation withdrew their initial petition on November 10, 1998 for unpublished reasons. On November 12, the Foundation re-filed their antidumping petition which resulted in the investigation described below.

Source: U.S. Census Bureau.

As can be seen in Figure [II], U.S. imports of cattle from Canada and Mexico increased 4.6 percent between 1996 and 1997 to 2.0 million head before decreasing 2.4 percent in 1998. While the average unit import price of cattle from Canada increased 10.9 percent between 1996 and 1998, the average unit price of cattle from Mexico decreased 5 percent between 1996 and 1997 before increasing 17 percent between 1997 and 1998, as illustrated in Figure [III]. In 1997, Canada held a 3.7 percent share compared to Mexico’s 1.2 percent share of U.S. cattle market. In 1998, U.S. cattle and beef prices declined, in part due to record cattle weights at slaughter and near record beef production as well record supplies of pork and poultry and stagnating U.S. beef consumption. U.S. exports of beef also decreased during this time period due to financial problems in Asia and Russia. The ITC noted in the antidumping investigation that both the U.S. and Canadian cattle industries were in the liquidation phase of the cattle cycle in 1997.

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The petition specifically excluded dairy cows and breeding cattle from the investigation.
On January 19, 1999, the ITC made a preliminary determination that while there was some evidence that imports of cattle from Canada may be causing material injury to the domestic industry, there was no indication that imports from Mexico were either causing or threatening to cause injury to U.S. cattle producers.\textsuperscript{34} Under U.S. antidumping law, the ITC is required to cumulate the impact of imports from all countries under investigation on the U.S. industry when making their determination \textit{unless} products from the countries under investigation do not compete with one another. In this particular investigation, the ITC determined that because virtually all Canadian imports were in the slaughter stage while those from Mexico were in the calf stage that imports from the two countries did not need to be cumulated in making the injury determination. Once Mexican imports were taken under consideration on their own, the ITC found that the volume and market share of U.S. cattle imports from Mexico was insignificant between 1995 and 1997, thus these imports could not have depressed U.S. cattle prices or weakened the U.S. cattle industry. The ITC decision terminated the antidumping investigation against Mexico without the imposition of antidumping duties.

However, the ITC decision did allow the antidumping investigation against Canada to move forward. On July 8, 1999, the DOC released their preliminary finding that imports of live cattle from Canada were being sold at less than normal value in the United States, thus paving the way for the collection of antidumping duties. The dumping duties were revised slightly in the DOC final determination, which was released on October 21, 1999. Firm-specific dumping duties, which are presented in Table [1], ranged from nothing to 15.69 percent.

In order to calculate the dumping margin, the DOC calculated the difference between the average export price and the normal value for individual products and producers over the period of investigation.\textsuperscript{35} Because of the size of the Canadian industry, the DOC chose to investigate only the six largest Canadian exporters of live cattle. Under U.S. antidumping law, normal value is typically defined as the price set by the producer under investigation in their domestic, in this case Canadian, market. However, the DOC excludes any prices set below the producer’s average cost of production in the calculation of normal value as these sales are made outside the “normal course of trade.” If more than 20 percent of the producer’s sales are made below their average cost of production then the DOC calculates the normal value using a “constructed value” based on the producer’s average cost of production.\textsuperscript{36} In this investigation, the DOC primarily defined the normal value as the price set by the producer’s in the Canadian market, although when there were

\textsuperscript{34} Two commissioners dissented from the majority opinion; one believed there was reasonable evidence that imports from both Mexico and Canada were causing material injury to the domestic industry, the second rejected the opinion that there was evidence that imports from Canada were causing material injury to the domestic industry.

\textsuperscript{35} The period of investigation for this case was October 1, 1997 through September 30, 1998.

\textsuperscript{36} The constructed value also builds in administrative and selling expenses as well as a reasonable profit margin.
insufficient sales of a particular product above the producer’s average cost the production
the DOC relied on the constructed value to define normal value.37

<table>
<thead>
<tr>
<th>Firm</th>
<th>Antidumping Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cor Van Raay</td>
<td>4.53</td>
</tr>
<tr>
<td>Groenenboom</td>
<td>3.86</td>
</tr>
<tr>
<td>JGL Group</td>
<td>5.10</td>
</tr>
<tr>
<td>Pound-Maker</td>
<td>0.00</td>
</tr>
<tr>
<td>Riverside/Grandview</td>
<td>5.34</td>
</tr>
<tr>
<td>Schaus</td>
<td>15.69</td>
</tr>
<tr>
<td>All Others</td>
<td>5.63</td>
</tr>
</tbody>
</table>

On October 12, 1999, the ITC made its final determination that imports of live cattle
from Canada were not causing material injury, nor were they threatening to cause
material injury, to the U.S. cattle industry.38 In their determination, the ITC noted that
imports of live cattle from Mexico were minimal in terms of volume and market share.
Moreover, imports actually decreased between 1996 and 1998. The ITC also found no
correlation between cattle prices in the United States and the volume of cattle imports
from Canada, indicating that the small volume of imports were not depressing the prices
received by U.S. cattle ranchers. Moreover, there was no indication that the volume of
cattle imports from Canada would significantly increase in the future. With this decision,
the antidumping investigation was terminated and all antidumping duties collected after
the preliminary DOC determination were refunded.

Since the termination of the antidumping petition, U.S. imports of cattle from Canada
increased nearly 60 percent between 2000 and 2002 before plummeting due to U.S.
import restrictions associated with the presence of BSE in Canada. U.S. imports of cattle
from Mexico fluctuated between 1998 and 2004. However, the U.S. cattle industry
seems to have moved from the liquidation phase of the cattle cycle to the expansion
phase. U.S. cattle prices grew an average of 6.4 percent between 1999 and 2003, and the
cattle inventory and beef production reached the low point in the cycle in 2005.39

Antidumping and U.S. Beef Exports to Mexico

On June 30, 1998, a group of Mexican cattle ranchers and beef producers filed an
antidumping petition claiming that between June and December of 1997, U.S. imports of
live cattle and certain beef products were sold at less than fair value in Mexico, and these

37 Note that the normal value and export prices are adjusted to account for differences in such things as
transportation costs or differences in the level of trade.
38 One commissioner dissented from this few, voting that imports from Canada were causing material
injury to the U.S. cattle industry.
39 Per pound price for Nebraska Direct slaughter steers from 1,100 to 1,300 pounds.
imports were causing injury to the domestic industry.\textsuperscript{40} On October 21, 1998, SECOFI determined there was sufficient evidence that dumped imports from the United States were causing injury to the domestic cattle industry to initiate a full antidumping investigation.

Prior to the antidumping petition, the Mexican cattle industry had suffered from continuing drought conditions that forced many Mexican cattlemen to liquidate their herds. The 1994 peso devaluation significantly raised the cost of imported feed; as a result many Mexican cattlemen faced significant debt and credit problems. As can be seen in Figure [I], U.S. exports of beef to Mexico increased 74 percent between 1996 and 1998; in 1998, U.S. beef exports to Mexico were valued at $400 million. The average unit price of these exports fell significantly during this time period, from nearly $2.60 per kilogram in 1996 to just $2.23 per kilogram in 1998 as the U.S. entered the liquidation phase of the cattle cycle. These average unit prices are illustrated in Figure [IV]. The United States represented over 95 percent of total Mexican beef imports.

\textbf{Figure IV}

\textbf{U.S. Beef Exports to Mexico}

\textbf{Average Unit Export Price}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure_iv.png}
\caption{U.S. Beef Exports to Mexico Average Unit Export Price}
\end{figure}

Source: U.S. Census Bureau.

\textsuperscript{40} Petitioners included Confederacion Nacional Ganadera, Asociacion Mexicana de Engordadores de Ganado Bovino, A.C., Union Ganadera Regional del Norte de Veracruz, Unin Ganadera Regional de Tabasco, Carnes Valmo de Sonora, Empacadora de Carnes, Unidad Ganadera, Fapsa y Asociados, Frigorifico y Empacadora de Tabasco, Frigorifico Rastro del Sureste de Veracruz, Frigorifico del Sureste, Ganaderia Integral El Centinela, Ganaderia Integral SK, and Ganaderia Integral Vizur.
The U.S. industry argued during the investigation that difficulties in the Mexican cattle industry were not caused by U.S. imports but rather by a number of economic and climatic conditions. Nevertheless, on August 2, 1999 SECOFI released their preliminary finding that while there was no evidence that dumped imports of U.S. cattle were causing injury to the Mexican cattle industry, there was evidence that unfairly-priced imports of beef from the United States were causing harm. As a result, SECOFI imposed temporary antidumping duties on U.S. beef imports as listed in Table [2] and continued the investigation.

<table>
<thead>
<tr>
<th>Product</th>
<th>U.S. Firm</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ConAgra</td>
</tr>
<tr>
<td>Beef Carcasses</td>
<td>0.00</td>
</tr>
<tr>
<td>Bone-in beef cuts</td>
<td>0.00</td>
</tr>
<tr>
<td>Boneless beef cuts</td>
<td>7.66</td>
</tr>
<tr>
<td>Frozen beef tongue</td>
<td>16.91</td>
</tr>
<tr>
<td>Frozen beef liver</td>
<td>3.02</td>
</tr>
<tr>
<td>Edible beef offals</td>
<td>11.42</td>
</tr>
</tbody>
</table>

The preliminary duties were much higher for beef offals than other products, which resulted in a sharp decrease in U.S. exports of beef offals in August of 1999. Relatively small duties were assigned for the four major U.S. exporters that submitted cost and price data over the course of the investigation. These four companies accounted for 80 percent of U.S. beef exports at the time. Smaller processors and exporters that did not participate in the investigation were assessed much higher duties, ranging from 5.24 to 214.52 percent.

On April 27, 2000, SECOFI released their final determination. SECOFI found that while imports from the United States of beef tongues, livers and other offal were not causing injury to the domestic beef industry, the same could not be said for other beef product imports from the United States. As a result, SECOFI ordered the permanent imposition of antidumping duties, which are listed in Table [3]. The final antidumping order imposed a complex set of antidumping duties on a larger number of U.S. exporters than included in the preliminary investigation; antidumping duties were conditional on the exporter’s source of beef. For example, Murco Foods, Inc. was assessed an antidumping duty of $0.11 per kilogram as long as the bone-in beef was from the firms of Excel, IBP, Sunland or H&H; if Murco shipped beef from any other source to Mexico it would be assessed a duty of $0.80 per kilogram. SECOFI set the all others rate for beef carcass at $0.07 per kilogram; in comparison bone-in beef was assessed a $0.80 per kilogram rate and boneless beef was assessed a $0.63 per kilogram rate. In comparison, the average unit import price for U.S. beef in April of 2000 was $3.08 per kilogram.41 The ruling

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41 This is value of U.S. beef exports to Mexico divided by the quantity for beef carcasses, bone-in cuts and boneless cuts of beef.
also required that the USDA certify that beef exports were no more than 30 days old; beef
more than 30 days old were assessed the higher “all others” duty rates.

Mexican Imports of U.S. Beef and Beef Offals
Final Antidumping Duties (Dollars per Kilogram)

<table>
<thead>
<tr>
<th>Firm</th>
<th>Beef Carcass</th>
<th>Bone-In Beef</th>
<th>Boneless Beef</th>
</tr>
</thead>
<tbody>
<tr>
<td>ConAgra¹</td>
<td>0.07</td>
<td>0.80</td>
<td>0.63</td>
</tr>
<tr>
<td>Excel Corp.¹</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>IBP, Inc.¹</td>
<td>0.00</td>
<td>0.00</td>
<td>0.13</td>
</tr>
<tr>
<td>Sunland Beef Company¹</td>
<td>0.00</td>
<td></td>
<td>0.25/0.63</td>
</tr>
<tr>
<td>Sam Kane Beef Processors Inc.¹</td>
<td>0.00</td>
<td>0.00</td>
<td>0.15/0.63</td>
</tr>
<tr>
<td>H&amp;H Meat Products Company, Inc.²</td>
<td>0.00</td>
<td>0.11/0.80</td>
<td>0.07/0.63</td>
</tr>
<tr>
<td>Northern Beef Industries, Inc.¹</td>
<td>0.00</td>
<td></td>
<td>0.00</td>
</tr>
<tr>
<td>Farmland National Beef Packing¹</td>
<td></td>
<td>0.03</td>
<td>0.00</td>
</tr>
<tr>
<td>Murco Foods, Inc.²</td>
<td>0.11/0.80</td>
<td></td>
<td>0.07</td>
</tr>
<tr>
<td>Packerland Packing Company, Inc.²</td>
<td>0.11/0.80</td>
<td></td>
<td>0.07</td>
</tr>
<tr>
<td>Agriwest International Inc.²</td>
<td>0.11/0.80</td>
<td></td>
<td>0.07/0.63</td>
</tr>
<tr>
<td>Almacen de Tajas, Inc.¹</td>
<td>0.16/0.80</td>
<td>0.12/0.63</td>
<td></td>
</tr>
<tr>
<td>San Angelo Packing Company</td>
<td></td>
<td></td>
<td>0.07</td>
</tr>
<tr>
<td>CKE Restaurants, Inc.²</td>
<td></td>
<td></td>
<td>0.07/0.63</td>
</tr>
<tr>
<td>All Others</td>
<td>0.07</td>
<td>0.80</td>
<td>0.63</td>
</tr>
</tbody>
</table>

¹ These firms cooperated in the antidumping investigation, and thus were assigned firm-specific
antidumping duties.
² Although these firms cooperated in the antidumping investigation, time did not permit firm-specific
antidumping duties. Firms were assigned the weighted average antidumping duties.

SECOFI used one of three methods to calculate the firm-specific antidumping duties
listed in Table [3]. Firm-specific duties were calculated for eight U.S. exporters that fully
cooperated in the investigation. Five U.S. companies cooperated but time did not permit
SECOFI to calculate firm-specific margins; these companies were assessed a weighted
average margin of those firms investigated. Firms that did not cooperate in the
investigation were assessed the highest duty of those firms that cooperated in the
investigation. The structure of the antidumping duties favored products that did not
compete with Mexican products and products for which there is high demand. For
example, USDA certified Angus Beef was exempted from all antidumping duties, and
boneless beef cuts were assessed a lower duty than bone-in cuts.

In July of 2000, a NAFTA dispute settlement panel was formed to review the
antidumping determination regarding Mexican imports of beef from the United States at
the request of U.S. beef producers. U.S. producers made a number of allegations to the
dispute settlement panel, including that SECOFI lacked the authority to make
antidumping determinations. More importantly, U.S. producers argued that the
imposition of higher dumping margins on beef that does not prove it is less than 30 days
old was unlawful under antidumping regulations.

According to U.S. firms, SECOFI did not take all factors under consideration when
determining whether U.S. imports were causing material injury to the Mexican beef
industry. Specifically SECOFI is supposed to consider the rate of increase of imports, the
excess capacity of the foreign producers, inventories of the products under investigation,
and whether increased imports would have repercussions on Mexican prices; however, U.S. producers claimed that SECOFI improperly considered capacity and incorrectly calculated the increase in dumped imports. Moreover, SECOFI failed to prove that imports were the cause of material injury rather than other potential factors. Other complaints raised by U.S. producers before the panel included the fact that SECOFI imposed two different antidumping duties on the same firm as well as the lengthy period of time between the imposition of preliminary and final antidumping margins.

Because of delays in selecting panelists, the panel did not begin reviewing the case until March 30, 2001. U.S. beef producers became frustrated at the lack of action on the case; the panel delayed the issuance of their final ruling on June 10, 2003, August 29, 2003 and October 31, 2003 without giving a reason. Meanwhile, on June 16, 2003 the United States filed a dispute settlement case with the World Trade Organization (WTO) regarding Mexico’s imposition of antidumping duties on U.S. imports of rice and beef. The two countries held consultations between July 31 and August 1. The U.S. WTO complaint included many of the same issues raised in the submission to the NAFTA dispute settlement panel, in addition to some broader issues. For example, the U.S. claimed that Mexico failed to provide a detailed account of their findings and conclusions in their injury determination and failed to conduct objective examinations of all relevant data. Although the two countries failed to resolve their differences, the WTO dispute settlement panel that was formed focused solely on the rice antidumping decision rather than on the beef decision despite the fact that many of the issues raised in the case were relevant in both decisions.

Finally, on March 15, 2004 a NAFTA dispute settlement panel ruled that SECOFI had not sufficiently demonstrated that beef imports from the United States were damaging the Mexican beef industry to warrant the imposition of antidumping duties. The panel ordered the Mexican government to reconsider the antidumping order on U.S. beef imports, agreeing with domestic producers that SECOFI violated antidumping regulations in a number of ways. Specifically, the panel noted that antidumping orders should not be used to introduce new import classifications, imposing different regulations depending on whether beef is more or less than 30 days old. It ordered that the Mexican government recalculate dumping margins to take all submitted information into consideration. Most importantly, the panel ordered the Mexican government to prove that U.S. dumped imports were threatening to cause material injury after fully taking into account the excess capacity of U.S. producers and the rate of increase in dumped imports, not all imports from the United States. Moreover, the panel ruled that the Mexican government did not comply with regulations governing the causality analysis in their initial investigation. The panel gave Mexico three months to comply with their ruling.

In response to the NAFTA panel ruling, Mexico released a revised antidumping determination on October 20, 2004. Mexico’s Secretariat of Economy (SE), the successor to SECOFI, eliminated all antidumping duties on boneless and bone-in beef cuts. Although the ruling maintained the antidumping duties on boneless and bone-in beef carcasses. Although the ruling maintained the antidumping duties on boneless and bone-in beef cuts, it did eliminate the ruling that the USDA certify that U.S. meat was no more than 30 days old. The NAFTA dispute settlement panel has not reviewed the new determination to ensure
that it is compliant with the panel’s original finding. Meanwhile, the SE launched a five-
year “sunset” review of the antidumping duties on April 26, 2005 as required under the
WTO. Results from the review are still pending.

As illustrated in Figure [I], U.S. exports of beef to Mexico continued to increase after
1999 despite the imposition of antidumping duties; U.S. exports of beef to Mexico
increased approximately 8 percent per year in terms of quantity between 1999 and 2000
before falling in 2003 and 2004 due to Mexican bans on U.S. beef associated with the
presence of BSE. However, these increases are far from the burgeoning market of the
mid 1990s—recall that U.S. beef exports to Mexico increased nearly 50 percent between
1996 and 1997 and an additional 25 percent between 1997 and 1998. As noted above,
because Mexico was one of the first countries to lift its ban on U.S. beef exports
following the BSE scare, it is projected to be the leading destination of U.S. beef in 2005
despite the antidumping duties.

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Butter Cookies

Introduction
In February of 1998, the Hearthside Baking Company filed an antidumping petition claiming that Denmark was selling butter cookies in tins at less than normal value in the U.S. market, and these imports were causing material injury to the domestic industry. The U.S. International Trade Commission (ITC), however, found that the petitioner had not demonstrated injury due to imports Denmark, and rejected the petition.

Background: The U.S. Cookie Market

According to the ITC investigation report, there were approximately 191 cookie and cracker plants in the United States in 1996. Due to consolidation of the industry throughout the 1990s, cookie and cracker plants tended to be large corporations; twenty percent of producers had annual sales of more than $20 million while less than 8 percent reported annual sales less than $5 million. The four largest U.S. producers of cookies held a 30 percent market share at this time. Annual U.S. cookie sales were $3.6 billion in 1997.

Butter cookies are indistinguishable from other types of cookies except in their shortening ingredient; the Food and Drug Administration requires that cookies labeled as butter cookies contain no shortening ingredient other than butter. Butter cookies accounted for approximately 6.5 percent of U.S. cookie production in 1997. The specific butter cookies under investigation were those packaged in decorative tins, although butter cookies may also be sold in a variety of other containers. Demand for butter cookies in tins peaks during the Christmas holiday season, when the product is often purchased as a gift. Demand for the product fell between 1995 and 1996, but increased substantially between 1996 and 1997 growing 19 percent. At this time, U.S. market for butter cookies in tins was estimated at $49.7 million. The increase in demand was in part attributed to warehouse club and drug store chains offering and advertising the product during the Christmas season.

At the time of the antidumping investigation, two U.S. companies produced butter cookies in decorative tins -- the petitioner, Hearthside Baking Company, and Little Dutch Boy Bakeries. Both firms also produced other types of cookies in decorative tins. Hearthside, a Chicago-based firm, originally began production of the product in 1994. The firm was prompted to file the antidumping petition after losing almost all of its large sales accounts to Danish imports in 1997. Specifically, company officials stated in the petition that in 1997 “sharp price cuts by the Danes, forcing a drastic reduction in sales, caused Petitioner to incur significant losses on its butter cookies in tins business.”

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42 Hearthside is also known as Maurice Lenell. There were two other U.S. companies that produced butter cookies not packaged in tins—Bestfoods and Pepperidge Farms.
U.S. imports under HTS codes 1905.30.0040, 1905.30.0041, 1904.30.0049, 1905.31.0041, and 1904.31.0049. Source: U.S. Census Bureau

Public data on imports of butter cookies in tins from this time period is unavailable. U.S. imports of all “sweet biscuits” from Denmark actually decreased between 1996 and 1997, as can be seen in Figure [1]. The average unit price of the imports of these products fell just slightly by 0.5 percent, as illustrated in Figure [2]. In their petition Hearthside argued that it was at a strategic disadvantage because Danish producers could produce butter more cheaply due to the European Union’s “export restitution payments on butter, sugar and wheat flour.”

The Antidumping Petition

On February 6, 1998, the Hearthside Baking Company filed an antidumping petition, claiming that producers in Denmark were selling butter cookies in tins at less than fair value and that these imports were causing (or threatening to cause) material injury to the U.S. industry. The firm also filed a countervailing duty petition at this time, claiming that the domestic industry was also materially injured by subsidized imports of butter cookies in tins from Denmark. In their petition, Hearthside argued that firm-specific antidumping duties should range from 45 to 83 percent. The DOC initiated the official investigation on February 26, 1998.

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43 Average unit value per kilogram was calculated by dividing customs value of imports by the quantity of imports.
On March 20, 1998, the ITC issued its finding that there was no reasonable indication that the domestic industry was injured or threatened with injury due to imports from Denmark, thus ending the investigation. Specifically, two Commissioners voted that there was not reasonable indication of injury or threat of injury, while one Commissioner found reasonable evidence that the domestic industry was threatened with material injury due to imports from Denmark. The key element in each Commissioner’s determinations was in how each defined the “like product.”

Under U.S. antidumping law, Commissioner’s must determine the like product, or the product which “is like, or in the absence of like, most similar in characteristics and uses with, the article subject to the investigation.” This determination has significant repercussions for the case, as it also defines the domestic industry and affects such characteristics as the market share of the country under investigation. In making this determination, Commissioners may consider physical characteristics, interchangeability of products, channels of distribution, customer and producer perceptions of the product, use of common manufacturing facilities and employees, and price. Commissioners may also consider other factors they deem relevant.

Of the two commissioners that found no evidence of injury, one defined the domestic industry as all cookies in tins; based on this definition this Commissioner found that there was not a significant increase in the volume or market penetration of imports from Denmark.
Denmark. The second Commissioner defined the like product as all cookies; based on this definition, the Commissioner found that the market share of imports from Denmark—less than one percent—was unlikely to threaten the U.S. cookie industry. Neither Commissioner was convinced that imports from Denmark had a significant impact on U.S. prices of the “like” product.

In contrast, the Commissioner that made the affirmative definition defined the like industry as “butter cookies in tins.” Based on this definition, the Commissioner found that the increase and market share of imports from Denmark did threaten the domestic industry with material injury. Moreover, there was reasonable indication that imports would eventually have adverse price effects in the U.S. market.

The Case Outcome

U.S. imports of all “sweet biscuits” from Denmark reached a high in 2001, growing over 200 percent from 1997 levels that prompted the filing of the antidumping petition, as can be seen in Figure [1]. Unit values of these imports decreased during this time period, falling by over 20 percent. Little Dutch Boy Bakeries continues production, with annual sales of approximately $17.3 million and approximately 75 employees, as does Maurice Lanell.

References

Catfish

Introduction

In June, 2002, the coalition Catfish Farmers of America (CFA) and eight individual U.S. catfish processors filed an antidumping petition with the Department of Commerce (DOC) and International Trade Commission (ITC) claiming that producers from Vietnam were selling frozen fish fillets in the United States at less than fair value, and these imports were causing material injury or threatening to cause material injury to the domestic industry. The ITC determined that the catfish fillet industry in the United States was materially injured by imports from Vietnam, which were found by the DOC to be sold in the United States at less than fair value. Antidumping duties have been imposed on U.S. imports of certain frozen fish fillets from Vietnam since that time.

Background: The U.S. Catfish Industry

The farm-raised catfish industry is the largest aquaculture industry in the United States, accounting for more than 80 percent by volume and 60 percent by value of total U.S. aquaculture production of fish in 1999. In 1970, U.S. catfish farmers produced only 5.7 million pounds of catfish; however, by 2001 the production output reached 597 million pounds.

There are more than 1,000 catfish farms in the United States, primarily located in the Southeastern states such as Mississippi, Alabama, Arkansas, and Louisiana. Catfish farmers sell over 90 percent of their live catfish to processors, while the rest is sold to local fresh seafood markets. There are approximately 25 domestic processors of catfish; these firms process only catfish and thus completely depend on catfish farmers for their input. Hence, catfish farmers and processors are highly interdependent. Several of the processors are owned by catfish farms.

In the United States, catfish are raised in man-made, earthen ponds year-round and receive daily feedings. It takes approximately 10 weeks for catfish to reach between 0.75 pounds and 3 pounds; at this point the catfish are harvested and transported live in tank trucks to processors. To produce frozen fish fillets, the catfish are deheaded, eviscerated, skinned, and filleted in the processing plants. After chilling and sorting by weight, the fillets are typically individually quick frozen by reducing the temperature of the fish from 32 degrees Fahrenheit to 15 degrees Fahrenheit in less than 30 minutes; this

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44 The Catfish Farmers of America is a trade association representing a number of catfish farmers and processors, primarily located in Mississippi, Louisiana, Alabama, and Arkansas. The other eight individual U.S. catfish processors who participated in the petition included America’s Catch, ConFish, Delta Pride, Harvest Select, Heartland Catfish, Pride of the Pond, Simmons, and Southern Pride.
45 ITC (2003).
46 Catfish products are not limited to frozen fillets; processors also process fresh fillets, fresh and frozen whole fish, dressed fish, steaks, and nuggets.
47 Some individual farms may harvest only 2 or 3 times annually.
process retains the original fresh fish quality. Finally, the fish fillets are packed according to size and then shipped. On average, frozen fish fillets account for 24 percent of the weight of the live catfish being processed, while other catfish products account for 26 percent and the remaining 50 percent is sold as byproduct that can be processed into fish meal, fertilizer, or fish oil.

In contrast, the frozen fish fillets imported from Vietnam belong to the Pangasius family and are usually called “basa” and “tra” fillets by Vietnamese. Basa and tra are raised in cages in the Mekong River in Vietnam, particularly concentrated in the Delta region. At harvest, they are transported downriver in cage boats to processing facilities to produce frozen fish fillets. Unlike U.S. catfish processors, Vietnamese processors also process other types of fish and seafood other than frozen basa and tra fillets.

Basa, tra and domestic catfish are all freshwater white fish, and the fish fillets are typically individually quick frozen. When frozen, they all have similar appearance, texture, a neutral or mild flavor, and prices. Domestic catfish fillets and imported basa and tra fillets are viewed as comparable products and can be used interchangeably. In the period leading up to the antidumping petition, frozen basa and tra fillets from Vietnam were even labeled as “catfish” and sold in the U.S. market until a new labeling law was instituted in January 2002. Frozen fish fillets are primarily distributed to the food service industry and restaurants.

Catfish was the fifth most popular seafood consumed in the United States in 2000. Farm-raised catfish are low in fat, cholesterol, and calories but high in protein, vitamins, and minerals. They also have no fishy smell, no small bones, and can be cooked in many different recipes. U.S. demand for frozen fillets of catfish, basa and tra has increased over time. U.S. consumption rose 24.1 percent, from 148.1 million pounds to 184.2 million pounds, between 2000 and 2002 alone. To meet the growing U.S. demand, domestic catfish processors expanded capacity by 12.8 percent between 2000 and 2002, from 150.6 million pounds to 169.9 million pounds.

As the only country exporting frozen basa and tra fillets, Vietnam has been able to increase the quantity of its exports to the United States rapidly and significantly since 2000. Prior to the antidumping petition, the quantity of frozen fish fillets imported from Vietnam rose from 12.5 million pounds in 2000 to 36.0 million pounds in 2002, an increased of 187.4 percent, as illustrated in Figure [1]. The value of Vietnamese imports increased 127.5 percent during this same period, from $23.5 million to $53.3 million. Consequently, Vietnam’s share of the U.S. market for frozen fish fillets increased from 8.4 percent to 19.6 percent while domestic producers’ market share decreased from 90.7 to 80.1 percent between 2000 and 2002. This rapid increase in imports of fish fillets from Vietnam may be due in part to the implementation of a bilateral trade agreement between Vietnam and the United States in 2000.\footnote{Vietnam was subject to a trade embargo by the United States from 1975 until 1994, therefore U.S. trade with Vietnam was limited prior to 1994. Vietnam began to export frozen basa and tra fillets to the United States in 1996 following normalization in relation between the two countries.} The agreement eliminated the import tariff on Vietnamese frozen fish fillets.
As illustrated in Figure [2], despite increasing demand in the United States the average import price of frozen fish fillets from Vietnam decreased from $3.45 per kilogram in 2000 to $2.83 per kilogram in 2001, and then increased slightly to $2.97 per kilogram in 2002. Average prices for the domestic frozen catfish fillets also declined in the period leading up to the antidumping petition, from $2.88 per pound in March and April of 2000 to $2.37 per pound over the same period in 2002. The ITC noted during the investigation that Vietnam’s producers were able to remain profitable at these lower prices because labor and other input costs are much less expensive in Vietnam when compared to U.S. production costs.

Figure 1
Imports of Certain Frozen Fish Fillets

Although the domestic catfish industry’s processing capacity expanded in the period leading up to the antidumping petition, the domestic industry’s output had a net increase of only 0.2 percent between 2000 and 2002, rising from 108.3 million pounds to 108.5 million pounds; the quantity of U.S. shipments grew only 3.6 percent during this period. As a result, the domestic industry’s capacity utilization rate decreased significantly. As average prices for the domestic frozen catfish fillets fell and production stagnated, net sales values declined as well, from $274.7 million in 2000 to $223.6 million in 2002, a decrease of 18.6 percent. Although catfish processors were able to reduce their whole fish input cost, which is about two-thirds of the total production costs, lower costs were
insufficient to compensate for declining prices. Consequently, the ratio of domestic industry’s operating income to net sales declined from 2.3 percent in 2000 to 0.1 percent in 2002. In addition, the domestic industry’s employment levels fell. Between 2000 and 2002, the number of production and related workers declined by 13.3 percent.

Figure 2
Average Import Price of Frozen Fish Fillets from Vietnam
(Calculated Unit Price per Kilogram)

Source: U.S. Census Bureau.

The Antidumping Petition

On June 28, 2002, the coalition Catfish Farmers of America (CFA) and a number of individual U.S. catfish processors filed an antidumping petition claiming that producers from Vietnam were selling certain frozen fish fillets in the United States at less than fair value, and these imports were causing or threatening to cause material injury to the domestic industry.

As noted in the ITC investigation report, the petition requested that antidumping duties be imposed on “frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. As noted above, these products are more commonly referred to as frozen basa and tra fillets. The ITC defined the domestic industry as domestic processors of

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49 The average price of whole catfish declined between 2000 and 2002 due to an increase in the catfish production prompted by the declining price of feed.
frozen catfish fillets, whether or not breaded or marinated; catfish farmers were not included in the definition of domestic industry.

On January 31, 2003, the DOC released its preliminary determination that certain frozen fish fillets from Vietnam were being sold in the United States at less than fair value. Temporary antidumping tariffs ranging from 37.94 percent to 63.88 percent were imposed through June 23, 2003, when the DOC released its final affirmative determination. The final weighted-average dumping margins, which ranged from 36.84 to 63.88 percent, are presented in Table I.

Table I  
Weighted-Average Dumping Margin

<table>
<thead>
<tr>
<th>Producer/Exporter</th>
<th>Weighted-Average Margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agifish</td>
<td>44.76</td>
</tr>
<tr>
<td>Vinh Hoan</td>
<td>36.84</td>
</tr>
<tr>
<td>Nam Viet</td>
<td>52.90</td>
</tr>
<tr>
<td>CATA CO</td>
<td>45.55</td>
</tr>
<tr>
<td>Afiex</td>
<td>44.66</td>
</tr>
<tr>
<td>CAFATEX</td>
<td>44.66</td>
</tr>
<tr>
<td>Da Dang</td>
<td>44.66</td>
</tr>
<tr>
<td>Mekonimex</td>
<td>44.66</td>
</tr>
<tr>
<td>QVD</td>
<td>44.66</td>
</tr>
<tr>
<td>Viet Hai</td>
<td>44.66</td>
</tr>
<tr>
<td>Vinh Long</td>
<td>44.66</td>
</tr>
<tr>
<td>Vietnam-Wide (all others)</td>
<td>63.88</td>
</tr>
</tbody>
</table>

The DOC typically calculates the dumping margin as the average difference between the average normal value over the investigation period and export prices associated with individual transactions. The DOC determined during their investigation that Vietnam should be treated as a non-market economy under U.S. antidumping law. Under these non-market economy procedures, normal value is calculated based on the cost of production in Vietnam but the factors of production used by the Vietnamese producers are valued in an appropriate surrogate market economy that produces the product in question and is at similar level of development to Vietnam. The DOC chose Bangladesh as the primary surrogate economy to evaluate the cost of frozen fish fillets production, which is primarily the cost of live fish input in Vietnam. Hence, Vietnam’s normal value was calculated using the cost of Vietnamese producer’s factors of production valued at the prices for these factors in Bangladesh. When Bangladesh values were not available the DOC used data from India instead.

In August, 2003, after considering the volume of the dumped imports, the effect of imports on domestic prices, and the total impact on the domestic catfish fillet producers,

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50 The period of investigation is from October 1, 2001, through March 31, 2002.
the ITC determined that the domestic processors of frozen catfish fillets were materially
injured by imports of frozen fish fillets from Vietnam. As a result more permanent
antidumping duties were imposed on Vietnamese imports of frozen fish fillets, thus
eliminating the free trade advantage that resulted from the bilateral trade agreement with
the United States.

The Case Outcome

U.S. antidumping investigation had a devastating effect on Vietnamese frozen fish fillet
exports to the United States; the volume of imports from Vietnam dropped considerably
from 6.6 million pounds in the first quarter of 2002 to 2.3 million pounds in the first
quarter of 2003. The decrease in imports benefited the domestic industry. The quantity
sold, net sales value, and unit net sales value of domestic frozen catfish fillets increased
in the first quarter of 2003 compared to the same period in 2002. The operating income
of domestic industry also rose slightly.

According to U.S. trade statistics, despite the imposition of antidumping duties, the
United States has remained the main export market for Vietnamese frozen basa and tra
fillets. Although imports from Vietnam declined in 2003, they rose rapidly in 2004 and
exceeded 2002 levels, as seen in Figure [1]. With the imposition of the dumping duties,
the average unit import price increased, from $2.89 per kilogram in 2003 to $3.21 in
2004, as illustrated in Figure [2].

References


Vietnam,” Investigation Nos. 731-TA-1012 (Final), Publication No. 3617.
Corn

Introduction

In June 2000, the Manitoba Corn Growers Association (MCGA) filed an antidumping petition claiming that U.S. producers were selling grain corn at less than normal value, and these imports had caused or were threatening to cause material injury to corn growers in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia. Although Revenue Canada, the agency charged with administering investigations into whether countries are dumping products in the Canadian market, made an affirmative determination in February 2001, the Canadian International Trade Tribunal (CITT) found that these imports were neither causing nor threatening to cause material injury to the domestic industry. As a result, antidumping duties were not imposed upon U.S. grain corn shipments to Canada at that time, although a new antidumping investigation was launched in 2005.

Background: The North American Grain Corn Market

Corn is the most widely produced feed grain in the United States, accounting for over 90 percent of total production of feed grains. In 2002, the United States produced 228.8 million metric tons (MT) of grain corn valued at $21.2 billion. Although corn is produced in almost every state in the country, the leading producers include Iowa, Illinois, Nebraska, Minnesota, and Indiana. In 2002, there were 348,590 farms growing corn in the United States. The United States is the largest producer of corn in the world, typically accounting for around 40 percent of world production.

The most common variety of corn grown in North America is dent or field corn. The corn is harvested when the kernels are dry, usually from September through November depending on the region. Corn kernels are separated from the husk at harvest then sent to corn refiners or processors. Although most grain corn is used as livestock feed, corn is also processed into starch, sweeteners, industrial alcohol, fuel ethanol, and other products. Demand for corn is primarily driven for the demand for livestock, which in turn is driven by consumer demand for meat, milk and eggs.

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51 The MCGA also filed a countervailing duty petition at this time claiming that subsidized grain corn from the United States was causing or threatening to cause material injury to producers in this region. However, the focus of this study is on the antidumping petition.
52 Other varieties, such as sweet corn and pop corn, are also grown in North America, but in smaller quantities. Moreover, these varieties are primarily used for human consumption unlike the grain corn which was the subject of the antidumping petition.
53 U.S. producers of high fructose corn syrup (HFCS), which is produced from corn, was also targeted by antidumping actions by Mexican sugar producers in the late 1990s.
Under the 1995 and 2002 Farm Bills, U.S. corn producers are eligible for significant financial assistance from the government.\textsuperscript{54} For example, under the non-recourse marketing loan program, farmers can obtain loans from the United States government at a designated loan rate per unit bushel by pledging and storing a crop as collateral. Farmers have the option either to repay their loans with interest or to forfeit their crops to the government and have the loan and interest forgiven. To discourage crop forfeitures, the United States allows corn growers to repay the loans at lower rates when market prices decline below the loan rate, resulting in a gain to the farmer. Eligible farmers who do not take out loans may also receive direct payments called loan deficiency payments that are equal to the difference between the loan rate and the repayment rate. Other government-sponsored programs include crop insurance programs and ethanol production subsidies.

In 2003, the United States accounted for approximately 53 percent of world corn exports. Approximately 20 percent of U.S. corn production is exported to other countries. Leading U.S. markets for corn include Japan, Mexico, Taiwan, and Canada. Figure [1] illustrates recent U.S. corn export levels, as well as the share of these exports shipped to Canada.

**Figure I**

U.S. Exports of Grain Corn

![Graph](image)

Source: U.S. Census Bureau.

\textsuperscript{54} The 1995 Farm Bill included direct payments under the Production Flexibility Contracts. A more simplified direct payment program was included in the 2002 Farm Bill. Many of these programs were targeted by the Canadian countervailing duty petition.
Canada is also one of the top ten producers of corn in the world. Compared to the United States, however, Canada is a much smaller producer; production reached 8.84 million MT in the 2004/2005 marketing year. Moreover, less than three percent of total Canadian corn is produced in western Canada, the specific region that filed the antidumping petition. As a result, the western region of Canada has traditionally relied upon imports to meet demand. In the period leading up to the antidumping petition, the import market share fluctuated between 53 and 59 percent, reaching a high of 63 percent in the 2000/2001 marketing year.

Figure II

Prices Received by U.S. Farmers
Grain Corn

Source: U.S. Department of Agriculture

U.S. corn production in 1999, the year prior to the antidumping petition, was 9,437 million bushels, down 3 percent from 1998 but the fourth highest on record. At the same time, grain corn consumption in the United States reached near record highs during the year as both feed and other uses for grain corn, namely ethanol and high fructose corn sweetener production, expanded. Despite the increase in demand, the U.S. Department of Agriculture forecast in April, 2000 that the season average farm price of corn in 1999/2000 would be $1.85-1.95 per bushel. As illustrated in Figure [2], corn prices began falling in 1996 and continued to fall through 2000; the midpoint of the forecasted range for the 1999/2000 growing season was the lowest reached since the 1986/87 growing season. The USDA attributed the weak prices to fundamental developments in the corn market, including favorable crop production, and low prices for virtually all commodities. In March of 2000, the USDA reported that corn growers intended to plant
77.9 million acres of corn in 2000, up 1 percent from 1999, which would likely put further downward pressure on U.S. corn prices.

The Antidumping Case

In June 19 2000, the Manitoba Corn Growers Association (MCGA) filed an antidumping petition claiming that U.S. producers were selling grain corn at less than normal value, and these imports had caused or were threatening to cause material injury to corn growers in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia. MCGA is a producer organization that represented all 391 corn growers at the time in the province of Manitoba, where the majority of corn is produced in western Canada. The association argued that the price of corn in western Canada was determined by the price in the United States. Because of depressed U.S. corn prices, producers in western Canada had been forced to accept reduced gross sales margins and lower profits. Moreover, the association argued that the projected record U.S. corn production levels threatened the domestic producers with more injury in the future.

Revenue Canada, the agency charged at the time with evaluating whether dumping has occurred, determined that there was sufficient evidence in the petition that grain corn from the United States was dumped in western Canada. As a result, an official antidumping investigation was launched on August 9, 2000. On October 10, 2000, the Canadian International Trade Tribunal made a preliminary determination that there was a reasonable indication that dumped imports were causing injury to corn growers in western Canada, thus allowing the investigation to move forward.

In certain circumstances, the government may be more likely to impose antidumping duties if producers can prove that they qualify as a regional market. It may be easier, for example, to prove that a subset of producers in a certain region have been hurt by imports than all producers in the country. Under Canadian antidumping law, producers must meet two specific conditions in order to qualify as a regional market. First, producers in the region must sell all or almost all of their production in the region. Second, the demand in the regional market must not be supplied by producers in the rest of Canada. Although the Canadian International Trade Tribunal (CITT) makes the final determination whether producers qualify as a regional market, Revenue Canada made a preliminary determination that producers qualified as a regional market at the time that the investigation was initiated based on the lack of corn flows between western and eastern Canada, and CITT later agreed.

On November 7, 2000, Revenue Canada made a preliminary determination that there was evidence that U.S. grain corn producers were dumping corn in western Canada, and set a

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55 The MCGA also filed a countervailing duty petition at this time claiming that subsidized grain corn from the United States was causing or threatening to cause material injury to producers in this region. However, the focus of this study is on the antidumping petition.

56 The other corn grower association in the region, Bow Island Corn Marketing Ltd. of Alberta, Canada, represented 12 growers at the time and took no position on the antidumping petition.
provisional duty of $1.58 per bushel. As a comparison, the U.S. Department of Agriculture reported that various grain corn prices in major U.S. markets ranged from $1.82 to $2.27 per bushel in the 2000/2001 marketing year. In their final determination, which was released on February 5, 2001, Revenue Canada stated that if CITT made a final affirmative determination, antidumping duties would be assessed on grain corn imported for use in western Canada in an amount equal to the margin of dumping established by comparing the export price to the normal value of US $2.46 per bushel. This is unusual final ruling, as must antidumping duties are a fixed percentage, regardless of the current export price.

In an effort to calculate the dumping margins, Revenue Canada requested information from exporters representing 90 percent of corn shipped to western Canada. Dumping margins are typically calculated based on the difference between the export price and normal value, where normal value is based on the average price of profitable sales in the exporter’s domestic market. In this case, however, Revenue Canada determined that none of the submissions by exporters provided sufficient information to determine normal value. Therefore, the agency used the best “facts available,” which in this case was defined as the average cost of production and selling price as published by the USDA. Because the USDA data revealed that during the investigation period the average cost of production for corn in the United States exceeded the average harvest selling price, Revenue Canada determined that selling prices in the United States could not be used as the normal value. Normal value was instead “constructed” using cost data from the USDA and a profit margin of 2.4 percent, which was the profit margin earned by U.S. soybean producers in 1997.

Case Outcome

On March 7, 2001, the CITT released its final determination that imports of grain corn from the United States were not causing, nor threatening to cause, material injury to corn producers in western Canada, thus ending the investigation without the imposition of antidumping duties. In their determination, the CITT noted that the price of corn had declined between 1997 and 2000, resulting in a decline in the financial performance of corn growers in western Canada. However, they found that despite arguments to the contrary by the petitioner, the price of corn in western Canada was determined by a combination of import prices and other market forces, such as the price of other feed grains.

The more important element of the CITT determination that U.S. imports were not causing injury to western producers was the fact that a significant portion of the domestic industry had not been hurt by imports. For example, an examination of individual firm’s

57 This provisional duty was intended to offset both dumping on the part of U.S. producers and countervailable subsidies.
58 Because of the large number of U.S. corn exporters, it proved impossible to collect data from all exporters.
59 Soybeans proved to be the only field crop earning a profit in the United States during the investigation period.
prices and costs revealed that some producers had been able to earn reasonable rates of return even when U.S. prices were at their lowest levels. Moreover, farmers producing corn for on-farm livestock consumption, or diversified farms, had not been injured by imports, as even the petitioner admitted. CITT estimated that production by diversified farms accounted for between 31.5 to 33.3 percent of total production in western Canada.

The CITT decision resulted in the refund of all posted antidumping duties between November of 2000 and March of 2001. Moreover, as illustrated in Figure [III], the temporary imposition of antidumping duties between November 2000 and March 2001 did not appear to harm U.S. corn exports to Canada.

Figure III

U.S. Exports of Corn to Canada

![Figure III: U.S. Exports of Corn to Canada](image)

Source: U.S. Census Bureau.

U.S. exports of grain corn to Canada continued unabated between 2001 and 2005. However, on June 30, 2005, the Canadian Corn Growers Association filed another antidumping petition against U.S. grain corn following an increase of U.S. grain corn imports of over 50 percent between 2003 and 2004. An investigation was initiated by Canada’s Border Service Agency (CBSA), the successor of Revenue Canada, on September 16, 2005. Results of the investigation are still pending.
References


Revenue Canada, “Initiation—Grain Corn,” AD-1242, August 9, 2000


Crawfish

Introduction

In September of 1996, the Crawfish Processors Alliance filed an antidumping petition claiming that Chinese producers were exporting crawfish tail meat at below normal values, and these imports were materially injuring the U.S. crawfish industry. One year later, the two agencies charged with administering U.S. antidumping law, the U.S. International Trade Commission (ITC) and Department of Commerce (DOC) agreed, and dumping duties were imposed on all imports of crawfish tail meat from China. The duties continue to this day.

Background: U.S. Crawfish Market

Over 90 percent of U.S. consumption and production of crawfish occurs in Louisiana. Approximately 1,500 producers operate crawfish aquaculture operations in the state; aquaculture operations produced between 16 to 28 thousand metric tons of crawfish per year during the 1990s. The remainder of U.S. crawfish production is produced by capture fisheries that rely on the seasonally flooded natural river systems. Variation in the capture supply can be traced to fluctuating water levels, while aquaculture producers alter production based on market conditions. Crawfish aquaculture is heavily tied to rice production; crawfish is often grown in rotation with rice or double cropped with rice.60

U.S. crawfish are in-season between January and June, although some crawfish continues to be produced during the remainder of the year. As a result, U.S. producers sell primarily fresh crawfish during the in-season and frozen crawfish during the off-season, between July and December.

In the United States, about 13 percent of U.S. crawfish production is processed into tail meat by blanching whole crawfish and separating the tail meat into bags for distribution. At the time of the antidumping investigation there were approximately 47 crawfish processors in the United States, all but one located in Louisiana. These processors tended to be small, family-run operations with annual sales ranging between $350,000 and $500,000.61 Until the mid-1990s, U.S. crawfish processors faced virtually no import competition. However, in 1994 China began exporting crawfish tail meat to the United States. Within one year China gained a 58 percent market share in the processed tail meat market. Within three years, China had gained an 87 percent market share.62 Crawfish from the two countries is similar but not identical; while most U.S. tail meat is sold fresh with the fat still on, Chinese tail meat typically enters the U.S. market frozen without fat.63

60 Roberts, pg. 1.
61 USITC (1997).
63 Crawfish “fat” is actually its hepatopancreas, a digestive organ that some consumers prefer because it imparts flavor to the crawfish.
Between 1994 and 1996, the period leading up to the antidumping investigation, domestically produced crawfish tail meat was typically sold between $3.75 to $8.91 per pound, while Chinese imports of frozen tail meat was much cheaper at anywhere from $2.43 to $4.25 per pound. During this time, apparent U.S. consumption of crawfish increased. Although typically consumers are willing to pay more for fresh, domestically-produced meat, the Crawfish Processors Alliance claimed in their antidumping petition that the low Chinese prices were putting downward pressure on domestic prices and, thus, profit margins. Rather than lower prices, domestic producers chose to decrease output in an effort to maintain profit margins. However, it should be noted that domestic producers were also hampered during this time period by adverse weather conditions which reduced the crawfish harvest of 1995 and 1996. As a result, the price of live crawfish increased.

As can be seen in Figure [1], Chinese imports of crawfish tail meat did increase dramatically between 1994 and 1996—up nearly 57 percent during the two years. And, as demonstrated in Figure [2], the average import price per kilogram fell over 50 percent between 1995 and 1996.

The Antidumping Case

The Crawfish Processors Alliance, a processor and distributor funded organization formed in 1996, evaluated a variety of trade remedies prior to filing the antidumping petition, including a petition requesting protection from a surge in imports known as a safeguard or Section 201 petition. However, the Alliance feared that the safeguard petition had less probability of success. Therefore the Alliance filed an antidumping petition on September 20, 1996 requesting that antidumping tariffs be imposed on imports of crawfish tail meat from China which were being sold at less than fair value and causing material injury to domestic producers.

The Department of Commerce released its preliminary estimates of dumping margins on March 26, 1997. 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 country. In this case, the DOC chose Spain as the surrogate economy to evaluate crawfish costs because it was one of the few countries that produced crawfish. It chose India to evaluate other costs because it had a significant

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64 Crawfish tail meat processors stated during the investigation that their prices were primarily determined by cost considerations, or the cost of live crawfish, rather than demand conditions. Thus, they were unable to lower prices.

65 Roberts, pg. 2.
Source: U.S. Census Bureau

Source: U.S. Census Bureau
processed seafood industry. The DOC analyzed costs of the six largest crawfish processors in China; normal values were calculated for the six 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 August 1, 1997, the DOC released the slightly revised final margins, which are presented in Table I.

Table I

<table>
<thead>
<tr>
<th>Firm</th>
<th>Initial Dumping Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>China Everbright Trading Co.</td>
<td>156.77</td>
</tr>
<tr>
<td>Binzhou Prefecture Foodstuffs</td>
<td>119.39</td>
</tr>
<tr>
<td>Huaiyin Foreign Trade Corp.</td>
<td>91.50</td>
</tr>
<tr>
<td>Yancheng Foreign Trade Corp.</td>
<td>108.05</td>
</tr>
<tr>
<td>Jiangsu Cereals, Oils &amp; Foodstuffs</td>
<td>122.92</td>
</tr>
<tr>
<td>Yancheng Baolong Aquatic Foods</td>
<td>122.92</td>
</tr>
<tr>
<td>Anhui Cereals, Oils and Foodstuffs</td>
<td>122.92</td>
</tr>
<tr>
<td>Nantong Delu Aquatic Food Co.</td>
<td>122.92</td>
</tr>
<tr>
<td>China-wide Rate</td>
<td>201.63</td>
</tr>
</tbody>
</table>

On August 29, 1997, the ITC made its final determination that imports from China were causing material injury to the domestic industry, thus paving the way for the permanent imposition of the dumping margins set by the DOC. Note that in making this determination, the ITC defined the domestic industry only as crawfish processors and not crawfish producers. The final determination noted that ITC Commissioner’s were not persuaded that weather conditions had caused injury to the domestic industry. Instead, they found that low-price imports from China prohibited domestic producers from raising prices to compensate for the increasing price of live crawfish, thus forcing producers to reduce sales volume.

Case Outcome

Following the imposition of antidumping duties, there were a number of accusations that Chinese producers were avoiding the extra duties. Following the ruling, Singapore became a major exporter of an identical product despite the fact that there were no crawfish production facilities in Singapore. Following an investigation, the United States determined that the Singapore exporter should be subject to the same duty as the product was in fact coming from China. Even after this investigation, U.S. Customs reportedly had difficulty collecting the dumping duties from Chinese producers because of discrepancies between the U.S. sales price of the product and the average entry value.

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66 The ITC made a preliminary affirmative injury determination on November 7, 1996.

67 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.
reported to U.S. Customs. In 2002, the DOC directed Customs to collect the dumping duties on a per kilogram basis in an effort to correct this problem.

Despite the duties, imports of crawfish tail meat from China have continued to grow, as can be seen in Figure [1]. Imports fell in 1999 and 2000, which could have been caused by a drought in China and investigations into contaminants in the Chinese product. Predumping duty import prices did not rise significantly until 2001. The plight of U.S. crawfish processors did not seem to improve. By 2002, only 42 U.S. processors responded to ITC requests for information regarding the health of the industry compared to 47 in the original investigation. Although U.S. consumption reached its lowest point in 1997 and peaked in 2001, U.S. producer’s market share peaked in 1997 and reached its lowest point in 2001. This was in part due to extremely low crawfish harvest in the United States in 2000 and 2001.

However, domestic crawfish producers definitely benefited from the antidumping duties even if they did not help the United States regain lost market share. Because of a new U.S. statute known formally as the Continued Dumping and Subsidy Offset Act, or informally as the Byrd Amendment, U.S. crawfish processors collected $7.5 million in refunded antidumping duties in FY2002, $9.8 million in FY2003, and $8.2 million in FY2004. To put this value in perspective, the ITC reported that U.S. shipments of crawfish tail meat ranged from $2.6 to $10.8 million between 1997 and 2002. Because of Byrd Amendment receipts, domestic crawfish producers posted a profit for the first time in at least five years in 2002.

Between 1997 and 2002, the DOC periodically reviewed the duties in administrative and new shipper reviews. During some of these reviews, DOC found that certain shippers had absorbed the entire dumping margin, or raised prices, so that dumping duties no longer had to be charged to these firms. On August 2, 2002, the International Trade Commission initiated a five-year review of the crawfish antidumping duty, known as a sunset review, as required under the World Trade Organization (WTO). On December 6, 2002, the DOC determined that revocation of the duties would lead to a recurrence of dumping by Chinese producers, and recommended the same antidumping duties as the initial investigation as reported in Table I. On July 15, 2003, the ITC determined that revocation of the duties would lead to a recurrence of injury, thus the antidumping duties remain in place today.

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68 The Byrd Amendment distributes antidumping duties collected due to a successful antidumping petition to firms that supported the initial petition and continue to produce the product in question. The WTO has ruled that the Byrd Amendment violates U.S. obligations under the WTO, therefore it is unclear what will happen to this current source of revenue.

69 For example, in 1999 DOC found that Ningbo Nanlian Frozen Foods no longer had to pay the dumping duties. This was followed by an additional Chinese firm in 2000, five firms in 2001, and one firm in 2002. Other new shippers were assigned various dumping margins. During this time period, however, the China-wide rate remained the same.
References


Grapes

Introduction
In March of 2001, a small group of U.S. grape producers filed an antidumping petition claiming that producers in Mexico and Chile were selling spring table grapes at less than fair value in the U.S. market, and these imports were causing material injury to the domestic industry. The U.S. International Trade Commission (ITC), however, found that the grape industry had not demonstrated injury due to imports from Chile and Mexico, and rejected the petition.

Background: The U.S. Grape Market

U.S. consumption of fresh table grapes is approximately 1 million tons annually, an amount that has gradually increased over the past 15 years. Typically this demand is met using Chilean grapes in December through early May, Mexican grapes in late May through the beginning of August, and domestic grapes, which are harvested from June through November. Approximately 90 percent of U.S. grapes are grown in California.

Grapes produced or imported in the United States between April 20 and August 15 of each year are subject to the California Desert Grape Marketing Order (Marketing Order 925). The order regulates grade, size, quality, maturity, and packing of all grapes produced domestically or imported during this time period. Because producers have an incentive to ship grapes early in the season when prices are at their highest, the order is intended to ensure consistent table grape quality through inspection. The order also establishes production research and development projects.

Historically, hot desert weather allowed grape growers in the Coachella Valley of California and western Arizona to fill a unique market niche, supplying grapes to the U.S. market prior to other domestic growers. As a result, grape growers charged as much as $10 to $15 dollars a box more during the month of May, after the Chilean harvest was over and the larger California harvest began. However, in the mid-1990s Mexican producers in the state of Sonora began growing grapes that ripened at the same time as U.S. desert grapes. To make things worse, through the first half of this decade weather patterns were such that Mexican producers were able to beat U.S. producers to the market, thus earning even higher prices. Faced with direct competition, profitability and production shrank in the U.S. desert grape industry. Grape acreage in the Coachella Valley shrank from 18,000 acres in 1990 to only 11,345 acres in 2004.70

In the period leading up to the antidumping petition, U.S. shipment of spring table grapes fell dramatically, from 145.7 million pounds to just 122.3 million pounds. Average prices during this time period fluctuated, from a low of $0.59 per pound in 1998 to $0.80 per pound in 1999. At the same time, imports from both Mexico and Canada increased significantly; imports from Chile grew 75.3 percent between 1997 and 2000 and imports

70 Shikes (2004).
from Mexico grew 35.3 percent. As can be seen in Figure [1], Chilean imports occur primarily in April and have fluctuated over the past 10 years, while Mexican imports occur almost entirely in May and June and have experienced a more constant growth. Shipments from the Coachella Valley and Arizona usually start in the latter half of May, and finish by the end of June.

**Figure 1**

U.S. Imports of Spring Table Grapes

Source: U.S. Census Bureau.

**The Antidumping Petition**

On March 30, 2001, the Desert Grape Growers League (League) filed an antidumping petition, claiming that producers from Chile and Mexico were selling their products at less than fair value and that these imports were causing material injury to the U.S. industry. The petitioners claimed that “spring table grapes,” or those produced between April and June of each year, were unique from those grapes grown during the rest of the year because grapes, which are highly perishable, could not be stored to sell during the rest of the year. Thus the League, which included 19 producers of spring table grapes located in the Coachella Valley of Southern California and the desert of Western Arizona, easily met the domestic industry support requirements needed to file a petition.71 The Department of Commerce (DOC) agreed, and initiated its antidumping investigation on

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71 All antidumping petitions must be filed on behalf of a domestic industry. A petition meets the requirement if domestic producers who support the petition account for at least 25 percent of total production and more than 50 percent of production of those that support and oppose the petition.
May 15, 2001. Based on information contained in the petition, the DOC estimated that dumping margins from Chile could range from 23.0 to 99.4 percent, while those from Mexico could range from 0 to 114.8.

![Figure 2](image_url)

**Figure 2**

Average Import Price (dollars per cubic meter)

Source: U.S. Census Bureau.

**The Case Outcome**

As noted above, the petitioners argued that the product should be defined as spring table grapes, or those produced during April, May and June, due to the seasonal nature of the product. In other words, grapes grown in the Spring and those grown later in the year do not overlap due to the perishability of the product. However, the ITC rejected this argument noting that there were no “significant differences between the table grapes produced [in the Spring] and those produced later in the year.” The ITC report noted that while “seasonality and perishability may be among the factors we consider, they do not override the other factors.” More specifically, “the physical characteristics and end uses of table grapes …are essentially identical.”

The likelihood of the ITC making an affirmative decision was further diminished when the ITC decided that imports from Mexico and Chile should not be cumulated during the injury decision. The current U.S. antidumping law requires the ITC to add together all

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72 Research has shown that cumulation increases the likelihood of an affirmative ITC injury determination. See, for example, Hansen and Prusa [1996].
subject imports, in this case those from Chile and Mexico, when determining whether dumped imports have materially injured the domestic industry, as long as imports from each country compete with each other and with the domestic product. However, in this case the Commission found that because imports from Chile were almost entirely shipped in April while those from Mexico were shipped in May and June products from the two countries did not compete with one another. Thus, the ITC did not cumulate imports in making their decision.

Once the ITC defined the industry as all grape production, it could find little evidence of material injury. U.S. demand and domestic producer’s shipments actually increased between 1998 and 2000. Although Chilean grape imports had increased significantly between 1999 and 2000, most Chilean grapes were shipped during April while most U.S. grape production occurs later in the year. Thus, the ITC found only limited competition between U.S. and Chilean grapes. Similarly, the ITC found only limited competition between U.S. and Mexican grapes because most Mexican shipments occurred in May and June, while most U.S. shipments occurred later in the year.

Since the failure of the petition, U.S. desert grape growers have attempted to preserve market share in other ways. For example, the League supported both the “California Grown” labeling program, as well as country of origin labeling which requires supermarkets to identify where produce comes from. The chairman of the League noted in 2004 that the industry “appears to have stabilized,” although the amount of desert acreage dedicated to table grape production would continue to decline. 73

References


73 Shikes (2004).
Hazelnuts

Introduction
In October, 2003, the U.S. hazelnut industry filed an antidumping petition claiming that Turkey was selling certain processed hazelnuts at less than normal value in the U.S. market, and these imports were causing material injury to the domestic industry. Although the U.S. International Trade Commission (ITC) issued a preliminary decision agreeing that the domestic industry was indeed injured by Turkish imports, the petition was later withdrawn when the domestic industry reached a settlement agreement with the Turkish government.

Background: The Global Hazelnut Industry

Turkey is by far the largest producer of hazelnuts in the world, accounting for approximately 80 percent of world production. Italy, Spain and the United States account for the remaining production. Although hazelnuts are sold as shelled nuts in containers, the largest consumer of processed hazelnuts is the food processing industry which uses them primarily as ingredients in chocolate candies.

Although the varieties of hazelnuts produced by each country are similar, there are key differences. For example, Turkish varieties tend to have higher oil content and a somewhat different taste, as well as a skin that is more easily removable. As a result, historically most Turkish varieties must be processed in some way, while U.S. hazelnuts are primarily sold still in their shell.

Over 99 percent of U.S. hazelnuts are produced in Oregon, with Washington accounting for the remaining production. U.S. production is extremely volatile. U.S. hazelnuts grow in a two-year cycle—in the first year production is extremely high and in the second year production is extremely low. Production has been hampered in recent years by the Eastern Filbert Blight, a disease that eventually kills the hazelnut trees it infects. Between 1995 and 2005, Oregon lost more than 1,600 acres of trees to the blight.

Domestic sales by U.S. producers are highly regulated. It is more profitable for U.S. producers to sell hazelnuts still in their shell, but these sales are subject to a marketing order. The Hazelnut Marketing Board (HMB) establishes the volume of in-shell nuts that may be freely sold in the U.S. market each year in order to maintain in-shell hazelnut prices. All other U.S. production must either be exported or processed in some way. In

74 USITC, pg. I-3.
75 Virtually all Turkish hazelnut exports are processed in someway, while approximately 65 percent of U.S. production is sold in-shell.
the 2004-2005 marketing year, just 6.5 percent of U.S. hazelnut production could be sold freely; the remaining 93.5 percent had to be exported or processed.  

Much of the restricted sales are exported rather than processed. In the 2004-2005 marketing season, 80.1 percent of U.S. hazelnut production was exported and, as noted above, historically most U.S. hazelnuts have been exported still in their shells. However, the percentage of in-shell sales has gradually been declining, in part because the trees developed in recent years to resist the Eastern Filbert Blight produce hazelnuts more suitable for further processing.

Unlike the United States, Turkish hazelnuts do not grow in a two-year cycle. Exports of Turkish hazelnuts account for between 79 and 86 percent of annual production; most Turkish hazelnuts are exported to the European Union, while two to four percent of annual production is exported to the United States. As noted above, virtually all Turkish hazelnut exports are processed in some way.

Prior to the filing of the antidumping petition in October of 2003, production of processed hazelnuts declined dramatically—falling over 19 percent between 2000 and 2002 and by 63 percent from the first six months of 2002 to 2003. At the same time, Turkey’s U.S. market share climbed steadily from 57 percent of total U.S. consumption in 2000 to 82 percent of consumption in the first six months of 2003. This surge in imports can be seen in Figure [1]. The price of both Turkish and U.S. produced hazelnuts products fell irregularly between 2001 and the first six months of 2003, as can be seen in Figure [2].  

The net income of the six firms filing the antidumping petition fell from $1.8 million in 2001 to only $0.2 million in 2002, and fell an additional 144.5 percent in the first six months of 2003.

The Antidumping Petition

On October 21, 2003, a coalition of hazelnut producers filed an antidumping petition, claiming that processors from Turkey were selling their products at less than fair value and that these imports were causing material injury to the U.S. industry. The petition, while excluding in-shell hazelnuts, included most forms of processed hazelnuts. Because the hazelnut industry, like most agricultural products, is highly competitive and characterized by a number of growers, the Department of Commerce (DOC) initiated an investigation to determine whether the petition had sufficient industry support. After

77 Note that at the time of the antidumping investigation, however, 18.4 percent of U.S. production could be sold freely.
78 USITC, pgs. IV-1 -- V-5.
79 USITC, pg. VI-2.
80 The coalition included: Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards.
81 This includes kernels that had been roasted, blanched, sliced, diced, or chopped, paste, meal, flour, croquant, and butter.
82 All antidumping petitions must be filed on behalf of a domestic industry. A petition meets the requirement if domestic producers who support the petition account for at least 25 percent of total production and more than 50 percent of production of those that support and oppose the petition.
gathering more information from the hazelnut industry, the DOC found sufficient support for the initiation of the investigation on December 1, 2003.

Figure 1

Imports of Processed Hazelnuts from Turkey

(in kilograms)

Source: U.S. Census Bureau

Figure 2

Average Price per Kilogram
Processed Hazelnut Imports from Turkey

Source: U.S. Census Bureau

Under U.S. law, the “fair value” is at the most basic level the price charged in the exporting country. However, if all foreign market sales are made below the cost of production than the normal value is defined as a “constructed value” based on the foreign cost of production. Petitioners requested that the DOC initiate a “sales-below-cost”
investigation. In their petition, domestic producers estimated a dumping margin of 31.80 percent by comparing a constructed value of Turkish production to actual U.S. export prices.

The Case Outcome

On December 15, 2003, the ITC issued its preliminary finding there was “a reasonable indication” that the industry was materially injured due to imports of Turkish hazelnuts based on many of the market characteristics described above.

However, on January 28, 2004 the coalition officially withdrew their petition. In a letter to the DOC and ITC, industry representatives noted that the government of Turkey, through its Undersecretariat of Foreign Trade, offered a number of concessions to the U.S. industry conditional on the withdrawal of the formal petition. First, the government of Turkey offered U.S. producers access to Turkey’s gene repository, a repository of over 700 hazelnut tree varieties. U.S. producers were hopeful that access to this material would help them develop new varieties of hazelnut trees that were immune to the Easter Filbert Blight. Turkey also offered to significantly increase funding to a U.S.-Turkey marketing/promotion program for hazelnuts, the Hazelnut Council which was established in 1996. Other reported elements of the settlement agreement included a Turkish donation of $125,000 to Oregon State University’s hazelnut breeding program over the course of two years, as well as Turkish funding of Oregon internships for Turkish students.83

The petitioners noted in their letter to the DOC and ITC that they understood that the government of Turkey would prevent Turkey’s hazelnut producers from requesting duty-free status for hazelnut under the Generalized System of Preferences (GSP), a program that allows duty-free imports of certain products from developing countries, which they had done unsuccessfully twice before. However, this was not part of the official settlement offer.

Since the settlement agreement, the joint U.S.-Turkey Hazelnut Council indeed increased spending to promote sales of hazelnuts from $1.0 million for the 2004 crop to $1.5 million for the 2005 crop. Of this amount, U.S. growers paid only $100,000. It remains unclear how much success the Hazelnut Council has had. Although U.S. consumption of hazelnuts increased 48.7 percent from the 2003/2004 to the 2004/2005 marketing year, total world consumption actually fell 31.9 percent.84

U.S. imports have fallen significantly since the antidumping case was filing and unit prices have increased, as can be seen in Figures [1] and [2]. Total U.S. imports of hazelnuts fell 65.8 percent between the 2002/2003 and the 2004/2005 marketing years, while U.S. production increased 100.9 percent during this same time period.85 However,

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85 Ibid.
the decrease in imports from Turkey and the price increase can be traced to low production levels in Turkey during the past two seasons and not the antidumping petition. The United States continued to combat the Eastern Filbert Blight.

References


High Fructose Corn Syrup

Introduction

In January 1997, Mexico’s National Chamber of Sugar and Alcohol Industries, an association of Mexico’s sugar producers, filed an antidumping petition claiming that U.S. corn millers were selling high fructose corn syrup (HFCS) on the Mexican market at less than normal values, and these imports were threatening to cause material injury to the domestic sugar industry. The following year, the Mexican Secretariat of Commerce and Industrial Development (SECOFI), the agency charged with administering Mexico’s antidumping law, agreed, thus leading to the imposition of antidumping duties on all imports of HFCS from the United States. However, the United States successfully challenged the results of the investigation through the World Trade Organization’s (WTO) dispute settlement process.

Because the findings of the first antidumping investigation were declared unlawful by the WTO dispute settlement panel, Mexico re-launched a second antidumping investigation in 2000, again imposing antidumping duties on U.S. imports of HFCS. When this investigation was found to be inconsistent with Mexico’s North American Free Trade Agreement (NAFTA) obligations by a bi-national dispute settlement panel, Mexico finally agreed to lift the antidumping duties on April 18, 2002. Although the antidumping duties have been lifted, U.S. producers of HFCS still face a number of trade barriers in the Mexican market.

Background: The HFCS Industry

The production of high fructose corn syrup (HFCS) accounted for the second largest use of all corn used for food and industrial production in the United States 2003; the manufacture of HFCS utilized over 20 percent of all corn bushels consumed in the United States. Although the Census Bureau reported that there were 30 firms in the corn milling industry in 1997, four companies accounted for over 70 percent of total production.86

The production of HFCS begins with the harvest of corn kernels. Each corn kernel contains four ingredients: starch, protein, oil and fiber. Once the corn kernels are shipped to the refiners, it is broken down into these four components using the wet milling process. The production of high fructose corn syrup begins with dextrose, a naturally occurring form of glucose, which is a pure crystalline sugar created by introducing enzymes to the starch component of the corn kernel. Processors introduce other enzymes to dextrose to produce 42 percent fructose syrup, known as HFCS-42. By passing HFCS-42 through a column which retains fructose, processors create a 90 percent fructose syrup (HFCS-90); combining the 90 percent and 42 percent fructose syrup results in a 55 percent fructose syrup (HFCS-55). Further processing produces crystalline fructose.

86 Leading producers of HFCS include Archer Daniels Midland (ADM) Company, Cargill, Inc., and Corn Products International.
HFCS-55, which accounted for approximately 57 percent of HFCS production in 2004, is used extensively in the soft-drink industry, as well as in frozen desserts and ice cream. HFCS-42 is the next most prevalent form of HFCS and is used primarily in foods that need just a mild sweetness, such as condiments or canned fruits. The extremely sweet HFCS-90 is used primarily in low-calorie products because sweetness can be obtained with very little of the product. Finally, crystalline fructose is often combined with sugar and used in cereals, dry-mixes, and instant beverages.

U.S. consumption of HFCS has exploded in the last twenty years. In 1975, the average U.S. consumer ingested 3.5 pounds of HFCS each year; by 2004 this figure had grown nearly 250 percent to 42.3 pounds per year. The wet corn milling industry as a whole grew more than 50 percent between 1987 and 1995, expanding shipments from $4.8 billion to $7.5 billion.

Between 1993 and 1998, U.S. HFCS producers exported between 1.5 and 4.2 percent of total domestic production. During this time period, Mexico was by far the leading destination of U.S. HFCS exports, followed by countries such as Canada and Japan. Moreover, as can be seen from Figure [1] exports to Mexico of HFCS, spurred in part by tariff reductions under the North American Free Trade Agreement (NAFTA), were growing quickly. Between 1991 and 1994, U.S. exports of HFCS-42 to Mexico grew over 300 percent to 21 thousand metric tons (MT), while exports of HFCS-55 grew 178 percent to 45.2 thousand MT. Although exports fell slightly in 1995, between 1996 and 1997 they began growing quickly once again. Mexico accounted for nearly 60 percent of U.S. exports of HFCS-42 and nearly 90 percent of U.S. exports of HFCS-55 in 1996. As can be seen in Figure [2], the calculated unit price of U.S. exports to Mexico grew only slightly during this time period.

According to the Corn Refiners Association, corn refiners invested heavily to expand its capacity following the passage of the NAFTA, under which Mexican tariffs on HFCS were scheduled to be phased out from a base tariff of 15 percent to a zero tariff by 2004. Experts estimated that HFCS annual capacity in the United States grew by 3.5 million tons between 1994 and 1997. Although consumption in the United States has increased, it has not kept pace with the increase in capacity, thus resulting in the industry’s overcapacity—particularly as exports to Mexico have been virtually eliminated since 2002 as explained below.

The origins of the HFCS dispute is undoubtedly linked to the dispute between Mexico and the United States over NAFTA’s sugar provisions. The original NAFTA agreement allowed Mexico to export its entire production surplus of sugar to the United States. The agreement stipulated that between 1994 and 1999 as much 25,000 metric tons raw value (MTRV) could be shipped duty-free; in 2000 this amount could increase to 150,000 MTRV, and could continue to increase 10 percent each subsequent year. These maximums could be exceeded if Mexico achieved a net production surplus of sugar in

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88 Production surplus is defined as total production minus domestic consumption.
two consecutive years. In other words, if Mexico was a net surplus producer of sugar in two consecutive years the agreement allowed it to export all surplus sugar to the United States beginning in 2000. However, a side letter agreement that was later negotiated changed these provisions. The United States claims that under the side agreement, Mexican sugar production must exceed its consumption of both sugar and HFCS to be considered a net surplus producer, making it less likely that Mexico would qualify for duty-free status. Moreover, it limited the amount of access for Mexican sugar to the U.S. market to 250,000 MTRV between 2001 and 2007. Mexico has challenged this interpretation, claiming it has had the right to export its total net surplus on a duty-free basis since 2000.\footnote{Multiple version of the side agreement were negotiated, and there is disagreement over which version is valid. Regardless of the disagreement over the transition process, both parties agree that NAFTA provides for free-trade in sugar beginning in 2008.} Although Mexico requested the establishment of a NAFTA dispute settlement panel to resolve the disagreement in August 2000, the United States has reportedly blocked formation of the panel by refusing to name a panelist. The Corn Refiners Association believes that if the United States allowed imports of Mexican sugar as envisioned under the original NAFTA agreement, Mexico would drop current impediments to U.S. HFCS exports.\footnote{Corn Refiners Association (2005), “Cost of Mexico Sweetener Dispute to the U.S. Corn Industry.”}

![Figure I](image-url)

**Figure I**

U.S. Exports of HFCS

Source: U.S. Census Bureau.
Compared to the U.S., the Mexican HFCS is relatively small; production of HFCS was estimated at 250,000 to 300,000 MT in 2001, compared to 8.4 million MT in the United States. However, sugar is Mexico’s largest agriculture industry, and it has undergone tremendous upheaval in recent years. Government-controls, namely a system of marketing allotments, keep Mexican sugarcane prices above world prices and even above prices in the United States. Nevertheless, the sugar industry found itself in crisis in the period leading up to and shortly after the instigation of the antidumping petition. Although Mexico had hoped to dramatically increase its sugar exports to the United States under the NAFTA, exports remained low due to the U.S. import restrictions described above. A surge in imports of HFCS from the United States further reduced demand for Mexican sugar, while the Mexican government issued permits to allow the import lower-priced sugar from world markets. Sugar mill owners, who were borrowing money for operating capital, could not meet payments using the low prices for exported refined sugar and fell into bankruptcy. Finally, in 2001 the Mexican Ministry of Agriculture expropriated 27 of the nation’s 60 sugar mills to ensure against future mismanagement. The antidumping petition filed in 1997 and subsequent restrictions on HFCS sales in Mexico arose in this environment.

Source: U.S. Census Bureau

91 The United States has some of the highest sugar prices in the world due to government controls and import restrictions. Under the marketing allotment, Mexican sugar millers are forbidden to supply to the market more than their predetermined allocation.
The antidumping investigation described below is not the first time that U.S. exporters of HFCS have suffered due to other trade conflicts between the United States and Mexico. In December 1996, the Mexican government increased import duties on U.S. HFCS to compensate for the damage to Mexican producers that occurred when the United States raised tariffs on Mexican broomcorn brooms. After the United States dropped the tariff increase on broomcorn brooms, Mexico dropped the temporary increase in HFCS tariffs in December 1998.

The Antidumping Case

On January 14, 1997, Mexico’s National Chamber of Sugar and Alcohol Industries (Sugar Chamber) filed an antidumping petition claiming that U.S. corn refiners were selling HFCS-42 and HFCS-55 on the Mexican market at below normal value, and these imports were threatening Mexico’s sugar industry with material injury. The petition indicated that the threat of damage was based on the recent increase in the capacity of the U.S. HFCS producers; this excess production would likely be shipped to Mexico. Furthermore, the price level at which HFCS was imported would have serious consequences for domestic sugar production and the industry’s attempt to restructure their debt with the sugar sector development bank. The Sugar Chamber further claimed that Mexican-produced sugar was comparable to HFCS-42, and Mexican-produced refined sugar was comparable to HFCS-55.

On February 27, 1997, SECOFI initiated an official investigation. At this time, SECOFI announced that the period of investigation, or the period that SECOFI would determine whether products were being dumped, was January 1, 1996 through December 31, 1996. On June 25, 1997, SECOFI made a preliminary decision that there was enough evidence that during the period of investigation there was a “threat to cause damage” to the Mexican sugar industry. The decision cleared the way for the imposition of the duties listed in Table 1, which ranged from $66 to $175 dollars per metric ton. As a comparison, the average unit value of U.S. HFCS exports in 1997 was $430.

Table 1
Preliminary Antidumping Duties on HFCS
(Dollars per MT)

<table>
<thead>
<tr>
<th></th>
<th>HFCS-42</th>
<th>HFCS-55</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cargill Incorporated</td>
<td>66.57</td>
<td>63.42</td>
</tr>
<tr>
<td>A.E. Stanley Manufacturing Company</td>
<td>125.30</td>
<td>95.58</td>
</tr>
<tr>
<td>Archer Daniels Midland Company</td>
<td>77.25</td>
<td>65.12</td>
</tr>
<tr>
<td>CPC International, Inc.</td>
<td>125.30</td>
<td>175.50</td>
</tr>
<tr>
<td>All Other Firms</td>
<td>125.30</td>
<td>175.50</td>
</tr>
</tbody>
</table>

During the preliminary investigation, U.S. producers and Mexican importers of HFCS argued that the Sugar Chamber had no standing to file an antidumping petition, as it did
not represent Mexican HFCS producers. Under the World Trade Organization (WTO) Antidumping Agreement, antidumping petitions must be filed by or on behalf of the domestic industry, where domestic industry refers to domestic producers of “like” products, or those that produce identical or similar to the products being imported. The U.S. respondents argued that, despite the suggestion by the Sugar Chamber, HFCS and sugar could not be considered similar products. SECOFI found that during the period of investigation there was no domestic production of HFCS, therefore the Sugar Chamber did have standing to file the antidumping petition because HFCS and sugar are similar products.

In December 1997, the U.S. Corn Refiners Association requested SECOFI terminate the investigation because an alleged agreement between Mexican sugar producers and soft-drink bottlers from September 1997 eliminated any threat of injury. The agreement reportedly urged soft drink manufacturers to limit purchases of HFCS for three years in exchange for a 20 percent discount on sugar. Although SECOFI investigated the allegation, the Sugar Chamber denied the existence of any agreement. The investigation continued, and on January 23, 1998, SECOFI published its final determination imposing antidumping duties ranging from $63.75 to $100.60 per MT for HFCS-42 and $55.37 to $175.50 per MT for HFCS-55.

In February 1998, the U.S. Corn Refiners’ Association asked for a review of the antidumping action under the NAFTA. Shortly thereafter, the U.S. Trade Representative announced on May 8, 1998 its intention to bring the dispute to a WTO dispute settlement proceeding.

Case Outcome

The U.S. submission to the WTO Dispute Settlement Body argued, among other things, that the initial antidumping petition filed by the Sugar Chamber did not contain enough evidence of the threat of material injury to justify the initiation of the investigation. Moreover, SECOFI failed to confirm that Mexico had no HFCS industry during the period of investigation, which was a key element of their determination that the Sugar Chamber had the standing to file the antidumping petition in the first place. The United States also took issue with SECOFI’s assertion that a determination of threat of material injury does not require an assessment of the likely impact of imports and other relevant economic factors on the domestic industry, unlike the determination of actual material injury. The United States argued that SECOFI should also have taken into consideration the alleged agreement between the sugar industry and soft drink manufacturers when assessing the likelihood of a future surge in imports of HFCS.

On February 24, 2000, the WTO Dispute Settlement Body (DSB) ruled that Mexico’s imposition of antidumping duties on HFCS was not in accordance with the WTO Antidumping Agreement. Although the DSB found that the initiation of the petition was justified, the injury determination was not in accordance with WTO rules. Specifically, the panel found that SECOFI did not adequately consider all economic factors affecting the Mexican sugar industry that were pertinent to the “threat of material injury” decision.
SECOFI also failed to take into account the agreement between Mexican sugar producers and soft drink manufacturers.

Mexico decided on September 20, 2000 to uphold the 1998 determination based on a new analysis that took into account many of the additional factors the WTO found missing in the earlier investigation. However, on October 12, 2000, the United States requested that the matter be reexamined by the same dispute settlement panel to establish whether Mexico had correctly implemented the DSB’s recommendations. In June 2001, the panel found that Mexico had failed to implement their recommendations; specifically, Mexico did not adequately consider the impact of dumped imports on the domestic industry and the impact of the agreement between sugar producers and soft drink manufacturers on future imports. Although Mexico appealed the ruling, an appellate body upheld the decision on November 21, 2001.

The NAFTA dispute settlement investigation was taking place simultaneously. In addition to the issues raised in the WTO proceedings, the U.S. Corn Refiners Association requested that the NAFTA panel also consider the fact that SECOFI erroneously determined the antidumping duty imposed on all other firms, particularly those who cooperated with the investigation. The Association also claimed that SECOFI erroneously applied the concept of the “best information available” for the determination of the duties.92 On August 3, 2001, the NAFTA panel also found that SECOFI had failed to prove the existence of an imminent material threat of injury for many of the same reasons as the WTO panel.93 Although Mexico appealed the ruling, the NAFTA panel ordered that Mexico had 30 days to eliminate the antidumping duties on April 15, 2002.

On April 18, 2002, Mexico announced that it would lift antidumping duties on U.S. HFCS exports as directed by the NAFTA dispute resolution panels. However, government officials announced that it would replace the antidumping duties with a tariff-rate quota (TRQ). Under the TRQ, up to 148,000 tons of U.S. HFCS could be shipped duty-free to Mexico, but any quantities above the quota would face tariffs of 210 percent.94 Mexican officials at the time indicated that the TRQ was directly related to the TRQ currently restricting Mexican exports of sugar to the United States.

Although the TRQ is still in place, U.S. exporters have not been able to utilize the entire quota. At approximately the same time as the TRQ was put in place, the Mexican government enacted a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar, including high fructose corn syrup, on January 1,

92 Countries may use the best information available, typically the dumping margins requested in the original antidumping petition, to set the dumping margin when companies refuse to cooperate with the investigation.
93 Like the WTO panel, the NAFTA panel ruled that SECOFI was justified in its initiation of the investigation, rejecting arguments that the Sugar Chamber did not have standing to file the petition. Because the NAFTA panel ruled that SECOFI had failed to prove the threat of material injury, it did not consider the other aspects of the complaint regarding the actual dumping margins.
94 The tariff of 210 percent was the maximum allowable under Mexico’s WTO obligations. At this time, Mexico reclassified the trading status of U.S. sweeteners trade from NAFTA preferential trading partner to WTO most favored nation trading partner.
2002. The tax law was even more effective than the antidumping duties in restricting U.S. exports of HFCS; as can be seen in Figure [1], U.S. exports of HFCS to Mexico were reduced to virtually nothing in 2002. The United States requested the establishment of a WTO dispute settlement panel over the soft drink tax on June 10, 2004.

Although the outcome of the dispute has yet to be determined, even Mexican officials admit that they will likely have to repeal the tax. According to the trade ministry’s legal director for international negotiations, “Mexico recognizes it is a particularly difficult case. We consider that sooner or later we will have an adverse decision.” Instead, Mexico is considering replacing the tax with an import tariff up to 210 percent on U.S. imports of HFCS, which Mexico claims it is entitled to do under the NAFTA to compensate the country for losses stemming from U.S. restrictions on Mexican sugar imports.

In total, the Corn Refiners Association estimates that they have lost $3.0 billion in HFCS sales to Mexico since 1997. This translates to a lost of sales of 672 million bushels of corn, valued at $1.4 billion.

References


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95 The tax was temporarily lifted until September 30, 2002.
97 Corn Refiners Association (2005), “Cost of Mexico Sweetener Dispute to the U.S. Corn Industry.”
Honey

Introduction

In September 2000, the American Honey Producers Association (AHPA) and the Sioux Honey Association\(^98\) filed an antidumping (AD) petition against imports of honey from Argentina and China at the Department of Commerce (DOC) and International Trade Commission (ITC).\(^99\) The associations claimed that producers in Argentina and China were selling honey in the United States at less than fair value, and these imports were causing material injury to the domestic industry. The DOC found that imports of honey from Argentina and the China were being sold in the United States at less than fair value, and the ITC determined that the domestic honey industry was materially injured by imports of honey from these two countries. As a result of the investigation, antidumping duties have been imposed upon honey imports from Argentina and China since 2001.

Background: The U.S. Honey Market

The United States is the largest consumer and second-largest producer of honey in the world. U.S. demand for honey has increased steadily and significantly over time. Between 1998 and 2000 alone demand rose 17.3 percent, from 352.7 million pounds to 419.2 million pounds.

There are over 300 unique varieties of honey produced in the United States; varieties differ in flavor and color depending upon the floral source. Honey is graded based on color, clarity, absence of defects, moisture, flavor and aroma. The colors of honey are related to its mineral content and form a continuous range from water white to dark amber. Light colored honey typically has a mild flavor, while dark colored honey is usually stronger in flavor.

Though U.S. beekeepers operate in virtually every state, California, North Dakota, South Dakota, Florida, and Minnesota accounted for 51 percent of the country’s honey-producing colonies, and 59 percent of total production, in 2000. According to statistics in 2000, there were over 100,000 beekeepers, 350 beekeeper-packers, and 110 independent packers in the United States. Beekeepers are keepers of bee colonies that extract honey from these colonies. They often migrate, generally from north in the summer to south in the winter, to areas in need of bees’ pollination services or to certain rich floral areas to promote production of honey. They also migrate to California during almond season and several other states for pollination of crops such as melons. Honey from beekeepers is

\(^{98}\) Sioux Honey is the only large-scale organization in the United States operating on a cooperative basis for processing, packing, and marketing honey for its beekeeper members.

\(^{99}\) The petitioners filed a countervailing duty (CVD) petition against Argentina at the same time, claiming that subsidized imports from Argentina were causing material injury to the domestic industry. Although the CVD petition also resulted in the imposition of countervailing duties on imports of honey from Argentina, this study focuses solely on the antidumping portion of the petition.
generally considered as “raw” or “unprocessed,” and is either bottled in its raw form for local sale, or placed in large drums and transported to packers for further processing. U.S. Packers of honey are either beekeeper-packers, who extract honey from bee colonies and then process or pack the honey, or independent packers that purchase and then process and pack honey. Honey can be stored in sealed containers to remain stable because honey tends to absorb moisture, which can lower its quality.

Despite the increase in U.S. demand, honey production is considered a declining industry in the United States. Honey output has stagnated in recent years despite government support programs and the protection imposed against imports from China, which is discussed below.\textsuperscript{100} Between 1998 and 2000, average annual honey production in the United States reached 96,423 tons, an increase of only 7 percent from the 1989 to 1991 period when average annual production was 90,000 tons. In contrast, world output increased by approximately 30 percent and Argentina’s output nearly doubled during the same period.

The increasingly-wide gap between domestic honey demand and supply has been filled by increasing levels of honey imports. Between 1990 and 2000, U.S. imports of honey increased 118 percent while the global honey trade increased 26 percent.\textsuperscript{101} In the period leading up to the antidumping petition, the quantity of U.S. imports from Argentina and China increased significantly from 100 million pounds in 1998 to 142.6 million pounds in 1999 and 157.9 million pounds in 2000. This increase can be seen in Figure [1]. During this same time period, domestic market share decreased. U.S. beekeepers’ share of apparent domestic consumption declined from 62.5 percent in 1998 to 52.9 percent in 1999, then declined further to 52.7 percent in 2000; in contrast, the combined U.S. market share of China and Argentina rose from 28.4 percent in 1998 to 36.8 percent in 1999 and 37.7 percent in 2000.

Although imports from Argentina generally consist of lighter grades of honey and imports from China predominately consist of the darker grades, imports from these two countries and domestically-produced honey are highly substitutable. Honey from China and Argentina is often blended with domestic honey to ensure consistent color, taste, and price. While both Argentinean and Chinese honey is exported throughout the entire year, the heaviest export flow of Argentinean honey occurs between March and May, whereas the export volume of Chinese honey is usually higher between November and December. Domestic honey and imports are distributed to three sectors: the industrial/ingredient sector accounts for 48 percent of U.S. consumption, while the retail sector accounts for 40 percent and the food service sector accounts for 12 percent of consumption.\textsuperscript{102}

\textsuperscript{100} The United States had operated a loan program and guaranteed purchase program for honey since 1951. In 1986, the program was amended to eliminate the purchase feature and became a recourse loan program. In the 1995 Farm Bill, the recourse loan program for honey was eliminated, but it was reestablished in 1998. Another change was made on October 6, 2000 for fiscal year 2001, when the recourse, non-purchase loan rate program was switched to a non-recourse, purchase loan rate program or loan deficiency payment (LDP) program.

\textsuperscript{101} Nogues (2003).

\textsuperscript{102} Percentages reflect data in 2000.
darker grades of honey are generally used in the industrial sector, while the lighter grades are used in the retail sector.

Figure 1

U.S. Imports of Honey

![U.S. Imports of Honey Chart]

Source: U.S. Census Bureau.

In 1994, the American Beekeeping Federation (ABF) and the American Honey Producers Association (AHPA) filed a petition claiming that the domestic industry was being injured by “less than fair-value” imports from China. The preliminary determination of injury was affirmative and preliminary dumping margins ranged from 128 percent to 157 percent. In August 1995, China concluded an “agreement” with the DOC that suspended the investigation. In this five-year agreement that ended in August 1, 2000, China was obliged to restrict the volume of honey exports to the United States to 20,000 tons per year, about a 30 percent reduction in trend exports to the United States; in addition, exports could not be sold at a price below a reference price.\(^{103}\)

Due to the suspension agreement, U.S. honey imports from China, the world’s largest honey exporter, increased only 17 percent between 1990 and 2000.\(^{104}\) In contrast, U.S. imports of honey from Argentina, which supplied 14 percent of total world exports in 1990 and 24 percent of world exports in 2000, grew quickly during this same time period.

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\(^{103}\) The reference price is calculated as 92 percent of the weighted-average of the honey unit import values from all other countries for the most recent six months of data available.

\(^{104}\) China typically accounts for one-third of all global honey exports.
Argentina became the world’s second-largest exporter and the third largest producer (following China and the United States) of honey in 2000. As shown in Figure [1], the growth of U.S. imports from Argentina accelerated in 1996, in part due to the 1995 suspension agreement between the United States and China.

This 1995 suspension agreement with China triggered higher domestic prices. However, as new exporters like Argentina entered the scene international prices began decline, as did domestic prices. The ITC found that imports from China and Argentina depressed domestic prices to a significant degree prior to the antidumping investigation. Between the first quarter of 1998 and the second quarter of 2001, prices for domestic and imported honey from China and Argentina fell by 17 to 26 percent. Although prices rebounded somewhat in the first half of 2001, they remained at levels well below those of the first quarter of 1998, as illustrated in Figure [2]. In addition, the ITC found that the prices of imports from China and Argentina were below those for domestically-produced honey by anywhere from 0.4 percent to 20.8 percent.

**Figure 2**

Calculated Average Import Price per Kilogram

![Calculated Average Import Price per Kilogram](image)

Source: U.S. Census Bureau.

Because of the significant decline in the domestic price of honey and stagnant honey production, the value of U.S. honey production decreased. Low honey prices also led to increased inventory and holding costs for the domestic industry because sales didn’t generate profit. U.S. beekeepers’ net income before taxes fell significantly prior to the initiation of the antidumping petition, as did the independent packers’ operating income.
The adjusted net income before taxes for all reporting beekeepers declined irregularly from $5.1 million to $2.0 million between 1998 and 2000. Further, the number of beekeepers reporting net losses increased over the period. Despite of the loan deficiency payment (LDP) program, the decline in honey prices and, thus, domestic operating profits, made repaying agriculture program loans difficult. The number of production workers in the honey industry declined slightly between 1998 and 2000, although the hours worked by the remaining workers remained steady.

The Antidumping Petition

On July 3, 2000, the ITC and DOC instituted a five-year review concerning the suspended investigation on honey from China as required under the World Trade Organization’s (WTO) Antidumping Agreement. The U.S. industry elected to let the suspension agreement expire by not participating in the five-year “sunset” review because it believed that the reference price mechanism of the suspension agreement was unsuccessful in stabilizing the price. On September 29, 2000, the American Honey Producers Association (AHPA) and the Sioux Honey Association filed an antidumping petition against imports of honey from Argentina and China claiming that the domestic honey industry was materially injured by reason of imports of honey from Argentina and China that were sold at less than fair value. The petitioners argued that the low import prices of honey drove down domestic prices.

U.S. honey producers had a few advantages over the importers in the course of the investigation. First, U.S. beekeepers were well organized and had efficient organizations that were capable of coordinating their actions. Second, because the previous antidumping case against China successfully resulted in a suspension agreement, petitioners were better able to assess their chance of achieving a successful outcome from the new petition. Finally, petitioners had significant financial resources; Governor Bill Janklow of South Dakota pledged to contribute $50,000 to help AHPA fight against unfair trade practices by Argentina and China. U.S. honey producers also raised nearly one million dollars to bring the lawsuit.

As requested in the petition, the ITC and DOC investigation focused on natural and flavored honey, as well as artificial honey and honey products which contain more than 50 percent natural honey by weight. Investigated products included all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk.

On May 11, 2001, the DOC released its Notice of Preliminary Determination that honey from Argentina and China was being sold, or likely to be sold, in the United States at less than fair value. Temporary antidumping tariffs that ranged from 49.93 percent to 60.67 percent for Argentinean honey imports and from 36.98 percent to 183.8 percent for

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105 Under the LDP program, if the market price of honey dropped below the loan rate, 65 cents per pound when the program was introduced, the beekeepers could forfeit their honey to the Commodity Credit Cooperation (CCC) and collect 65 cents per pound. But the subsidy was capped at 15 cents per pound and a maximum of $150,000 per beekeeper.
Chinese honey imports were imposed through October 4, 2001, when the DOC released its Notice of Final Determination. The amended weighted-average dumping margins, presented in Tables I and II, ranged from 32.6 percent to 60.7 percent for Argentinean producers and from 25.9 percent to 183.8 percent for Chinese producers.

Table I
Weighted-Average Dumping Margin for China

<table>
<thead>
<tr>
<th>Exporter/Manufacturer</th>
<th>Weighted-Average Margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inner Mongolia</td>
<td>57.13</td>
</tr>
<tr>
<td>Kunshan</td>
<td>49.75</td>
</tr>
<tr>
<td>Zhejiang</td>
<td>25.88</td>
</tr>
<tr>
<td>High Hope</td>
<td>45.51</td>
</tr>
<tr>
<td>Shanghai Eswell.</td>
<td>45.51</td>
</tr>
<tr>
<td>Anhui</td>
<td>45.51</td>
</tr>
<tr>
<td>Henan</td>
<td>45.51</td>
</tr>
<tr>
<td>PRC-wide Entity</td>
<td>183.80</td>
</tr>
</tbody>
</table>

Table II
Weighted-Average Dumping Margin for Argentina

<table>
<thead>
<tr>
<th>Exporter/Manufacturer</th>
<th>Weighted-Average Margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asociacion Cooperativas Argentinas (ACA)</td>
<td>38.71</td>
</tr>
<tr>
<td>Radix S.R.L.</td>
<td>32.56</td>
</tr>
<tr>
<td>ConAgra Argentina</td>
<td>60.67</td>
</tr>
<tr>
<td>All Others</td>
<td>36.59</td>
</tr>
</tbody>
</table>

The DOC typically calculates the dumping margin as the average difference between the average normal value over the investigation period and export prices associated with individual transactions. Although normal value is typically defined as the price set by producers in their domestic market, the DOC determined there was an insufficient volume of sales in Argentina to serve as a basis for normal value; therefore, normal value was calculated based on the price of Argentinean honey in Germany, where Argentina also exported heavily. However, the DOC determined all German sales were made below the cost of production (COP). Since all sales were excluded from the normal value calculations, normal value was calculated based on Constructed Value, or based on the cost of production.

In contrast, 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 the cost of honey production in China. Normal values were
calculated for the seven largest producers by valuing the factors of production used by these firms at the prices for these factors in India.

In the determination of whether domestic industry was materially injured by reasons of imports, the ITC mainly considered the volume of imports, the effect of imports on domestic prices, and the total impact on the domestic honey producers. The ITC found a significant increase in the volumes of imports from China and Argentina, both in absolute terms and relative to U.S. consumption. With significant margins of underselling, these imports from Argentina and China had depressed domestic prices and led to significant declines in the financial health of the domestic industry over the period examined.

In their decision, the ITC defined the domestic honey industry as all U.S. producers of honey, both raw and processed. Hence, packers, who produce processed honey, as well as beekeepers, which produce raw honey, were treated as U.S. producers. However, as the vast majority of imports from China and Argentina were of raw or bulk honey, not processed honey, the ITC focused the material injury analysis on the beekeepers, the producers of raw honey that competed most directly with the subject imports.

The Case Outcome

There is no doubt that the U.S. AD investigation had a devastating effect on Argentina’s and China’s honey exports to the United States; imports from the two countries began to decline during the investigation by the DOC and the ITC. In 2001, U.S. honey imports from Argentina declined by 55 percent, and those from China by 33 percent. At the same time, the U.S. imports of honey from many other countries increased, as can be seen in Figure 1.

According to Lyle Johnston, President of the AHPA, the ITC’s decision has resurrected the U.S. honey industry. In early 2002, following the imposition of antidumping duties, honey prices jumped by 20 cents per pound. By October of the same year, the price of U.S. honey was nearly 80 cents per pound higher than when the petition was filed. By then, U.S. honey industry had received a $140 million return on its one million dollar investment for the petition.

A sanitary-induced import ban against China has added another destabilizing element to the world honey market. In 2002, a mission of the European Union (EU)’s Food and Veterinary Office (FVO) revealed serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field. In the same year, during an investigation of illegal transportation of bulk honey from China to the United States through third-party countries to evade payments of U.S. antidumping duties, the U.S. Customs Service and the Food and Drug Administration (FDA)

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106 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.

107 Kemp (2002).
discovered that some of the bulk imports of Chinese honey were contaminated with low levels of chloramphenicol (CAP), a potentially harmful antibiotic and unapproved food additive. These findings have led major honey importing countries to ban imports from China, creating a supply shortage that has caused accelerated increases in honey prices around the world. The ban has benefited other exporting countries, including Argentina, whose total exports (in dollar terms) in the first six months of 2002 increased by 28 percent on an annual basis.108

According to the U.S. trade statistics, the imposition of the dumping duties resulted in a rapid and significant decline in imports of honey from Argentina, from 20.5 million kilograms in 2001 to 3.8 million kilograms in 2004. Imports from China dropped significantly in 2002, but have since increased slightly. The average unit import price from China has gradually increased, from $1.99 per kilogram in 2001 to $2.32 in 2003, but decreased to $1.90 in 2004. On the other hand, the average unit import price from Argentina rose rapidly, from $1.31 in 2001 to 5.58 in 2004, as illustrated in Figure [2].

References


Mushrooms

Introduction

In January 1998, the Coalition for Fair Preserved Mushroom Trade (Coalition) filed an antidumping petition claiming that producers from Chile, China, India, and Indonesia were selling certain preserved mushrooms in the United States at less than fair value, and these imports were causing material injury to the domestic industry. The U.S. International Trade Commission (ITC) determined that the preserved mushroom industry in the United States was materially injured by imports from these four countries, which were found by the U.S. Department of Commerce (DOC) to be sold in the United States at less than fair value. Antidumping duties have been imposed on U.S. imports of preserved mushrooms from Chile, China, India, and Indonesia since that time.

Background: The U.S. Mushroom Market

The United States is the second largest producer of mushrooms in the world, accounting for 16 percent of world output. U.S. mushroom growers are concentrated in Pennsylvania, which accounts for more than half of the U.S. total production, California and Florida. Until 2000, U.S. total mushroom production had been increasing from 777 million pounds in the 1995-1996 marketing year to 854 million pounds in 1999-2000 marketing year. The total production in recent years declined slightly to 837 million pounds in 2001-2002. During the last decade, farm consolidation continued to occur within the industry. In 2001-2002, there were 262 mushroom farms, which was a 14 percent decrease from 1999-2000 and 34 percent below levels from 1991-1992.

There are more than 38,000 kinds of mushrooms produced the world which vary in color, size and shape. In the United States, white Agaricus and brown Agaricus varieties account for the majority of sales, while specialty varieties such as Shiitake, Oyster, and other exotic varieties account for a small percentage of sales value. U.S. mushroom growers sell the majority of their products to the fresh market; less than 30 percent of U.S. mushroom production undergoes further processing. To produce preserved mushrooms, raw mushrooms are placed in refrigerated storage and processing must begin within 24 hours of harvest. After cleaning, sorting, and blanching, mushrooms are sliced, dewatered, and checked before they are packed and labeled. Preserved mushrooms are sold as whole, sliced mushrooms, or stems and pieces. There are about a dozen plants processing mushrooms in the United States. These processors usually process other vegetables as well.

Preserved mushrooms are distributed in the United States to three sectors: the industrial sector, which typically consists of large food companies that use them as ingredients in

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110 China is the largest world mushroom producer, which accounts for 30 percent of world output.
pizza, spaghetti and other sauces and gravies, casseroles, stews, and soups; the food service sector that includes restaurants and institutional customers as well as their distributors; and the retail sector, which primarily consists of grocery stores. Mushroom stems and pieces account for 75 percent of the preserved mushrooms sold in the U.S. market and especially predominate in the industrial and food service sectors. Whole mushrooms that are usually small, attractive, and of uniform size are mainly sold to retailers.

Fresh mushrooms are generally of a higher grade and have a stronger taste than those mushrooms that are preserved. Moreover, fresh mushrooms are also lighter, crispier and contain more moisture than their preserved counterparts. Although preserved mushrooms have a unique flavor, consumers often substitute fresh mushrooms for preserved mushrooms. In the period leading up to the antidumping petition, U.S. consumption of fresh mushrooms increased, while the consumption of preserved mushrooms fell. U.S. sales of fresh mushrooms increased from 537.1 million pounds in the 1995-1996 marketing year to 621.5 million pounds in 1997-1998 marketing year. In contrast, U.S. consumption of preserved mushrooms declined from 232.1 million pounds in 1995 to 196.2 million pounds in 1997. This indicates a general shift in consumer tastes from preserved mushrooms to fresh mushrooms.

Prior to the antidumping petition, U.S. demand for preserved mushrooms was met mostly with domestic production and imports from Chile, China, India, and Indonesia. Imported preserved mushrooms are generally interchangeable with the domestically-produced product. The majority of U.S. imports of preserved mushrooms from Chile and China were distributed to food service users, while imports from India and Indonesia were predominantly sold to retail users. Based on these channels of distribution, the antidumping investigation revealed that preserved mushrooms from Chile competed with those from both China and India, but not with those from Indonesia; imports from China competed with those from India and Indonesia; Indian and Indonesian imports competed with each other; domestic preserved mushrooms competed with imports from all of these countries.

Between 1995 and 1997, imports of preserved mushrooms from Chile and total imports from China and Hong Kong declined, whereas imports from India and Indonesia fluctuated upward. As Figure [1] illustrates, the quantity of cumulated imports from Chile, China, India, and Indonesia declined from 123 million pounds in 1995 to 111.1 million pounds in 1996, but rebounded to 118.3 million pounds in 1997. The value of these imports declined during this entire period despite the increase in quantity in 1997. However, the cumulated import market penetration of preserved mushrooms from the four countries targeted in the antidumping investigation, measured in quantity, increased from 51.2 percent in 1995 to 57.8 percent in 1997.

During this same period, the unit value of imports from China, India, and Indonesia trended downward, while Chile’s unit values moved upward, as shown in Figure [2]. Overall, the average unit price of the imports from these four countries decreased between 1995 and 1997, and domestic prices also fell during this time period. Although
U.S. production costs declined between 1995 and 1997, the net unit sales value decreased at a greater rate than costs of goods sold, thus profit margins fell. The domestic industry’s market share fell between 1995 and 1997, as did domestic production in terms of both quantity and value.

Figure 1

U.S. Imports of Certain Preserved Mushrooms

Source: U.S. Census Bureau.

The Antidumping Petition

On January 6, 1998, the Coalition for Fair Preserved Mushroom Trade filed an antidumping petition claiming that producers from Chile, China, India, and Indonesia were selling certain preserved mushrooms in the United States at less than fair value, and these imports were causing material injury to the domestic industry. The products addressed in the petition were preserved mushrooms that were of the species Agaricus Bisporus and Agaricus Bitorquis, whether imported whole, sliced, diced, or as stems and pieces. Preserved mushrooms refer to those that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting, and then packed and heated in containers in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. The ITC defined the domestic industry as all domestic producers of preserved mushrooms; growers of fresh mushrooms were not included in the definition of the domestic industry.\textsuperscript{111}

\textsuperscript{111} During the data collection period, 13 U.S. mushroom producers were included.
On October 22, 1998, the DOC released its Notice of Final Determination that certain preserved mushrooms from Chile were being sold in the United States at less than fair value. It released its affirmative final determination that imports from China, India, and Indonesia were being dumped on December 31, 1998. The weighted-average dumping margins are presented in Table I.

To determine whether sales of certain preserved mushrooms from Chile, China, India, and Indonesia to the United States were made at less than fair value, the DOC compared export prices to the average normal value for each country over the period of investigation\textsuperscript{112}. Under U.S. antidumping law, the normal value is typically defined as the price set by the producer under investigation in their domestic market. Any sales made by producers below their average cost of production are excluded from the calculation of normal value because the DOC considers these sales to be made outside of the “normal course of trade.” If there are insufficient sales made within the normal course of trade in the domestic market to calculate the normal value, the DOC may also use the price set by the producer in a third-country market or a constructed value based on the producer’s average cost of production.\textsuperscript{113}

Based on the volume of Indonesian sales in both their domestic market and third country markets, the DOC determined that there were insufficient sales to serve as a basis for normal value, thus the DOC calculated normal value based on a constructed value. In the

\textsuperscript{112} The period of investigation is from January 1, 1997 through December 31, 1997.

\textsuperscript{113} The constructed value also builds in to the normal value both administrative costs and a profit margin.
case of India, the DOC determined there was an insufficient volume of sales in the Indian domestic market, but the third country markets of the Netherlands and Denmark were viable. Of the two third-country markets, the DOC found that all of the sales in one market were made at prices less than the cost of production and the other market had some sales at prices below the cost of production. Thus, these sales were excluded from the calculation and the remaining above-cost sales were used as the basis for normal value. When there were no sales made above the cost of production, the DOC used a constructed value to calculate the normal value.

Table I
Weighted-Average Dumping Margin

<table>
<thead>
<tr>
<th>Country</th>
<th>Exporter/Manufacturer</th>
<th>Weighted-Average Margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>Nature’s Farm Products (Chile) S.A.</td>
<td>148.51</td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>148.51</td>
</tr>
<tr>
<td>India</td>
<td>Agro Dutch Goods, Ltd.</td>
<td>6.28</td>
</tr>
<tr>
<td></td>
<td>Ponds (India), Ltd.</td>
<td>14.19</td>
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<tr>
<td></td>
<td>Alpine Biotech, Ltd.</td>
<td>243.87</td>
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<tr>
<td></td>
<td>Mandeep Mushrooms, Ltd.</td>
<td>243.87</td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>10.87</td>
</tr>
<tr>
<td>Indonesia</td>
<td>PT Dieng Djaya/PT Surya Jaya Abadi Perkasa</td>
<td>7.94</td>
</tr>
<tr>
<td></td>
<td>PT Zeta Agro Corporation</td>
<td>22.84</td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>11.26</td>
</tr>
<tr>
<td>China</td>
<td>China Processed Food I&amp;E Co./Xiamen Jiahua Import and Export Trading CO., Ltd.</td>
<td>154.71</td>
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<tr>
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<td>Tak Fat Trading Co.</td>
<td>178.59</td>
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<td>Shenzhen Cofry Cereals, Oils &amp; Foodstuffs Co., Ltd.</td>
<td>126.16</td>
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<td></td>
<td>Gerber (Yunnan) Food Co.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Jiangsu Cereals, Oils &amp; Foodstuffs Import and Export Corp.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Fujian Provincial Cereals, Oils &amp; Foodstuffs Import and Export Corp.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Fujian Provincial Cereals, Oils &amp; Foodstuffs Import and Export Corp.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Putian Cannery Fujian Province</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Xiamen Gulong Import and Export Co., Ltd.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>General Canned Foods Factory of Zhangzhou</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Zhejiang Cereals, Oils &amp; Foodstuffs Import and Export Corp.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Shanghai Foodstuffs Import and Export Corp.</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>Canned Goods Co. of Raoping</td>
<td>158.79</td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>198.63</td>
</tr>
</tbody>
</table>

114 Two largest exporter/producers in India, Agro Dutch and Ponds, were selected as the mandatory respondents in this investigation.
Similarly, the DOC determined there was an insufficient volume of sales in Chile’s home market, but its largest third country market Brazil could serve as the appropriate third country market for calculating normal value. However, the DOC found that all of the sales in Brazil were made at prices below their cost of production. As there were no comparable third country sales, normal value was calculated using the producer’s cost of production.

Because China is a non-market economy, the DOC calculates normal value in a somewhat different way; normal value is defined as the cost of production in China but the factors of production used by Chinese producers are valued in an appropriate surrogate market economy that produces the product in question and is comparable to China’s in its level of overall economic development. The DOC selected India to serve as the surrogate country in this investigation. Hence, China’s normal value was calculated using the cost of Chinese producers’ factors of production valued at the prices for these factors in India, unless those inputs were sourced from a market economy and paid for in a market economy currency.

After considering the volume of the dumped imports, the effect of imports on domestic prices, and the total impact on the domestic preserved mushroom producers, the ITC determined that the domestic industry was materially injured by imports of certain preserved mushroom from Chile on December 2, 1998. On February 12, 1999, the ITC determined that the domestic industry was materially injured due to dumped imports from China, India, and Indonesia. In their ruling, the ITC noted that although the decline in demand for preserved mushrooms might have contributed to the decline in the domestic industry’s performance, the significant cumulated import volume from the four countries and the price-depressing effect of these imports had a significant negative impact on the domestic preserved mushroom industry.

The Case Outcome

U.S. antidumping investigation had a devastating effect on the four countries’ mushroom exports to the United States; in 1998, the average value of imports from the four countries decreased nearly 18 percent, as can be seen in Figure [1]. This decline provided an opportunity for other countries to increase their exports of preserved mushrooms to the United States. Taiwan and Mexico, also large exporters of preserved mushrooms, increased the values of their exports to the United States by 38 percent, whereas smaller exporters, Spain and Canada, increased their sales values of preserved mushrooms by approximately 125 percent.115 Nonetheless, total U.S. imports of preserved mushrooms from the world decreased in 1998.

In 1999, the quantity of cumulated imports from Chile, China, India, and Indonesia continued to decline by 19 percent, while imports from Taiwan, Mexico, Spain, and Canada increased by an average of 70 percent.116 U.S. total imports of preserved mushrooms from the world fluctuated upward between 1999 and 2001.

According to the Uruguay Round Agreements Act, an antidumping order should be revoked after five years unless the DOC and the ITC determine that revoking the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. On August 1, 2003, the DOC initiated the five-year sunset review concerning certain preserved mushrooms from Chile, China, India, and Indonesia. On March 10, 2004, the DOC released its final results of expedited review, which determined that revocation of the antidumping duty orders imposed on all four countries would be likely to lead to continuation or recurrence of dumping. The weighted-average dumping margins are presented in Table II. On February 6, 2004, the ITC also voted to conduct the full review, and an affirmative determination was made on October 18, 2004. Hence, the existing duty orders remained in place.

Since the issuance of the antidumping order in 1999, there have been no imports of preserved mushrooms from Chile. Public data show that total exports of canned mushrooms from Chile fell severely in 1999. Although its total exports rose to a level ranging from 2.4 to 5 million pounds between 2000 to 2002, it was still well below the levels between 1995 and 1998. Given the fact that the United States was a major export market to the Chilean mushroom producers and Chilean producers have been unable to increase the quantity of its exports to other countries, the ITC determined that imports from Chile would be likely to return to the U.S. market if the order is revoked.

Although imports of preserved mushrooms from China declined severely to 320,000 pounds in 1999 compared to 48.0 million pounds in 1998 and 75.6 million pounds in 1995, import quantities have been increasing rapidly since 2000 and reached 48.1 million pounds in 2003. In addition, the prices of these imports were predominantly below the prices of domestic preserved mushrooms.

Despite the antidumping investigation and the duty orders imposed, imports of preserved mushrooms from India have been increasing rapidly and significantly since 1995, as illustrated in Figure [1]. The quantity of imports rose from 6.0 million pounds in 1995 to 32 million pounds in 1999, and peaked 34.5 million pounds in 2000. Market penetration also increased quickly from 2.5 percent in 1995 to 14.4 percent in 2003. Moreover, sales of these imports were mostly made at prices less than the prices of domestic preserved mushrooms.

The quantity of imports of preserved mushrooms from Indonesia had moderate fluctuations but remained relatively stable between 1995 and 1999. After 2000, imports from Indonesia started to decline, partly due to the revocation of the order with respect to PT Zeta Agro whose exports were excluded from the antidumping duties in February 2002. Based on the quantity of imports, prices, substitutability, and the capacity of foreign preserved mushroom producers, the ITC determined that revocation of the antidumping duty orders on certain preserved mushrooms from China, India, and Indonesia would also likely have a significant negative impact on the domestic industry and thus decided to continue the existing duty orders.
Table I
Weighted-Average Dumping Margin

<table>
<thead>
<tr>
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<td>Chile</td>
<td>Nature’s Farm Products (Chile) S.A.</td>
<td>148.51</td>
</tr>
<tr>
<td></td>
<td>Ravine Foods</td>
<td>148.51</td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>148.51</td>
</tr>
<tr>
<td>India</td>
<td>Agro Dutch Goods, Ltd.</td>
<td>6.28</td>
</tr>
<tr>
<td></td>
<td>Ponds (India), Ltd.</td>
<td>14.19</td>
</tr>
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<td></td>
<td>Alpine Biotech, Ltd.</td>
<td>243.87</td>
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<td></td>
<td>Mandeep Mushrooms, Ltd.</td>
<td>243.87</td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>11.30</td>
</tr>
<tr>
<td>Indonesia</td>
<td>PT Dieng Djaya/PT Surya Jaya Abadi Perkasa</td>
<td>7.94</td>
</tr>
<tr>
<td></td>
<td>PT Zeta Agro Corporation revoked(^{117})</td>
<td></td>
</tr>
<tr>
<td></td>
<td>All others</td>
<td>11.26</td>
</tr>
<tr>
<td>China</td>
<td>China Processed Food I&amp;E Co./Xiamen Jiahua Import And Export Trading CO., Ltd.</td>
<td>121.47</td>
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<tr>
<td></td>
<td>Tak Fat Trading Co.</td>
<td>162.47</td>
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<td>Shenzhen Cofry Cereals, Oils &amp; Foodstuffs Co., Ltd.</td>
<td>151.15</td>
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<td>Gerber (Yunnan) Food Co.</td>
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<tr>
<td></td>
<td>198.63(^{118})</td>
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<td>Jiangsu Cereals, Oils &amp; Foodstuffs Import and Export Corp.</td>
<td>142.11</td>
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<td>Shanghai Foodstuffs Import and Export Corp.</td>
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<td>Canned Goods Co. of Raoping</td>
<td>142.11</td>
</tr>
<tr>
<td></td>
<td>PRC-wide rate</td>
<td>198.63</td>
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</tbody>
</table>

During the period of review, which was from 1998 through 2003, U.S. consumption of preserved mushrooms remained relatively steady. The domestic industry showed modest improvements in the earlier portion of the period of review, when cumulated imports declined right after imposition of the duty orders in 1999. However, in the latter portion of the period of review, when cumulated imports increased and prices declined, the domestic industry’s operating performance deteriorated. Production decreased from the peak level 68.9 million pounds in 2000 to 50.2 million pounds in 2003. The domestic

\(^{117}\) The antidumping duty with respect to PT Zeta Agro Corporation was revoked after February 1, 2002.

\(^{118}\) An adverse facts available rate was applied for Gerber (Yunnan) Co.
industry’s share of U.S. consumption fluctuated downward from its period peak level of 40.7 percent in 1999 to a period low level of 25.4 percent in 2003. Consequently, profitability declined during this period. Operating margin changed from positive 3.2 percent in 2000 to negative 2.7 percent in 2003.

References


Mussels

Introduction

In March of 2001, Great Eastern Mussel Farms filed an antidumping petition claiming that Canadian producers were exporting live, processed blue mussels at below normal values, and these imports were materially injuring the firm, which at the time claimed to be the only U.S. processor of blue mussels. Although the U.S. International Trade Commission (ITC) and Department of Commerce (DOC) made preliminary determinations that dumped imports were indeed injuring the industry, the firm withdrew its petition prior to the final imposition of antidumping duties citing improved market conditions.

Background: North American Mussel Industry

Blue mussels are similar to clams but dark blue or black in color. Although various species of mussels are found around the world, the blue mussel species consumed in the United States is produced primarily in the coastal areas of Northeastern United States and Eastern Canada. In the United States, production is concentrated in Maine and Massachusetts, while in Canada most production occurs on Prince Edward Island.

Mussels can be produced either through aquaculture (farming) or harvesting in the wild. Most wild mussels are harvested by commercial fisheries of various sizes. In the period leading up to the antidumping petition, U.S. wild mussel production was in a period of continuous decline and Canada had virtually no wild mussel production. The farming of mussels in both the United States and Canada began in the late 1970s. Great Eastern Mussel Farms produces mussels using a bottom culture technique; Canadian producers typically use a rope culture technique. Some argue that the former produces mussels with a thicker shell and a lower proportion of edible meat, or mussels of a lower quality.

The market share of wild, unprocessed mussels in the U.S. blue mussel market declined steadily in the 1990s from about 50 percent of all blue mussels sold in the U.S. market to about 20 percent. Therefore, once harvested most mussels are processed in a variety of ways. For example, water is channeled past the mussel to remove sand and grit from the body in a process known as purging. Mussels are often “debearded,” a process which involves the removal of a thread that mussels use to attach themselves to rocks, and picked through to remove any dead or broken mussels from the batch. At the time of the antidumping investigation, the ITC identified four U.S. processors of mussels. These firms processed both farmed mussels and those from Maine fishermen.

Expansion of the U.S. mussel industry has been constrained for a number of reasons. Firms face high costs of complying with regulations issued by various government...

119 USITC, pg. III-1.
entities and managing shellfish disease. Firms also face opposition to new lease sites for mussel aquaculture, while many potentially valuable shellfish harvesting sites have been closed by state regulating authorities.120

In the period leading up the antidumping petition, U.S. demand for mussels grew steadily due to increased popularity of seafood in general and the relative low price of mussels in particular. In fact, Canadian producers argued during the antidumping investigation that U.S. producers could not meet the growing demand for mussels. Nevertheless, Great Eastern found itself in a period of economic hardship in 2000. Although the quantity and value of shipments increased between 1998 and 1999, the quantity and value of shipments decreased between 1999 and 2000. As can be seen in Figure I, U.S. imports of mussels from Canada increased significantly between 1998 and 2000, up 31.8 percent in the two years.

![Figure I](image)

U.S. Imports of Mussels

Note that New Zealand produces a different variety of mussels that were not subject to the antidumping petition. Source: U.S. Census Bureau.

Typically, Canadian mussels sell at a higher price than the mussels produced by Great Eastern because of quality differentials. In the fall of 2000, however, a price war between Prince Edward Island producers significantly reduced prices of Canadian mussels in both the Canadian and U.S. market, as illustrated in Figure II. Prices fell as

120 USITC, pg. III-2.
low as 70 cents per pound in some cities, about the price of the bottom-cultured mussels produced by Great Eastern. Several U.S. mussel consumers claimed that they began to purchase Canadian mussels because of their superior quality rather than price differential, although it is likely that the lack of a price differential played a role in this decision.

Figure II

U.S. Imports of Mussels from Canada
Average Price per Kilogram

![Figure II graph](image)

Source: U.S. Census Bureau

The Antidumping Case

On March 12, 2001, Great Eastern Mussel Farms, Inc. filed an antidumping petition claiming that live processed blue mussels from Canada were being sold, or were likely to be sold, in the United States at less than fair value. Moreover, these imports were causing material injury, or at least threatening to cause material injury, to the domestic mussel industry.

On April 25, 2001, the ITC made a preliminary determination that there was reasonable indication that the U.S. mussel industry was threatened with materially injury due to imports from Canada. In making this determination, the ITC considered a number of important, and in some cases controversial, factors. For example, the ITC must define a “domestic like product” for each petition, or the product that is most similar to the imported product. This definition affects a number of characteristics considered by the ITC in their injury determination, such as the market share of the country under investigation. Great Eastern argued that the “like” product should exclude wild, unprocessed mussels. However, Canadian producers balked at this request, noting that
there are commercial fisheries in the United States that produce mussels that are processed by both Great Eastern and others, although Canada has no such commercial fisheries.

The ITC agreed with the petitioner, and limited the scope of the investigation to processed mussels, thus the domestic industry was limited to mussel processors and did not include mussel fisheries. The ITC further found that due to Canada’s recent increased production and exports to the United States, there was a reasonable indication that the volume of U.S. imports would continue to rise and suppress U.S. prices. Therefore, the financial performance of the domestic industry would continue to decline and materially injure the domestic industry in the imminent future.

On October 17, 2001, the DOC released its preliminary determination that mussels were being sold in the United States at less than fair value. Dumping margins for specific Canadian producers are presented in Table I. Although Great Eastern alleged that Canadian firms were selling blue mussels at prices less than their cost of production, the DOC investigation revealed that only two companies had more than 20 percent of their sales at less than their cost of production. Therefore, the below cost sales for these two firms were excluded in calculating the normal value. The normal value in this case was determined based on the prices charged by the companies under investigation in the Canadian market, and this normal value was compared to an adjusted export price. Following the affirmative determination by the DOC, the DOC directed U.S. Customs to collect a cash deposit or posting of a bond equal to the amount of the dumping margin on all imports from all Canadian producers.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Preliminary Antidumping Margin</th>
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<tr>
<td>Atlantic Aqua Farms, Inc.</td>
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<tr>
<td>Confederation Cove, Inc.</td>
<td>4.70</td>
</tr>
<tr>
<td>Prince Edward Aqua Farms, Inc.</td>
<td>3.48</td>
</tr>
<tr>
<td>PEI Mussel King, Inc.</td>
<td>0.00</td>
</tr>
<tr>
<td>All Others</td>
<td>4.33</td>
</tr>
</tbody>
</table>

Case Outcome

The price war in Prince Edward Island apparently ended in 2001. In May and October of 2001, Prince Edward Island producers initiated two price increases that brought the price of mussels back to 80 to 90 cents per pound. Moreover, following the ITC and DOC decisions in 2001, Great Eastern’s sales increased 18 percent over its sales in 2000. Prices continued to climb throughout 2002, as did sales by Great Eastern.

121 Under U.S. antidumping law, if more than 20 percent of a firm’s home market sales are made at below the cost of production, than these sales must be excluded for the purpose of determining the product’s normal value.
On January 7, 2002, Great Eastern sent a letter to the Department of Commerce withdrawing its petition. The letter stated that due to improved market conditions, the antidumping investigation was no longer needed. The DOC notified all interested parties of its intent to terminate the investigation, and receiving no objection terminated the investigation on January 20, 2002. At the time officials at Great Eastern stated, “Why spend a lot of time and money when you already got what you wanted” in reference to the recent price increases.\textsuperscript{122}

Producers from Prince Edward Island claimed that the price increase was unrelated to the antidumping petition. Instead, mussel production on the Island began to slow due to capacity constraints.\textsuperscript{123} Shortly after the termination of the antidumping petition, the Canadian mussel industry was hit with a shell fish disease that further repressed production and increased prices in 2002.

Press reports indicated that Great Eastern and Canadian mussel producers each prepared approximately $100,000 on the antidumping petition.\textsuperscript{124}

\textbf{References}


\textsuperscript{122} Hedlund.
\textsuperscript{123} Hedlund.
\textsuperscript{124} “Great Eastern withdraws its antidumping petition.”
Pasta

Introduction
In May of 1995, three of the largest pasta manufacturers in the United States filed an antidumping petition claiming that producers in Turkey and Italy were selling dry pasta at less than normal value in the U.S. market, and these imports were causing material injury to the domestic industry. Both the U.S. International Trade Commission (ITC) and Department of Commerce (DOC) agreed, and antidumping duties have been imposed on imports from these countries ever since.

Background: The U.S. Pasta Industry

Dried pasta is manufactured primarily from durum wheat semolina or flour due to durum wheat’s high level of gluten, which makes a stiff dough. A softer wheat, farina, may sometimes be added as may eggs or powdered flavorings such as tomato or spinach. The dough is then formed into hundreds of different shapes and sizes.

The United States ranks fourth in the world in average annual per capita consumption of pasta following Italy and Venezuela. U.S. consumption increased significantly in the 1970s through the early 1990s; Americans increased pasta consumption by 90 percent between 1975 and 1995 and 9.8 percent between 1993 and 1995 alone. The growth in popularity has been attributed to pasta’s low cost, convenience, and reputation as a low-fat food. However, Americans began to shift to low-carbohydrate diets in the late 1990s which resulted in a significant decrease in pasta consumption. U.S. shipments fell from $1.8 billion in 1997 to $1.2 billion in 2000.\(^{125}\)

Approximately 50 companies produce all of the pasta made in the United States through 266 establishments, although half of those firms were subsidiaries of larger companies. The largest U.S. pasta manufacturers include New World Pasta, a former division of Hershey Foods Corporation, Borden Foods Incorporated, and American Italian Pasta Company.\(^{126}\) The five largest producers of pasta in the United States accounted for approximately 70 percent of the production of dry pasta in 1995.\(^{127}\) Virtually all U.S. production of dry pasta is consumed domestically.

Today, Italy is by far the largest source of U.S. dry non-egg pasta imports, accounting for nearly 56 percent of all imports, followed by Mexico, China and Canada. Turkey is the ninth largest foreign supplier of dry non-egg pasta to the United States. However, the market share of these two countries was much higher in the year prior to the filing of the antidumping petition. Specifically, in 1994 Italy was the largest foreign supplier of dry non-egg pasta to the United States, accounting for 61.6 percent of imports. Italian imports of the product increased 28.9 percent between 1993 and 1994. Turkey at this

\(^{125}\) Encyclopedia of American Industries.
\(^{126}\) Ibid.
\(^{127}\) USITC (1996), pg. I-10.
point was the second largest supplier of dry non-egg pasta to the United States, accounting for 13.8 percent of imports in 1994; imports had increased 27.1 percent between 1993 and 1994. This surge in imports from Italy and Turkey is illustrated in Figure [1]. Domestic shipments between 1993 and 1994, meanwhile, grew only 3.5 percent. U.S. market share fell from 87.8 percent in 1993 to 85.7 percent in 1994, while Italian and Turkish market share increased. Prior to the antidumping petition, imports of pasta entered the United States duty-free.

Figure 1

![Graph showing U.S. Imports of Pasta](image)

Source: U.S. Census Bureau

At the same time that imports were increasing, U.S. pasta producers also saw costs rise dramatically as the price of durum wheat increased anywhere from 18 to 50 percent between 1993 and 1995. U.S. exports of durum wheat had steadily climbed since the 1960s, and by the 1990s the United States was exporting 50 percent of its durum wheat. As a result, supply of durum wheat in the United States fell in short supply during the pasta boom of the early 1990s, particularly as U.S. production of durum wheat was attacked by Karnal Bunt disease. Although prices of both domestically-produced and imported pasta increased between 1993 and 1995, some U.S. producers argued during the antidumping petition that the price increase was not enough to offset the higher price of durum wheat. Thus, although net sales of pasta by U.S. firms remained fairly constant

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between 1993 and 1995, profitability fell significantly. Calculated unit import prices are illustrated in Figure [2].

During this time period, domestically produced pasta was typically less expensive than imports from Italy. However, at the time of the antidumping investigation one of the major issues under discussion was to what extent U.S., Turkish and Italian dry pasta were substitutes for one another. Importers and purchasers claimed that Italian pasta was often perceived as a superior product to the pasta produced domestically, while Turkish pasta was often perceived as an inferior product to domestically produced pasta.

### Figure 2

**Calculated Average Price per Kilogram**
(excluding antidumping margin)

![Figure 2](image-url)

Source: U.S. Census Bureau

**The Antidumping Petition**

On May 12, 1995, three of the largest U.S. pasta manufacturers, Borden, Inc., Hershey Foods and Gooch Foods, Inc., filed both antidumping and countervailing duty petitions against imports of dried non-egg pasta from Turkey and Italy.\(^{129}\) The case only targeted pasta sold in packages of 5 pounds or less, or packages for retail sale.\(^ {130}\) The Department of Commerce initiated an investigation the following month, on June 8. As per U.S. antidumping regulations, the ITC issued a preliminary find within 20 days on June 26,

\(^{129}\) Gooch Foods, Inc. is a subsidiary of Archer Daniels Midland.

\(^{130}\) At the time of the investigation, approximately 62 percent of U.S. pasta shipments were destined for the retail market, compared to 75 percent of imports from Italy and 95 percent of imports from Turkey.
stating that there was “a reasonable indication” that the industry was materially injured due to these imports.

The DOC released its preliminary estimates of the dumping margins on January 17, 1996, which were revised in their final determination on June 14, 1996. The final dumping margin determinations are presented in Table [1]. Note that although the initial DOC review revealed nearly 73 Italian and 15 Turkish pasta producers or exporters, the agency has limited resources to review price and cost information for all companies. Therefore, the agency reviewed the eight largest Italian firms and two largest Turkish firms; these firms accounted for 45 percent of U.S. imports from the two countries. The remaining firms would be assessed the “all other” rate, a weighted average of the dumping margin for the investigated firms. These firms could petition for firm-specific rates in new shipper reviews in the future.

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Italy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrighi/Italpasta</td>
<td>19.09</td>
<td>19.09</td>
</tr>
<tr>
<td>De Cecco</td>
<td>46.67</td>
<td>0.00</td>
</tr>
<tr>
<td>De Matteis</td>
<td>0.00</td>
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</tr>
<tr>
<td>Delverde/Tamma</td>
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<tr>
<td>La Molisana</td>
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<tr>
<td>Liguori</td>
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<tr>
<td>Pagani</td>
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<tr>
<td>All Others</td>
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<td>11.23</td>
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<tr>
<td>Maktas</td>
<td>48.26</td>
<td>48.26</td>
</tr>
<tr>
<td>All Others</td>
<td>51.49</td>
<td>51.49</td>
</tr>
</tbody>
</table>

To calculate the dumping margin for Turkish producers, the DOC compared the weighted average adjusted export prices to the weighted average “normal value” for the individual products under consideration. In this particular case the DOC defined the normal value as the price of the product sold by the firms in the Turkish domestic market. However, the antidumping petition filed by the domestic producers alleged that Turkish firms were selling pasta at prices less than their cost of production. The DOC investigation revealed that both companies had more than 20 percent of their sales at less than their cost of production.

131 Note that the DOC also found evidence that Italy and Turkey were subsidizing their pasta industry, and issued preliminary countervailing duty findings on October 17, 1995. This study, however, will focus solely on the antidumping case.
production for certain pasta products.\textsuperscript{132} Therefore, the below cost sales for these firm’s products were excluded in calculating the normal value. Because this exclusion resulted in no eligible home market sales of certain pasta products by Filiz, the DOC calculated the normal value as the “constructed value,” or the estimated cost plus a profit margin for the product.

Italian dumping margins were calculated in a virtually identical method as the Turkish dumping margins. Because one Italian firm, De Cecco, did not provide sufficient information for the DOC to calculate an accurate cost of product, the DOC utilized the “facts available” to calculate the margin for this firm. Specifically, De Cecco’s dumping margin was calculated using a simple average of the adjusted dumping margin estimations submitted in the original antidumping petition.

The ITC made its final determination that domestic producers were materially injured due to the imports sold at less than fair value on July 9, 1996, clearing the way for the permanent imposition of dumping duties. In making this determination, the ITC specifically cited the increase in imports from Turkey and Italy over the investigation period. Furthermore, Commissioner’s stated that domestic producers were unable to raise prices during the investigation period to cover higher costs due to these imports.

Note that the ITC and DOC also found that domestic producers were materially injured by subsidized imports of pasta from Turkey and Italy in the countervailing duty investigation that paralleled the antidumping investigation. Countervailing duties on individual Italian firms ranged from zero to 11.23 percent, while those on Turkish producers ranged from 3.87 to 15.82 percent. The WTO prohibits assessing dumping duties on the portion of the dumping margin attributed to the export subsidies. Therefore, the dumping margins presented in Table I are adjusted to exclude this portion.

The Case Outcome

Following imposition of the dumping and countervailing duty orders, U.S. imports of pasta from Turkey fell over 300 percent between 1995 and 1997. Italian imports, however, increased by nearly 20 percent during this time period and did not begin to drop off until 1998. Domestic producers claimed that the benefits of the order were nullified for two years because of the circumvention of the order by one of the largest Italian producers of pasta, Barilla.\textsuperscript{133} Italy-based Barilla Group began selling pasta in the U.S. market in 1996, and today has captured a 15 percent market share through aggressive advertising.\textsuperscript{134} However, Barilla produces pasta within the United States. In 1997, Barilla invested $130 million in the opening of a U.S. production plant in Ames, Iowa.

\textsuperscript{132} Under U.S. antidumping law, if more than 20 percent of a firm’s home market sales are made at below the cost of production, than these sales must be excluded for the purpose of determining the product’s normal value.

\textsuperscript{133} DOC initiated an anti-circumvention inquiry in 1997 following claims that Barilla was exporting pasta in large containers (which are not covered by the scope of the ruling), and repackaging the pasta for retail in order to avoid paying the AD and CV duties. On October 5, 1998 the DOC confirmed that Barilla had illegally avoided paying the antidumping duties.

\textsuperscript{134} Encyclopedia of American Industries.
Between 1995 and 2001, the U.S. pasta industry consolidated; Hershey sold its pasta branch to New World pasta in 1999 and Borden sold its pasta divisions to New World and AIPC in 2001. As noted above, industry officials believe that U.S. consumption of pasta fell after the imposition of the duties due primarily to changes in diets, however shipments and market shares of domestic pasta producers increased through 2000. In fact, the U.S. pasta industry added production capacity between 1997 and 2000.

Between 1997 and 2001, the DOC reviewed the antidumping orders on imports of pasta from Italy and Turkey and made several modifications. For example, on December 13, 2000, the DOC revoked the AD order for one of the largest Italian sources of pasta, De Cecco, finding that the company had sales above normal value for 3 consecutive administrative reviews. In 2001, the ITC and DOC initiated a five-year sunset review of the pasta antidumping and countervailing duties as required under the WTO. The two agencies found that revocation of the dumping duties would be likely to lead to continuation or recurrence of material injury of the domestic industry due to imports of pasta at less than fair value. The dumping margins set by the DOC during this review that remain in effect today were virtually identical to those from the original investigation, and are presented in Table 1.

References


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135 This may in part be due to new production facilities of Barilla.
Pork

Introduction

Mexican producers have filed three separate antidumping petitions against the U.S. pork industry since 1998. In June 1998, the Mexican Pork Council filed an antidumping petition claiming the U.S. slaughter hogs were being sold in Mexico at below production costs, and these imports were causing injury to the domestic industry. As a result, SECOFI, the agency charged with administering Mexican antidumping legislation, imposed duties on U.S. hog imports beginning on February 1, 1999. After the United States challenged the finding at the World Trade Organization (WTO), Mexico voluntarily ended the antidumping duties on May 23, 2003.

The withdrawal of antidumping duties on live swine was of little comfort to U.S. pork producers, who were by then subject to a second antidumping investigation. The Secretariat of Economy (SE), the successor to SECOFI, initiated an antidumping investigation regarding the import of pork meat from the United States on January 7, 2003 at the request of the Mexican Pork Council. Over one and a half years later, SECOFI announced that could not quantify any injury or threat of injury to the domestic industry due to U.S. imports, thus the petition was dismissed. However, in the same announcement SECOFI self-initiated an antidumping petition against U.S. imports of pork legs. The investigation is ongoing.

Background: The North American Pork Industry

The United States is the world's third largest producer of pork in the world. The current U.S. hog herd is approximately 60 million animals located on nearly 80,000 farms. Although the number of farms raising hogs has gradually declined over the past 50 years, this is primarily due to technological advancements and structural changes in the industry that has increased the size of the average hog farm. Today, production is highly concentrated; in 2002, 2.7 percent of U.S. hog producers had more than 5,000 hogs and accounted for slightly over half of the total hog herd.136 Pork is the seventh largest U.S. farm commodity in size of cash receipts. Nearly 19 billion pounds of pork were processed from 97 million hogs in 2001; annual farm sales typically exceed $11 billion.137 North Carolina and Iowa accounted for approximately 45 percent of all hogs sold in 2002; other leading producers include Illinois, Minnesota, Missouri, Nebraska, Oklahoma, and South Dakota. In total, approximately 68 percent of U.S. hogs are located in the “Corn Belt,” while another 20 percent are located in the Southeastern United States.138

138 The Corn Belt is typically defined as Iowa, Indiana, most of Illinois, and parts of Kansas, Missouri, Nebraska, South Dakota, Minnesota, Ohio and Wisconsin.
Hog operations typically fall into one of three categories. “Farrow-to-finish” operations raise hogs from birth to slaughter weight,\(^{139}\) in contrast, “feeder pig” operations raise pigs from birth to approximately 20 to 60 pounds, then sell them to “feeder pig finishers” who grow the young pigs to slaughter weight. Although historically most firms were farrow-to-finish operations, restructuring in the industry has resulted in more specialized farms. For example, many operations in the Corn Belt specialize in finishing feeder pigs using locally grown corn and soybeans. The move toward large scale operations and specialization has reduced costs in the hog production industry and, thus, prices. In 1998, the industry suffered record low prices for live hogs.

A female pig or sow gives birth to an average of nine piglets in 16 weeks; following birth, piglets nurse for an additional two to three weeks. The sow can be bred again shortly after weaning the piglets. It typically takes six weeks for the young pigs to reach the feeder pig stage of 20 to 60 pounds, then an additional 16 to 20 weeks of intense feeding to reach slaughter weight. Although hogs are produced year round in the United States, production peaks between September and December. After they reach full weight, the hogs are sold to meat packing plants. Like hog production, the meat packing industry has undergone structural change, and is now dominated by new, very large slaughter plants. Three packers now process close to 35 percent of U.S. pork.\(^{140}\) Processors typically operate on extremely small profit margins.

The United States is the second largest consumer of pork and pork products in the world. Pork accounts for about a fourth of domestic meat consumption, making it the third most important meat product consumed in the United States following beef and chicken. Consumption has fluctuated over the years, although over the long run per capita consumption decreased 10 percent between 1960 and 2003. Although most pork consumed in the United States is produced domestically, imports account for about 5 percent of total consumption.\(^{141}\) Pork tends to be a more popular worldwide, accounting for 50 percent of daily meat protein consumption.

In the early 2000s, the United States became the second largest pork exporter in the world, shipping over 2 billion pounds of fresh and frozen pork cuts overseas. Exports now account for about 6 percent of domestic production.\(^ {142}\) Between 2000 and 2004, net pork exports from the United States increased more than five fold. The leading market for U.S. pork is Japan, which account for nearly half of total U.S. pork exports; other leading destinations include Mexico and Canada. From the mid-1980s to the early 2000s, Mexico was the destination of over three-fourths of U.S. live hog exports; approximately three-fourths of these exports were slaughter hogs with the rest made up of breeding

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\(^{139}\) Slaughter weight is typically defined as 240 to 270 pounds.


\(^{141}\) Although imports account for only a small share of domestic consumption, the United States is the third largest importer of pork products accounting for slightly less than one-fifth of total imports. Most U.S. pork imports originate in Canada and Denmark. The United States is also a major importer of hogs from Canada, most of which are feeder animals.

\(^{142}\) The United States only became a net exporter of pork in 1995.
animals. Mexican demand for U.S. hogs is strongest in the fourth quarter of the year, during the peak production period in the United States.

Like the U.S. pork industry, the Mexican pork industry has undergone a great deal of restructuring over the past 30 years. In the 1970s, Mexico introduced technologically advanced farms that rapidly increased productivity. The Mexican government subsidized the cost of sorghum for feed use, thus keeping production costs low. By the early 1980s, pork was the leading meat product produced in Mexico, accounting for nearly half of all meat production, due to low costs, high productivity, and growing demand. However, in 1984, the Mexican government ended sorghum subsidies, increasing costs. Moreover, the devaluation of the peso in the 1980s and 1990s drastically reduced demand for pork as consumers substituted lower priced meat.

The Mexican market opened to hog and pork imports in the 1990s. Upon enactment of the North American Free Trade Agreement (NAFTA) in 1994, Mexico eliminated its 10 percent tariff on imports of U.S. and Canadian swine for breeding. At the same time, Mexico established a tariff rate quota (TRQ) for imports of slaughter swine and pork products. Under the TRQ, imports within the quota paid a much lower tariff than those imported outside of the quota. NAFTA specified that Mexico would gradually eliminate the 20 percent within-quota tariff over 10 years and increase the quota by three percent per year. As noted above, Mexico quickly became one of the largest foreign markets for U.S. pork and live hogs. U.S. pork exports to Mexico tripled between 1995 and 1999. The United States accounted for more than 80 percent of Mexican imports of pork in 2004. In 1997, Mexico had a 91.6 percent market share in domestic pork consumption; by 2000 its market share had fallen to 78.0 percent. It was in this environment that Mexican pork producers filed their first antidumping petition.

The First Antidumping Case: Live Swine

In June 1998, the Mexican Pork Producers Council (CMP) filed an antidumping petition alleging that U.S. slaughter hogs, in particular lightweight hogs below 100 kilograms, were being sold in the Mexican market at prices below production costs, and these imports were causing or threatening to cause material injury to the domestic industry. Specifically, the petition alleged that falling U.S. hog prices caused Mexican hog prices to drop from 12 pesos to 9.50 pesos per kilo over the course of the year. Producers particularly asked for a halt to Mexico's favorable in-quota TRQ duties under NAFTA.

As can be seen from Figure [I], U.S. exports of live swine to Mexico did increase dramatically between 1997 and 1998, growing over 250 percent. As noted above, U.S. hog prices reached record lows in 1998; high production levels combined with falling capacity levels at pork processing plants resulted in a flood of hogs on the market and dramatically lower prices. Many of these hogs found their way to Mexico. As can be seen in Figure [II], the average price per hog of U.S. exports to Mexico fell between 1997 and 1998. More specifically, the average price of U.S. hogs above 50 kilograms shipped to Mexico fell by approximately 2.3 percent.
Figure I

U.S. Exports of Live Swine for Slaughter
(Number of Hogs)

Source: U.S. Census Bureau.

Figure II

U.S. Exports of Live Swine to Mexico
(Swine over 50 kilograms for slaughter)

Source: U.S. Census Bureau.
On February 1, 1999, SECOFI released its preliminary determination, imposing antidumping duties on U.S. hogs for slaughter designed to raise the U.S. export price to a reference price of $1.08 per kilogram, or $0.49 per pound. To compare, the U.S. Department of Agriculture projected in January 1999 that U.S. pork prices would rebound to approximately $0.27 per pound in 1998. According to the announcement by SECOFI, an investigation of market data from October 1997 through March 1998 revealed that further increase in U.S. exports at dumping level prices posed a threat to Mexican hog producers, which could cause serious deterioration of national production. SECOFI revised the dumping margin in their final determination on October 20, 1999, setting the antidumping duties at $0.351 per kilogram ($0.159 per pound), or approximately 48.13 percent.

On July 10, 2000, the U.S. government requested consultations with the Mexican government regarding the antidumping determination through the World Trade Organization. Typically, a request for consultations is the first step in the WTO dispute settlement process. The U.S. request focused on a number alleged shortcomings in the antidumping investigation, and particularly in the determination that U.S. hog imports threatened the Mexican industry with material injury. For example, the United States claimed that Mexico failed to evaluate all relevant economic factors that could impact the health of the domestic industry. Moreover, Mexico failed to conduct an objective examination of the impact of imports on domestic producers and prove that material injury would occur unless protective action were taken as required when making the determination that there is a threat of material injury.

The United States also put forth the argument that Mexico violated several aspects of the WTO antidumping agreement when it failed to provide U.S. producers with opportunities to see and prepare responses to the information used by SECOFI in its determination. According to the U.S. complaint, SECOFI failed to inform U.S. producers of the facts under consideration in their determination.

The U.S. complaint never progressed to a WTO dispute settlement panel. Instead, Mexico’s Secretariat of Economy (SE), the successor to SECOFI, announced on May 23, 2003 that it would voluntarily eliminate the antidumping duties. Specifically, SE noted that it had the right to annually review the need to continue the imposition of antidumping duties. Based on import data from January 2000 to May 2000, the agency determined that compensatory duties were no longer needed.

It is unclear to what extent Mexico’s imposition of antidumping duties on live swine from the United States between February 1, 1999 and May 23, 2003 impacted U.S. exports. As can be seen from Figure [I], U.S. exports of swine actually continued to increase through 2001, increasing 81 percent between 1998 and 2001. However, exports plummeted in 2002, falling 25.7 percent.
The Second Antidumping Case: Pork Products

On January 7, 2003, Mexico’s Secretariat of Economy (SE), the successor of SECOFI, announced that it was initiating an antidumping investigation against U.S. pork meat in response to a petition submitted by the CMP. The petition alleged that U.S. pork meat exporters, particularly those exporting hams and pork shoulders, shipped products to Mexico at less than fair value between April 1, 2002 and September 30, 2002. The CMP claimed that discriminatory pricing practices resulted in lower prices for domestically-produced pork products and that increasing U.S. imports would cause increasing levels of damage to Mexican producers.

As can be seen in Figure [III], U.S. exports of pork products to Mexico actually decreased in 2002, falling 25 percent from the previous year. Moreover exports from April through September of 2002 were 31 percent less than from the same time period a year earlier. Moreover, as can be seen in Figure [II], the average unit price of U.S. pork exports to Mexico actually increased slightly between 2001 and 2002. However, the average unit price of U.S. exports in August and September of 2002, the period right before the petition was submitted, was 21 percent lower than in the same period in 2001, which may have prompted the petition.

Figure III

U.S. Exports of Pork Products

Source: U.S. Census Bureau.
In lobbying for the termination of the antidumping investigation, the National Pork Producers Council (NPPC) of the United States argued that the investigation was initiated solely as a way to compel U.S. pork producers to agree to reverse the market access provisions of NAFTA associated with Mexican pork imports. According to a NPPC press release, Mexican Foreign Secretary Ernesto Derbez stated at a conference just two days before the initiation of the antidumping investigation that the agricultural aspects of NAFTA “need to be corrected, will be corrected.”

NPPC claimed in a submission to the SE that the CMP had no standing to file the antidumping petition. The WTO’s Antidumping Agreement specifies that petitions must be filed by or on behalf of the domestic industry, defined as domestic producers of the identical product targeted in the antidumping petition. In this case, NPCC argued, CMP represented hog producers while domestic producers of the identical product were hog slaughterers or packers. NPCC also argued that the petition did not include sufficient evidence of dumping or injury to justify the initiation of an investigation.

Source: U.S. Census Bureau.

U.S. pork producers further stated that Mexico could neither prove that the domestic industry was materially injured nor threatened with material injury due to U.S. imports because of a number of key economic facts, including that the volume and market share of imports from the U.S. were not significant, the U.S. did not have the capacity to increase exports to Mexico in the future, and imports from the United States were not depressing domestic pork prices. Domestic price declines were instead a reflection of lower international prices for pork products and increased consumption of poultry. Furthermore, Mexican pork production had actually continued to grow during the investigation period; any reduction in the number of pork producers during the time period was a reflection of structural change in the industry rather than increased import competition.

On May 31, 2004, Mexico’s SE released its preliminary finding that the domestic industry had not been materially injured due to dumped imports from the United States, thus ending the investigation without the imposition of dumping duties. Specifically, SE noted in their report that although there was evidence that U.S. pork producers had been exporting pork products to Mexico at less than normal values, it was impossible to quantify objectively the damage or threat of damage to the domestic industry.

Outcome

As noted above, the Mexican government chose not to impose antidumping duties on all U.S. pork products. However, the same announcement that terminated the pork product investigation initiated a new antidumping investigation on the import of pork legs from the United States. Specifically, Mexico’s SE self-initiated an investigation to determine whether imports of pork legs from the United States were being sold at less than normal value and causing or threatening to cause injury to the domestic pork industry. In their announcement, SE stated that the market information obtained in the original antidumping investigation indicated that an additional antidumping investigation on pork legs needed to be undertaken.

Under the WTO Antidumping Agreement, countries may self-initiate investigations under “special circumstances” if they have sufficient evidence of dumping, injury, and a causal link between the two to justify the initiation. SE argued that the agency needed to initiate the investigation due to the fragmentation of the Mexican pork industry, rapid growth of U.S. ham imports, and evidence that the U.S. hams were being dumped in the Mexican market.

Although the investigation is still ongoing, the U.S. National Pork Producers Council has vigorously lobbied for the immediate termination of the new investigation. NPPC argues that SE self-initiated the investigation in order to avoid the fact that CMP had no standing.

144 U.S. producers noted that Canada and Chile had increased their share of the Mexican market faster than the United States in recent years.
145 The WTO Antidumping Agreement specifies that all antidumping investigations should be concluded within one year, or at the latest 18 months, following their initiation. In this case, Mexico did not release their preliminary finding for 15 months.
to file the initial antidumping petition. Moreover, the association claims that SE is investigating injury to hog producers, while the petition actually calls for an investigation of injury to Mexican hog slaughterers and packers. Most importantly, NPPC alleges that SE did not have sufficient evidence to justify the initiation of the investigation.

Because antidumping duties have yet to be imposed, the investigation has not appeared to have impacted U.S. exports as of yet. U.S. pork exports increased 60 percent between 2003 and 2004.

References


Poultry

Introduction

In 1999, the largest South African poultry producer filed an antidumping petition claiming that U.S. producers were selling frozen chicken leg quarters, thighs and backs at less than normal value in the South African market, and these imports were causing material injury to the domestic industry. The agency charged with administering South Africa’s antidumping law, the Board on Tariffs and Trade (BTT), found on July 5, 1999 that dumped U.S. chicken imports were injuring South African poultry producers. Although the U.S. poultry industry and a group of U.S. senators urged the United States to challenge the finding at the World Trade Organization (WTO), no action was taken and South Africa has imposed antidumping duties on U.S. chicken parts since the 1999 decision. As a result, U.S. exports of chicken to South Africa plummeted to virtually nothing. In September of 2005, South Africa began a five-year review of the antidumping duties to determine whether the imposition of the duties is still warranted.

In contrast, U.S. poultry efforts to use antidumping legislation to protect themselves from unfair imports have been unsuccessful. In December of 2003, the largest producer of kosher chicken in the United States filed an antidumping petition claiming that dumped imports from Canada were causing injury to the kosher chicken industry. The U.S. International Trade Commission (ITC), the agency charged with determining whether imports have caused injury to the domestic industry, ruled in January of 2004 that there was no evidence that imports from Canada were injuring domestic producers, thus terminating the antidumping investigation without the imposition of duties.

Background: The U.S. Poultry Industry

The United States is the world’s largest producer of poultry in the world. In 2003, the United States produced 38.5 billion pounds of poultry valued at $23.3 billion; of this quantity 84 percent consisted of broiler meat, 15 percent was turkey meat, and 1 percent was other chicken meat.\[146\] The leading producers of broilers in the country include Georgia, Arkansas, Alabama, Mississippi and North Carolina. According to the U.S. Census of Agriculture, there were slightly over 32,000 farms producing broilers in the United States in 2002, up from 27,737 farms in 1997. Poultry production is a highly concentrated industry; three percent of top poultry producers, or those with sales in excess of $1 million, accounted for one-third of total U.S. egg and poultry production.

Most U.S. broiler production is done under contract with a broiler processor. The broiler processor typically delivers chicks from company-owned hatcheries to the grower. The processor also provides the grower with feed and veterinary medicines. The grower, in turn, supplies a growout house to raise the chicks with all the necessary heating, cooling, feeding, and watering systems, as well as the labor needed in growing the birds. The

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146 A broiler is any young chicken suitable for roasting or broiling.
grower typically cares for the chick for six weeks until it becomes a broiler chicken ready for slaughter. The processor then schedules the transportation of the birds from the farm to the processing plant. At the processing plant, broilers are slaughtered, de-feathered, and eviscerated. In some cases, the chicken is further processed by cutting the chicken into parts and freezing or processing in some way prior to shipment.

U.S. consumption of chicken has increased dramatically in recent years, reaching 81.5 pounds per person in 2002, due in part to consumers’ growing preference for low-fat and healthy food alternatives. In 1992, chicken consumption surpassed beef consumption, the former top meat choice in the United States, for the first time. Most of this consumption is met through domestic production; the United States imports only small amounts of broiler products. In 2003, imports amounted to 12 million pounds, or less than 1 percent of domestic production. As can be seen in Figure [I], Canada accounts for virtually all U.S. imports of chicken.

![Figure I](image.png)

**Figure I**

U.S. Imports of Chicken

<table>
<thead>
<tr>
<th>Year</th>
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<th>Rest of the World</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>2004</td>
<td>6.0</td>
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</tr>
</tbody>
</table>

Source: U.S. Census Bureau

In the 1990s, the U.S. market for chicken became increasingly segmented, with virtually all white meat remaining in the United States and most dark meat exported. The United States is the world's largest exporter of broilers; broiler exports totaled 4.93 billion pounds, or approximately 15 percent of total production, valued at $1.5 billion in 2003. As illustrated in Figure [II], in 2004 the leading foreign destinations for U.S. poultry included Russia, Hong Kong, the Ukraine, Turkey and Mexico. Demand for U.S. broiler products has fluctuated over the last several years due to changing economic conditions and currency exchange rates in major exporting countries. The imposition of
antidumping duties has also retarded U.S. poultry exports, albeit to the relatively small South African market.

Figure II

U.S. Exports of Chicken

Source: U.S. Census Bureau.

U.S. Exports to South Africa

On September 22, 1999, Rainbow Farms, Ltd., the largest poultry producer in South Africa, filed an antidumping petition claiming that U.S. producers were selling chicken leg quarters, thighs and backs at less than normal value, and these imports were causing material injury to the South African Customs Union (SACU) poultry industry. The petition had the full support of the Southern African Poultry Association. On November 5, 1999, the South Africa Board on Tariffs and Trade (BTT), the agency charged with investigating dumping complaints, determined there was enough evidence to launch an official investigation.

In 1998, South Africa was the eleventh largest destination for U.S. exports of poultry; exports reached 69.3 million pounds valued at $23.8 million dollars. As illustrated in Figure [III], U.S. poultry exports to South Africa decreased 28 percent between 1997 and

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147 SACU includes South Africa, Botswana, Lesotho, Namibia, and Swaziland.
Figure III

U.S. Exports of Chicken to South Africa

Source: U.S. Census Bureau.

Figure IV

U.S. Exports of Chicken to South Africa
Average Unit Price

Source: U.S. Census Bureau.
1998, due in part to economic conditions in South Africa. Nevertheless, chicken remained the leading export of the United States to South Africa. The United States increased their share of the South African market by 1 percent between 1996/1997 and 1998/1999, while South African domestic producers lost four percent of their market share. Figure [IV] illustrates the average unit price of chicken shipped from the United States to South Africa, which consistently fell in the period leading up to the antidumping petition, falling 12.8 percent between 1996 and 1997, and an additional 2.3 percent between 1997 and 1999.

On July 5, 1999, the BTT completed their preliminary investigation, finding that dumped imports of chicken parts from the United States were causing injury to the domestic poultry industry in South Africa. The decision paved the way for the temporary collection of antidumping duties. On December 27, 2000, the BTT revised the antidumping margins in their final determination. The final antidumping duties ranged from 2.24 to 6.96 Rand per kilogram (approximately $0.37 to $1.13 per kilogram in average 1999 exchange rates). Firm specific dumping duties are listed in Table [1]. In comparison, the average unit price of U.S. poultry imports in 1999 was 2.24 Rand per kilogram. Note that the BTT opted not to impose dumping duties on frozen whole chickens, but did impose duties on chicken parts that had been processed by adding certain preservatives or flavoring to prevent U.S. firms from circumventing the antidumping order.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Duty (Rand/Kilogram)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tyson Foods Incorporated</td>
<td>2.24</td>
</tr>
<tr>
<td>Gold Kist Incorporated</td>
<td>2.45</td>
</tr>
<tr>
<td>All Others</td>
<td>6.96</td>
</tr>
</tbody>
</table>

Table 1
Antidumping Duties Imposed by South Africa on U.S. Poultry
(Frozen Bone-In Cuts)

In order to calculate the dumping margin, the BTT calculated the difference between the U.S. export price and the “normal value” of chicken over the investigation period. Under South African antidumping law, normal value is typically calculated as the price set by the producers under investigation in their domestic market. However, if the BTT cannot calculate the normal value in this way because of a “particular market situation,” normal value may alternatively be calculated as a constructed value based on the producers’ cost of production.

The BTT determined over the course of their investigation that the United States is characterized by an unusual market situation in which consumers have a strong preference for white over dark chicken meat. U.S. consumers are willing to pay a premium for white meat; the surplus dark meat is often shipped overseas at artificially low prices. South African consumers, in contrast, typically prefer dark meat over white

148 The investigation period was defined as August 1, 1998 through July 31, 1999.
meat. Because of this particular market situation, BTT chose to calculate normal value using a constructed value. Moreover, the BTT found that U.S. poultry producers allocated costs between the production of white and dark meat according to the product’s contribution towards sales revenue, and not through the usual accumulation of costs principles. Specifically, the BTT stated that “the costing policy has the effect that actual production costs are not reasonably reflected, although this costing policy may generally be consistent with acceptable international accounting practices.” The BTT therefore allocated costs according to their own methodology.

Typically the “all others” antidumping rate, or the antidumping margins paid by importers/producers that did not take part in the investigation, is a weighted average of the firm-specific dumping margins. In this case, the BTT used the highest normal value of the firms taking part in the investigation. The export price was calculated as the average unit price (value of imports divided by quantity of imports) by all U.S. firms excluding those taking part in the investigation, Tyson and Gold Kist.

In their determination of whether the dumped imports caused injury to the domestic injury, BTT noted that although imports of whole chickens from the United States had decreased over the investigation period, imports of frozen chicken pieces increased 103 percent between 1996 and 1999. While U.S. producers claimed that the South African import figures were incorrect, South African producers argued that the discrepancy between U.S. and South African trade statistics was due to the fact that U.S. exports to Russia were often rerouted to South Africa. The BTT also found that U.S. imports were preventing South African producers from raising prices, despite the fact that domestic poultry prices increased 12 percent between the 1995/1996 and 1998/1999 marketing years. The BTT concluded that dumped imports from the United States contributed to lower profit margins and lower employment in the domestic poultry industry; the dumping duties listed above were imposed to remedy this injury.

The USA Poultry and Egg Export Council (Council) urged the United States to challenge the South African finding at the World Trade Organization. U.S. producers argued that the BTT decision did not recognize value-based, cost-allocation methods and failed to find a reduction in prices or production in the domestic market due to U.S. imports. In August of 2001, a group of 21 U.S. senators wrote a letter to the U.S. Trade Representative, urging action in order to discourage other countries from following in South Africa’s footsteps. According to press reports, South Africa’s ruling encouraged producers in countries like Venezuela, Mexico, Canada and Great Britain to protest the alleged dumping of chicken parts by U.S. producers on overseas markets. According to the South Africa Poultry Association general manager, producers from these countries disrupted an international meeting of egg producers to protest international pricing practices by U.S. firms shortly after the final South Africa ruling. The U.S. government opted not to take any WTO action.

149 BTT statistics also showed that domestic production increased during this time period by approximately 6 percent.
The Council reported that chicken prices in the South African market rose 30 percent between July and December of 2000 following the preliminary antidumping ruling. In the first nine months of 2001 alone, U.S. exports of poultry to South Africa fell 77 percent from $9.3 million in 2000 to only $2.2 million in 2001. As can be seen in Figure [III], U.S. exports have never recovered since the imposition of the high dumping duties. In 2004, the U.S. exported 548,700 pounds to chicken to South Africa compared to 49.4 million pounds in 1999. However, South Africa continued to import large quantities of chicken, primarily from Brazil and China. Total South African broiler imports increased 67 percent between 2001 and 2003, from 64,000 tons to 125,000 tons.

On September 9, 2005, South Africa’s Department of Trade and Industry, the successor of BTT, announced that it was initiating a five-year “sunset” review of the chicken antidumping duties as required under the World Trade Organization. The review will determine whether dumping duties are still needed to prevent continued dumping by U.S. producers. The review is ongoing.

U.S. Imports from Canada

On December 1, 2003, Empire Kosher Poultry, Inc. filed an antidumping petition claiming that Canadian producers of ready-to-cook kosher chicken were dumping their product in the U.S. market, and these imports were causing material injury to the domestic poultry industry. U.S. antidumping law requires that petitions be filed by or on behalf of the domestic industry, defined as firms representing at least 25 percent of domestic production or 50 percent of the production of those firms that both support and oppose the petition. The DOC defined the industry as producers of ready-to-cook kosher chicken; based on this definition of the industry, the DOC determined that the petitioner and an additional U.S. producer that also indicated its support for the petition had standing to file the antidumping petition. Therefore, the DOC initiated an official antidumping investigation on December 31, 2003.

Kosher chicken is chicken that has been certified as Kosher, or fulfills the requirements of Jewish dietary laws. At the time of the investigation, U.S. producers accounted for 90 percent of the ready-to-eat kosher chicken market, while imports from Canada accounted for the remainder of the market. There were five U.S. producers of kosher chicken at the time of investigation located in Pennsylvania, Iowa, and New Jersey; two Canadian firms produced kosher chicken at this time.

As illustrated in Figure [I], Canada accounts for nearly all U.S. imports of chicken; imports of chicken as a whole increased significantly in the period leading up the investigation, growing 57 percent between 2000 and 2002 before falling slightly in 2003.

152 Ibid.
153 This determination also relied on the fact that the DOC received no information that any domestic producer of ready-to-eat Kosher chicken opposed the petition.
154 The process for killing, cleaning, inspecting and chilling kosher chicken is different than non-kosher chicken; specially trained religious Jews must perform the slaughter of kosher chicken.
As illustrated in Figure [IV], the unit price of Canadian imports of all poultry was fairly consistent; the annual average unit price fell 3 percent between 2001 and 2002, but increased nearly 15 percent in 2003. The ITC investigation revealed that imports of kosher chicken from Canada, as well as Canada’s market share of the U.S. kosher chicken market, increased each year between 2000 and 2003. The investigation also revealed that prices for kosher chicken fluctuated throughout the period, with no clear trends, although Canadian imports were typically priced above the competing U.S. products.

Figure IV

U.S. Imports of Chicken from Canada
(Average Unit Price)

Source: U.S. Census Bureau.

On January 14, 2004, the ITC made its preliminary determination that there was no evidence that imports from Canada were causing material injury to the domestic poultry industry, thus terminating the investigation without the imposition of dumping duties. In their explanation of the determination, the ITC noted that Canadian imports did not have a significant market share and did not seem to depress U.S. prices, particularly as Canadian prices were typically higher than U.S. prices. In fact, the Commission noted that there was little evidence of a strong correlation between U.S. and Canadian prices for kosher chicken. Moreover, the U.S. industry increased shipments between 2000 and 2001 and again in 2003 after a 2002 decline in production. The industry’s gross profit was also showing signs of improvement in 2003 despite the increase in Canadian imports.
The ITC further ruled that there was little evidence that imports from Canada would increase significantly in the future.155

There have not yet been any published, negative consequences from the ITC decision to terminate the antidumping investigation. Although statistics on U.S. imports of kosher chicken are not readily available, imports of chicken from Canada increased significantly between 2003 and 2004, growing 32 percent over the course of the year. Empire Kosher Poultry continues to serve about half of the U.S. market for kosher chicken.

References


155 One commissioner dissented from the ruling, stating that the price data collected during the preliminary investigation could be unreliable because many of the U.S. importers of kosher chicken from Canada were also distributors of domestically-produced kosher chicken. The commissioner also found the volume of, and increase in, imports from Canada to be significant, unlike the majority of commissioners. Thus, these imports could have caused material injury to the domestic industry.
Raspberries

Introduction

In May 2001, the IQF Red Raspberries Fair Trade Committee (IQF Committee), Washington, DC, filed an antidumping petition, claiming that producers in Chile were selling individually quick frozen (IQF) red raspberries in the United States at less than fair value, and these imports were causing material injury or threatening to cause material injury to the domestic industry. The U.S. International Trade Commission (ITC) determined that the raspberry industry in the United States was materially injured by reason of imports from Chile, which were found by the U.S. Department of Commerce (DOC) to be sold in the United States at less than fair value. An antidumping order has been imposed on imports of IQF raspberries from Chile since early July 2002.

Background: The U.S. Raspberry Market

The red raspberry is the dominant type of raspberry grown commercially, and most of the U.S. raspberries are grown in Washington, Oregon, and California. There are two primary varieties of red raspberry: the Heritage and the Meeker. The Heritage is grown in Chile and generally has a higher brix value, whereas the Meeker, grown in the United States, generally has better appearance and is larger and darker than the Heritage.\(^{156}\) U.S. IQF-quality fresh red raspberries are harvested from late June through early August, whereas Chile has two harvests, with the first occurring between November and January and the second occurring between March and May.

U.S. demand for IQF red raspberries has been relatively stable since 1998. IQF red raspberries are consumed both by downstream food producers that use them as an ingredient in processed foods and consumer and institutions that purchase IQF red raspberries at the retail level. Demand is mostly met by domestic production of IQF red raspberries, as well as imports from Chile.

Red raspberries are sold either in the fresh market or to processors who freeze and pack them. The fresh market accounted for approximately 5.7 percent of U.S. production during 1999-2001, and the various frozen pack forms accounted for the remaining 94.3 percent. Given the data provided by the grower and growers/processors in the preliminary phase, the ITC found that 66 percent of all IQF-quality raspberries grown by these growers were used to produce IQF red raspberries in 2000, and 46.6 percent in 2001.

IQF red raspberries are processed by freezing IQF-quality fresh red raspberries either in a liquid nitrogen bath or mechanically, i.e. running the berries through a “tunnel” over cold air. Once IQF red raspberries are in cold storage, they may be stored for indefinite periods of time and shipped year round. However, the cost of cold storage can be

\(^{156}\) Brix is the standard for measuring the sugar content of a solution at a given temperature.
sufficiently high to discourage processors from holding product for extensive lengths of time. The supply of IQF red raspberries from Chile reduces the frozen storage time, and thereby reduces the cost of cold storage. Consumers typically use IQF red raspberries in baked goods, yogurt, fruit drinks, or in place of fresh raspberries after defrosting.

Chile’s raspberry production has increased significantly during the last few years, reaching a production level of close to 37,000 metric tons (MT), up from 15,000 MT ten years earlier. The majority of its raspberries are exported to the U.S. market in both fresh and frozen sales. As can be seen in Figure [1], although imports of raspberries from Chile decreased between 1999 and 2001, the volume remained significant both in absolute terms and relative to apparent U.S. consumption. When measured as a share of total U.S. shipments, imports from Chile increased 10.3 percent from 1999 to 2001.

![Figure 1](image.png)

U.S. Imports of Raspberries

The overall average unit import price of Chilean raspberries fell during the investigation period. As Figure [2] shows, the calculated import price of raspberries from Chile dropped quickly from 2000 to 2001. The subject imports from Chile were consistently priced lower than the domestic product over the period examined, with the lowest price occurring in 2001. As the domestic and Chilean IQF raspberries were highly substitutable and competed almost exclusively on the basis of price, U.S. producers significantly reduced prices to hold on to market share. The price received by U.S. growers of IQF red raspberries fell by 36 percent between 1999 and 2001, decreasing from $0.80 per pound in 1999 to $0.50 per pound in 2000 and increasing slightly to $0.51 per pound in 2001.
Due to lower average unit sales revenue and volume and lack of a corresponding decline in operating expenses, the domestic raspberry industry experienced an operating loss of $1,392,000 in 2000, from a $948,000 operating income profit in 1999. As the operating expenses decreased in the following year, the overall operating loss was reduced to $552,000 in 2001, although net losses remained throughout the period. Consolidated net sales, when measured in terms of total revenue, declined 20 percent from $25.6 million in 1999 to $20.4 million in 2001. Further, the domestic industry’s capacity utilization decreased from 87.2 percent in 1999 to 79.8 percent in 2001, and over 50 percent of domestic shipment quantities were held in inventory throughout the period.

The Antidumping Petition

On May 31, 2001, the IQF Red Raspberries Fair Trade Committee, representing growers and processors of IQF red raspberries in Oregon and Washington, filed an antidumping petition with the ITC and DOC, claiming that producers in Chile were selling IQF red raspberries in the United States at less than fair value, and the domestic industry was materially injured or threatened with material injury by these imports. The specific product targeted in the petition was individually quick frozen red raspberries (IQF), whole or broken, with or without the addition of sugar or syrup, regardless of
variety, grade, size, horticultural method grown (e.g., organic or not), the size of the container in which packed, or method of packing. The scope of the investigation excluded fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concentrate).

The domestic industry is defined as “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.” Thereby, the ITC defined the domestic industry in this investigation as all domestic processors, grower/processors, and growers of IQF red raspberries.

To determine whether sales of IQF red raspberries from Chile to the United States were made at less than fair value, the DOC compared export prices (EP) to the average normal value (NV) over the period of investigation. Although normal value is typically defined as the price set by producers in the domestic, in this case Chilean, market, the DOC determined there was an insufficient volume of sales in the domestic market to serve as a basis for normal value; therefore, two of three respondents reported their sales to the United Kingdom and one reported its sales to France. Normal value was calculated based on the price of Chilean raspberries in these comparable third markets. In addition, some sales were excluded from the calculation of NV because they failed the Cost-of-Production (COP) test. In other words, sales occurring below cost in substantial quantities are considered outside the normal course of trade, and thus excluded from the normal value calculations. When comparable-market sales could not be found, NV was determined based on Constructed Value (CV), or based on the cost of production.

On May 21, 2002, the DOC released its Notice of Final Determination that IQF red raspberries from Chile being sold in the United States at less than fair value. The amended final weighted-average dumping margins (in percent \textit{ad valorem}) for companies subject to this investigation are presented in Table I.

<table>
<thead>
<tr>
<th>Company</th>
<th>Dumping margins (percent \textit{ad valorem})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Fruticola</td>
<td>0.50 (de minimis)</td>
</tr>
<tr>
<td>Exportadora Frucol</td>
<td>0.00</td>
</tr>
<tr>
<td>Fruticola Olmue</td>
<td>6.33</td>
</tr>
<tr>
<td>All others</td>
<td>6.33</td>
</tr>
</tbody>
</table>

The Case Outcome

On June 20, 2002, the ITC determined by a vote of 4-1 that the domestic industry producing IQF raspberries was materially injured or threatened with material injury by reason of imports from Chile. The profit loss in the domestic industry during this period resulted from a significant and steady volume of low-priced imports from Chile, which
depressed U.S. prices. These imports forced the domestic industry to hold large quantities of merchandise in storage, thereby compounding further depressing the price.

“We are very pleased with the ITC’s affirmative determination,” said Henry Bierlink, Executive Director of the Washington Red Raspberry Commission. “The ITC’s determination recognizes that domestic producers and workers have suffered tremendously because of unfairly low-priced imports from Chile. We are confident that the antidumping order will prevent future surges of dumped imports from Chile that depress market prices and prevent U.S. producers from earning a fair return on their labor and investment. We intend to remain vigilant and take all necessary steps in the future to ensure a level playing field for U.S. raspberry growers and processors.”

Since 2002, an antidumping surcharge has been applied to frozen raspberries exported from Chile to the United States. However, the U.S. has remained the main export market for both fresh and frozen raspberries. Although imports of raspberries from Chile decreased between 1999 and 2001, they continued to grow as soon as the investigation was over, which can be seen in Figure [1]. With the imposition of the dumping duties, the average unit import price has gradually increased, from $1.55 per kilogram in 2001 and 2002 to $1.61 in 2003, then to $1.81 in 2004, as illustrated in Figure [2].

References


Rice

Introduction

In October of 1999, the Mexican Rice Council filed an antidumping petition claiming that U.S. producers were exporting long grain, milled white rice at below normal values, and these exports were causing damage to Mexican rice producers and millers. After a preliminary investigation into the complaint, the agency charged with administering Mexican antidumping law, the Secretariat of Commerce and Industrial Development (SECOFI) initiated a full antidumping investigation over one year later in December of 2000; SECOFI’s predecessor, the Secretariat of the Economy (SE), made a final determination on June 5, 2002 that antidumping duties should be imposed on imports of rice from the United States. The United States challenged the findings at the World Trade Organization. Although a WTO dispute settlement panel found in favor of the United States in a June 2005 ruling, the case is still under appeal thus antidumping duties continue to be imposed upon U.S. rice exports to Mexico.

Background: North American Rice Market

In 2000, the value of cash receipts from the sale of U.S.-produced rice topped $800 million, making rice one of the top 30 agriculture products and the 8th highest field crop produced in the United States in terms of value. All rice in the United States is grown in flooded fields, thus production tends to be located in areas with an abundant and cheap supply of water and certain types of soil. Approximately 80 percent of rice acreage is located in the southern United States in Arkansas, Louisiana, Texas, Mississippi, and Missouri. The remaining 20 percent is located in northern California. There are currently 15,000 growers of rice in the United States.

There are predominantly three types of rice grown in the United States: southern long grain, southern medium grain and California medium grain rice. However, there are thousands of different varieties of rice, and the United States also produces some specialty and aromatic varieties. As can be seen from Figure [1], rice production generally increased during the 1990s, reaching recording highs in 1999. However, in 2000 U.S. rice plantings plummeted due to expectations of low prices, as well as poor growing conditions including drought, heat and saltwater intrusion in the South. Production has since increased, although the average price continues to fall.

Planting of rice in the Southeast begins in spring. Once the rice plants emerge, the field is flooded with water. Water is kept on the growing field until shortly before harvest, when it is drained. Rice grows to maturity in 100 to 120 days, thus in the midsummer or early fall the rice is harvested. After the rice is harvested, it is dried and then sold to a rice mill. Millers shell the rice by removing the inedible hull surrounding the grain. Although the rice may be sold in this form, known as brown rice, millers also polish the
rice to produce white rice. In total, the rice milling industry, which consists of 56 firms, was worth approximately $1.7 billion in 2001. The industry is highly concentrated, with four firms accounting for over half of total U.S. production in 1997.

Figure I
U.S. Production of Long Grain Rice

Per capita rice consumption in the United States has more than doubled since the late 1970s, and in 2002 reached 26.3 pounds per person. U.S. produced rice accounts for nearly 90 percent of domestic consumption. Approximately 60 percent of U.S. rice consumption is in the form of table rice. An additional 25 percent is consumed in the industrial market or as processed food, such as rice flour, with the remaining 15 percent used in the production of beer.

Historically, over half of all U.S. rice production has been exported; U.S. produced rice accounts for over 10 percent of all internationally traded rice, making it one of the top five rice exporting countries in the world. Leading markets for U.S. produced rice include Mexico, Japan, the European Union, and countries within Central America; U.S. rice is exported to over 100 countries.

158 Some millers may also “parboil” the rice, or soak the rice in pressurized water prior to milling in order to help retain the nutrients from polished rice. However, parboiled grains take longer to cook.
Figure II

U.S. Exports of Long Grain Rice

Source: U.S. Census Bureau

Figure III

U.S. Exports of Rice to Mexico
Average Unit Export Price

Source: U.S. Census Bureau
In contrast to the United States, Mexico has two growing seasons for rice—a spring/summer and a fall/winter season. However, nearly 90 percent of all production takes place in the spring/summer season. As a result, most rice milling in Mexico occurs between October and December of each year. On average, imports accounted for 45 percent of total Mexican rice consumption between 1989 and 1998. Most of these imports occurred in Mexico’s off-season, between March and August.\textsuperscript{159}

Although nearly 90 percent of U.S. rice exports to Mexico consist of non-milled rice, in 2000 Mexico accounted for 2.9 percent of total U.S. exports of long-grain white rice, after growing nearly 50 percent between 1999 and 2000 and 17 percent between 1998 and 1999. Between 1998 and 2000, the average unit price of long grain rice exported to Mexico fell 12.7 percent. These statistics are illustrated in Figures [II] and [III].

The Antidumping Case

In October 1999, the Mexican Rice Council (CMA), an association representing Mexican rice producers and millers, filed an antidumping petition alleging that the United States was selling long grain white rice in Mexico at a less than normal value, thus causing damage to the Mexican industry.

On December 11, 2000 SECOFI completed a cursory review, finding that there were some indications of price discrimination. Moreover, SECOFI found that the price discrimination allowed U.S. exporters to decrease the price of long grain white rice between March and August of 1999, and increase the volume of exports.\textsuperscript{160} The combination of these two factors caused domestic rice prices in Mexico to fall, thus damaging the domestic industry. With this finding, SECOFI launched a full antidumping investigation, giving interested parties 30 days to respond to SECOFI questionnaires regarding the complaint.

The petition filed by the Mexican Rice Council listed only two U.S. exporters, Producers Rice and Riceland Food, although the petition later discussed a third company, the Rice Company. SECOFI sent questionnaires only to the two exporters listed in the original petition. However, two additional exporters, Rice Company and Farmers Rice Milling Company, requested questionnaires from SECOFI.

Mexico’s Secretariat of the Economy (SE), SECOFI’s successor agency, published a preliminary determination on July 18, 2001. In the preliminary determination, the agency found there was no evidence of injury to the domestic industry and that any industry was due to long term structural problems in the industry such as low profit margins and high levels of short-term debt, as well as a surge in imports of low-priced rice from Argentina. Moreover, SE found that none of the four companies had dumped long grain white rice into the U.S. market. However, this finding was based in part on Producers Rice contention that they had no exports to Mexico during the period of investigation. SE

\textsuperscript{159} USTR (2004).
\textsuperscript{160} Note that this six month period of investigation is the minimum allowed for under the World Trade Organization (WTO) Antidumping Agreement.
deemed Producers Rice an “uncooperative party” based on this response, and assigned the firm a preliminary antidumping duty based on “adverse facts available,” or the dumping margin alleged in the original petition, of 10.18 percent. SE further assigned this margin to all other U.S. exporters not explicitly investigated.

On June 5, 2002, published the final results of the antidumping review, imposing the antidumping duties listed in Table [1]. In their final determination, SE found that all but two U.S. exporters were dumping, and that imports from these firms were causing injury to the domestic industry thus reversing many of their determinations from the preliminary investigation. U.S. rice millers and producers protested the finding, and immediately began to pressure the U.S. government to remedy the situation.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Antidumping Duty</th>
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<tr>
<td>Farmers Rice Milling Company</td>
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<tr>
<td>Riceland Foods, Inc.</td>
<td>0.0</td>
</tr>
<tr>
<td>The Rice Company</td>
<td>3.93</td>
</tr>
<tr>
<td>All Others</td>
<td>10.18</td>
</tr>
</tbody>
</table>

Table 1
Mexican Antidumping Duties on U.S. Long Grain White Rice

Case Outcome

On June 16, 2003, the United States launched a formal appeal of the decision with the World Trade Organization. When consultations between Mexico and the United States failed to resolve the numerous issues the United States had with Mexico’s use of antidumping regulations, a formal dispute settlement panel was launched.

The U.S. complaint focused on a number of issues. First, the U.S. claimed that the lengthy period of time between the period of investigation used to determine both injury and dumping and the antidumping determination violated the WTO’s antidumping agreement. Moreover, based on the original petition SE only utilized data from March to August of each year to determine whether the domestic industry was suffering injury. As noted above, this is typically a period of little domestic production and a high level of imports due to Mexico’s growing seasons.

The United States also objected to the technical imposition of dumping margins against exporters found innocent of dumping. Under the WTO Antidumping Agreement, countries agree that an investigation will be terminated as soon as a firm is found not to be dumping. However, although two companies were assigned an antidumping duty of zero percent in the rice investigation, the case against these firms was not terminated. In other words, although the companies pay zero antidumping duties they continue to be subject to future administrative review.

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161 Nearly three years separated the period of investigation and the final determination,
The final and perhaps most egregious measure included in the U.S. complaint involved the imposition of the “adverse facts available” antidumping duty on all imports from companies not specifically investigated. Although the WTO agreement does allow for an “all others” rate to be imposed upon firms not specifically investigated, this rate is typically calculated as the import-weighted average of the margins assigned to firms found to be dumping.

On June 6, 2005, the WTO dispute settlement panel released a ruling that almost entirely sided with the United States, finding many of the methods used by Mexico in the antidumping investigation regarding long grain rice non-compliant with the WTO Antidumping Agreement. Among other things, the WTO found that Mexico improperly based its injury analysis on outdated information, and on only half of the data in collected—the data between March and August. The WTO also agreed that the antidumping investigation against Farmers Rice Milling and Riceland Foods, Inc. should have been terminated. Finally, the WTO affirmed that Mexico improperly used “adverse facts available” to set the dumping margin against Producers Rice and to calculate the all others rate.

Mexico has announced that it will appeal the WTO decision, thus the antidumping duties remain in effect to this day. Although U.S. exports of long grain white rice have fluctuated since the imposition of antidumping duties, reaching a high of $21.5 million dollars in 2004, USA Rice Federation estimates a potential increase in exports of $5 million to $25 million resulting from the removal of the anti-dumping order.162

References


162 USA Rice Federation, “Submission of the USA Rice Federation for the 2005 National Trade Estimate Report for Foreign Trade Barriers,” downloaded September 19, 2005 from http://www.usarice.com/industry/gov/pop_2005NTE.html. This estimate is based on an assessment of the country's total market demand and the U.S. rice industry's ability to supply that demand.
Salmon

Introduction
In June of 1997, the Coalition of Fair Atlantic Salmon Trade (FAST) of the United States filed an antidumping petition claiming that salmon farmers in Chile were selling farmed, fresh Atlantic salmon at less than normal value in the U.S. market and these imports were causing material injury to the domestic industry. Both the U.S. International Trade Commission (ITC) and Department of Commerce (DOC) agreed, and antidumping duties were imposed on imports of farmed Atlantic salmon from Chile between 1998 and 2003.

Background: The Farmed Atlantic Salmon Market

Fresh Atlantic salmon is sold in the United States either in whole “dressed” form or in various cuts such as fillets or steaks. In the period leading up to the antidumping petition, demand for salmon in all forms increased significantly in the United States. According to investigation reports, consumption of whole salmon rose 50.7 percent between 1994 and 1997, while consumption of cuts of salmon increased 356.1 percent during the same time period. The surge in consumption was attributed to the shift in American diets towards healthier foods, as well as the decrease in the price of salmon that coincided with the availability of farm-raised salmon.

Farming of Atlantic salmon began in the North Atlantic in the early 1970s and grew quickly; in 1998, worldwide production of farmed Atlantic salmon was 710,342 tons, over 295 times the quantity of wild salmon caught in the North Atlantic in that year. Salmon has a three-year growth/production cycle. Production begins in the fall, when Atlantic salmon typically spawn. The first 18 months of production, from egg to juvenile “smolt” occurs in fresh water. Then the smolt are then transferred to ocean sites for an additional 18 months until maturity.

In the United States, twelve firms farmed Atlantic salmon in 1997—10 of which were located in Maine with the other two located in Washington. Most Maine producers processed the salmon through the dressed stage, while the two Washington producers sold non-dressed salmon to independent processors. In addition to the producers, there were a number of small processors in both states that cut and dressed Atlantic salmon into fillets, steaks, and other cuts.

Norway and Scotland together accounted for 63 percent of total worldwide production of Atlantic salmon in 1998. Chile was the third largest producer of fresh Atlantic salmon in the world. Production of Chilean salmon first began in 1986 when Marine Harvest International, the largest salmon producer in Scotland, invested in the Chilean

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163 Dressed salmon has been bled, gutted and cleaned.
164 According to investigation reports, the commercial harvest of wild Atlantic salmon is prohibited in the United States and most other countries in order to preserve the species for sport fishery.
165 U.S. Fish and Wildlife Service.
aquaculture industry in order to take advantage of the country’s lower costs of production and different harvesting seasons. At the time of the antidumping investigation there were 49 firms farming Atlantic salmon in Chile; five firms accounted for the bulk of Chilean production.

Chile was and continues to be the leading source of Atlantic salmon in the United States. Moreover, the bulk of Chilean salmon production was exported to the United States in the period leading up to the antidumping petition; between 91.9 and 96.5 percent of all Chilean production of cuts of Atlantic salmon was shipped to the United States. As seen in Figure [1], imports from Chile surged dramatically in the period leading up to the antidumping petition. According to the investigation reports, imports of all fresh Atlantic salmon from Chile increased 35 percent between 1995 and 1996, and an additional 20 percent between 1996 and 1997. Although U.S. domestic production also increased during this time period, U.S. market shares fell significantly between 1994 and 1997.

![Figure 1: U.S. Imports of Atlantic Salmon](image)

Source: U.S. Census Bureau

Of perhaps more concern to U.S. domestic producers, the unit import price of Chilean salmon fell during the investigation period, which is illustrated in Figure [2]. Calculated

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166 Imports from Norway have been subject antidumping duties since 1991; in 1997 these duties ranged from 2.28 to 31.81 percent. The tariffs effectively eliminated U.S. imports of Norwegian salmon.
import prices of total fresh Atlantic salmon from Chile fell from $2.15 in 1995 to $1.91 in 1996 and 1997, a decrease of nearly 12 percent. This in turn put downward pressure on the price of domestically produced salmon and profitability levels, which prompted the antidumping petition. Gross profits per pound of dressed, whole salmon fell from $0.56 in 1994 to $0.22 in 1997.

According to U.S. producers, the rapid expansion of the Atlantic salmon aquaculture industry resulted in overcapacity. They claimed that in order to maintain market share and continue to grow, Chilean producers were selling at prices 40 percent below full production costs. Chilean producers argued that they were just more competitive than U.S. producers, with better weather and sea conditions, cheap and plentiful feed from Chile’s fishmeal industry, moderate labor costs, and fewer environmental regulations. Chilean producers also noted that they had invested a great deal in new production technologies and marketing in the United States.\textsuperscript{167} Regardless of the reason, Chile was selling whole, dressed salmon at prices 10 percent lower than U.S. producers, and salmon fillets at prices 25 percent lower than U.S. producers at the time of the investigation.\textsuperscript{168}

\textbf{Figure 2}

\textit{Calculated Unit Price per Kilogram Imports of Salmon from Chile}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{calculated_unit_price.png}
\caption{Calculated Unit Price per Kilogram Imports of Salmon from Chile}
\end{figure}

Source: U.S. Census Bureau

\textsuperscript{167} Friedland.
\textsuperscript{168} Rushford.
Like many antidumping petitions, the case divided U.S. firms. For example, while the two salmon producers in Washington state were members of FAST, other Washington companies sold production equipment and salmon eggs to Chilean producers and imported Chilean salmon for distribution. As a result, the Washington Fish Growers Association declined to take a position on the antidumping petition.\(^{169}\)

**The Antidumping Petition**

On June 12, 1997, the Coalition of Fair Atlantic Salmon Trade (FAST) of the United States filed an antidumping petition claiming that salmon farmers in Chile were selling farmed, fresh Atlantic salmon at less than normal value in the U.S. market, and these imports were causing (or threatening to cause) material injury to the domestic industry. The Coalition was made up of eight of the twelve U.S. salmon producers in Maine and Washington, although an additional producer joined the coalition on March 9, 1998.\(^{170}\) An official investigation was initiated by the DOC on July 10. On July 28, the ITC made a preliminary determination that there was reasonable evidence that the domestic industry was injured due to imports of farmed Atlantic salmon from Chile.

The DOC released their preliminary dumping margins on January 16, 1998, paving the way for the collection of a bond on imports of Atlantic salmon from Chile equal to the amount of the estimated dumping margins. The final revised margins, which were released on June 1, 1998, are presented in Table [1].\(^{171}\)

<table>
<thead>
<tr>
<th>Firm</th>
<th>Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aguas Claras</td>
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</tr>
<tr>
<td>Camanchaca</td>
<td>0.21</td>
</tr>
<tr>
<td>Eicosal</td>
<td>10.91</td>
</tr>
<tr>
<td>Mares Australes</td>
<td>2.24</td>
</tr>
<tr>
<td>Marine Harvest</td>
<td>1.36</td>
</tr>
<tr>
<td>All Others</td>
<td>5.19</td>
</tr>
</tbody>
</table>

To calculate the final margin, the DOC compared a weighted average adjusted export price to a weighted average “normal value.” Under U.S. law, normal value is typically based on the price at which the product is sold in the targeted country’s domestic market. However, when there are insufficient quantities of the product sold in the domestic market, the DOC may use the price sold in a third market or a constructed value based on

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\(^{169}\) Wilhelm.


\(^{171}\) The final dumping margins were higher than the preliminary margins for five of the six Chilean firms under investigation.
the cost of production. In this case, the DOC determined that Japan was the appropriate third market comparison for Mares Australes and Canada was the appropriate third market for sales of certain products by Agua Claras. Normal value was based on constructed value for all other firms.

The ITC made its final determination that the U.S. industry was materially injured or threatened with injury due to imports from Chile on July 14, 1998, paving the way for the permanent imposition of antidumping duties. Only three commissioners voted in the final determination; one commissioner found evidence of material injury, a second commissioner found evidence that the industry was threatened with material injury, while the final commissioner found no evidence of injury.

The final determination was based in large part on how the ITC defined the “domestic industry,” as this definition significantly altered the economic data taken into consideration. Throughout the investigation Chilean producers argued that whole salmon and salmon cuts should be considered different products produced by two separate industries. The Commission rejected this argument and defined the product under investigation as all fresh Atlantic salmon. However, critics argued that Commissioners then contradicted this finding by excluding U.S. salmon processors, or those who produced salmon cuts from whole salmon, from the definition of the domestic industry. The commissioner who found no evidence of material injury included processors in the definition of the domestic industry.

Although the period of investigation in antidumping petitions is typically the three years prior to initiation, in this case the ITC used four years of data in order to better understand the “growth in demand in the salmon market and the manner in which the subject imports are competing within the market.”172 Using this data, the dissenting commissioner determined that imports from Chile did not have a significant price effect on domestic prices of Atlantic salmon. In contrast, those commissioners that voted in favor of the imposition of antidumping duties found that the surge in Chilean imports of salmon did depress U.S. domestic prices.

It should be noted that FAST submitted a countervailing duty petition claiming that the domestic industry was materially injured by subsidized imports of farmed Atlantic salmon at the same time that they filed the antidumping petition. However, the DOC determined that countervailable subsidies were not being provided to Chilean salmon producers on June 9, 1998.

**Case Outcome**

Chilean producers appealed the affirmative ITC decision to the Court of International Trade shortly after the decision was released, arguing that the decision was not supported by substantial evidence. Moreover, the producers claimed that the decision was counter to U.S. law in its use of evidence, the discussion of injury causation, and the effects of the dumping margins. The Commission then filed petition for a voluntary remand, or the

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172 One Commissioner dissented and used only a three-year period of investigation. USITC (1998).
opportunity to review the decision, in order to determine whether its calculation of foreign production and capacity was in error. On July 2, 1999, the CIT granted the ITC’s motion.

In October 1999, after considering new data, the ITC voted once again that there was evidence that the domestic industry was materially injured or threatened with injury due to imports of dumped Atlantic salmon from Chile. The CIT was not satisfied that the ITC had accurately verified foreign production, capacity and shipments data.\(^{173}\) In its second remand order to the ITC, the CIT directed the ITC to either adjust 1998 production data or justify the determination that the current 1998 data was the best available. The ITC did not adjust the 1998 production data, but rather invoked a clause allowing the Commission to use the best “facts available” in making its determination in August of 2000. The CIT found the response lacking, specifically stating that the Commission failed to justify the use of “facts available.” After further justification, the CIT finally upheld the ITC’s third remand determination on January 9, 2002.

Throughout the court fight, importers of Chilean salmon continued to have to post duties in the amounts listed in Table [1]. However, the duties did not slow the growth of Chilean imports, as can be seen in Figure [1]. Moreover, prices continued to fall sporadically over the period. In 2003, production of Atlantic salmon in the United States was only 6,453 tonnes, compared to nearly 51,000 tonnes of imports from Chile; production in Maine fell significantly between 2001 and 2003 due to environmental restrictions that limited harvesting to every other year.

In June 2003, the ITC and DOC initiated a five-year “sunset” review of the dumping duties as required under the World Trade Organization. On July 25, 2003, the DOC announced its decision to revoke the dumping duties because “domestic interested parties expressed no interest in the continuation of this order.”\(^{174}\)

References


\(^{173}\) Specifically, there was some question whether one Chilean producers production was double counted in estimates of Chilean shipments, production and capacity due to consolidations in the industry.

Sugar

Introduction
In February of 1995, the Canadian Sugar Institute (CSI), a trade association comprised of all Canadian sugar refiners, filed an antidumping petition in Canada against the United States, four countries in the European Union, and Korea claiming that producers in these countries were selling refined sugar at less than normal value in the Canadian market, and these imports were causing the domestic industry material injury.175 The following year, the agencies charged with investigating Canadian antidumping petitions, Revenue Canada and the Canadian International Trade Tribunal, determined that antidumping duties should be imposed upon imports of refined sugar from all countries under investigation except Korea. Duties continue to this day.

Background: Refined Sugar in North America

The United States is among the world’s largest sugar producers, with well-developed sugarcane and sugar beet industries. Sugarcane is produced in Florida, Louisiana, Hawaii, and Texas, while sugar beets are grown in California, Minnesota, Montana and North Dakota. The total number of U.S. farms growing sugarcane and sugar beets was 5,980 in 2002, a decrease of 30.7 percent from 1997; despite the decrease in the number of farms, the average area harvested per farm and production actually increased during this time period.

Sugar cane must undergo a number of important steps before it can be sold as refined sugar. Once the raw sugarcane is harvested, it is shipped to sugar mills that are typically located near the plantations and are operated either by the plantation itself or a cooperative of sugarcane plantations. Mills run continuously from fall until spring when the last of the sugar cane is harvested.176 At the mill the raw sugar cane is washed and shredded, then placed in either crushing machines or vats of hot water to dissolve the sugar, creating cane juice. Once all the water is removed, the raw sugar is sold to either refiners or consumers. Refiners further process and separate the raw sugar into white sugar, brown sugar and molasses. In 1997 there were 12 U.S. sugar refiners, although four companies accounted for 98.7 percent of all shipments.177

In contrast, beet sugar can be processed directly into refined sugar. Factories wash and cut the root of the sugar beet plant into thin slices, which are then soaked to remove the sugar. After processing to remove impurities, the liquid is evaporated to produce a

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175 European Union countries targeted include Denmark, Germany, the Netherlands, and United Kingdom. CSI filed a countervailing subsidy petition at the same time, claiming that subsidized imports from the United States and European Union were causing material injury to the domestic industry; however, the countervailing duty petition against the United States was terminated by Revenue Canada on July 7, 1995 and is not considered in this case study.

176 Plantations typically grow a wide variety of sugar cane that can be harvested throughout the season, although the variety depends upon the soil and climate of the particular plantation.

177 U.S. Census Bureau, “1997 Economic Census, Concentration Ratios.”
crystallized sugar product. There were eight U.S. beet sugar manufacturers in 1997; the top four firms accounted for 85 percent of production.\footnote{Ibid.}

U.S. sugar prices have been well above world prices for many years, primarily because of government price supports and import restrictions. Under the Agriculture and Food Act of 1981, the government agreed to purchase raw cane sugar and refined beet sugar for a specific price per pound if commercial prices were not high enough. These price supports are provided in the form of non-recourse loans; sugar growers can borrow money from the government with the crop as collateral, where the value of the crop collateral is the minimum price per pound.

Between October 1, 1990 and December 31, 1994, Canada faced no prohibitive duties for its exports of refined sugar to the United States under the U.S.-Canada Free Trade Agreement. Since January 1, 1995, all U.S. imports of both raw and refined sugar occur under a tariff-rate quota (TRQ)—a two-tiered tariff in which a low tariff is charged for those imports within the quota and a much higher tariff is charged for any imports that occur outside of the quota. For example, in 2004 refined sugar imported within the quota paid an approximate tariff of $0.0366 per kilogram, while those imported outside of the quota paid $0.3574 per kilogram.\footnote{Actual sugar tariffs are a function of its raw sugar content, as measured by a polarimetric test. The tariff values reported here are for pure raw sugar.} Although the refined sugar TRQ, which was 43,000 metric tons raw value (MTRV) in 2005, is available to all importers on a first-come, first serve basis, Canadian producers are guaranteed 10,300 metric tons of the quota under the North American Free Trade Agreement (NAFTA). As a result of both the price support program and import restrictions, the U.S. price for sugar was more than double the world price in 1995.

U.S. import restrictions on raw sugar, which raise the price of raw sugar in the United States, reduce the competitiveness of U.S. sugar refiners. As a result, the U.S. Department of Agriculture (USDA) administers two re-export programs. The Refined Sugar Re-Export Program allows refiners to import world-priced sugar for refining and export the refined sugar. The Sugar-Containing Product Re-Export Program allows U.S. firms to buy sugar from participating refiners for use in products that will be exported onto world markets. Imports under these two re-export programs are not subject to the TRQ described above. Virtually all U.S. refined sugar exports occur under one of these two re-export programs. As can be seen in Figure [1], prior to the Canadian antidumping petition, Canada was the leading market for U.S. exports of refined sugar in 1994, accounting for 33.1 percent of total exports. Other leading markets included Peru, Jamaica and Haiti.

In contrast to the U.S. sugar refining industry, which uses domestically grown sugarcane and sugar beets, approximately 90 percent of Canadian refined sugar is processed from imported raw cane sugar; the remainder is processed from sugar beets grown in Alberta. Not surprisingly, Canada does not operate any subsidy scheme for sugar, and sugar tariffs
are minimal. All duties are zero if raw sugar is imported by a domestic refinery for processing. There are three Canadian sugar refiners producing sugar in six plants across Canada. Canada primarily produces refined sugar to meet domestic needs, in part due to trade restrictions in other countries that limit exports. Total sugar production in Canada decreased throughout the 1980s, a trend which Canadian producers blame both on increased imports and restricted access to the U.S. market due to U.S. import restraints.

Figure 1
U.S. Exports of Sugar

Source: U.S. Census Bureau.

The size of the Canadian market increased steadily between 1990 and 1994, growing 15.5 percent. The market is divided into two segments; the industrial market consists of food processors and accounts for approximately 70 to 80 percent of the Canadian refined sugar market. The remaining 20 to 30 percent of the market consists of the retail market for granulated sugar and other sugar products. Because of the growth in Canadian demand, Canadian domestic refined sugar shipments grew 11.7 percent to 970,686 metric tons (MT) between 1990 and 1994. Imports from the United States, European Union and Korea also increased significantly during this time period, by 94.2 percent, 5.5 percent, and 160.9 percent respectively. In 1994, Canadian domestic producers had an 86.8

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180 Canadian sugar beet producers may voluntarily join an income stabilization program under which participants select a protection level for their operation then make a deposit to secure the protection level. Program payments are made when the participant’s profit margin falls below their chosen reference margin.
percent market share, compared to shares of 11.2 percent for the United States, 1.3 percent for the European Union, and 0.3 percent for Korea.

Although Canadian production of refined sugar increased in the years prior to the antidumping petition, profitability levels decreased. According to petition documents, net income before interest and taxes on a per-tonne basis fell 12 percent between 1991 and 1994, and 14 percentage points during the first nine months of fiscal year 1994-1995. As can be seen in Figure 2, the average price per kilogram of refined sugar imports from the United States fell consistently between 1991 and 1994. These conditions spurred the initiation of the antidumping petition against U.S. sugar refiners.

![Figure 2: U.S. Exports of Sugar to Canada](image)

Source: U.S. Census Bureau.

Canadian sugar refiners filed an earlier antidumping petition against the United States in 1983, but the petition was rejected the following year because the Antidumping Tribunal found that imports were not causing injury to the Canadian industry.

**The Antidumping Petition**

On February 10, 1995, the Canadian Sugar Institute filed on behalf of its three members—the entire Canadian sugar refining industry—an antidumping petition against sugar producers in the United States, Denmark, Germany, the Netherlands, United Kingdom, and Korea claiming that refined sugar from these countries was imported at a
below normal value, and these imports were causing or threatening to cause material injury to the domestic industry. Based on an initial analysis of the petition, Revenue Canada determined that there was sufficient evidence that the targeted countries were dumping on the Canadian market and injuring the domestic industry. Therefore, the Deputy Minister of National Revenue officially launched an investigation on March 17, 1995. The investigation targeted imports of white granulated sugar, in addition to liquid sugar and specialty sugars such as brown sugar. The Canadian International Trade Tribunal (CITT) made a preliminary determination that there was a “reasonable indication” that the dumping of refined sugar from the targeted countries was causing injury to the domestic industry on May 8, 1995, thus clearing the way for investigation to proceed.

Revenue Canada released its preliminary determination that imports of refined sugar from the United States, as well as the other targeted countries, were being dumped on the Canadian market on July 7, 1995, clearing the way for the collection of provisional duties on all dumped imports of refined sugar. The agency’s final determination was released on October 5, 1995; the calculated dumping margins for U.S. refiners are presented in Table 1.

Revenue Canada calculated the dumping margins by looking at the difference between the companies’ Canadian export price and the “normal value.” Typically, normal value is defined as the price set by the firm in the domestic market during the normal course of trade. Only those sales made at a positive profit are considered within the normal course of trade; in other words, sales made at a loss are excluded from the calculation of the normal value. When there are insufficient domestic sales of the product in the normal course of trade, the agency calculates normal value using a constructed value based on the aggregate cost of production of the goods. In this case, Revenue Canada used a combination of domestic sales price and constructed value to define the normal value for all U.S. firms.

<table>
<thead>
<tr>
<th>Firm</th>
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<td>Domino Sugar</td>
<td>85.0</td>
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<tr>
<td>United Sugars</td>
<td>69.0</td>
</tr>
<tr>
<td>Savannah Foods</td>
<td>78.0</td>
</tr>
<tr>
<td>Refined Sugars</td>
<td>85.0</td>
</tr>
<tr>
<td>All Other U.S. Firms</td>
<td>79.0</td>
</tr>
</tbody>
</table>

The CITT made its final determination on November 6, 1995. Although the agency found that imports from the targeted countries had not caused material injury to the domestic industry, it determined that imports from all countries but Korea were threatening to cause injury to the domestic industry, thus paving the way for the imposition of permanent antidumping duties on imports from these countries.
During the course of the investigation, the CSI argued that trade distortions in the United States and European Union resulted in a surplus of refined sugar. Exporters in these countries had targeted Canada to sell this surplus because Canada was one of the few countries without trade restrictions. CSI further argued that competition from these dumped imports reduced the domestic price for refined sugar, thus reducing profitability levels. Moreover, imports from the United States were likely to increase in the future due to higher production levels and significant idle refining capacity.

U.S. producers argued that there was no connection between imports and the decline in the Canadian industry’s profits. Instead, firms argued that lower profitability levels could be traced to increased competition from high fructose corn syrup, a substitute for refined sugar, and high debt levels. Others suggested that the antidumping petition was filed to retaliate against recent U.S. trade restrictions on Canadian refined sugar. Press reports at the time suggest that this could have been one of the motivations behind the petition. A trade advisor to the Canadian sugar industry was quoted as saying that the refiners’ hoped their trade action would put pressure on the U.S. government to relax restrictions on sugar imports from Canada.  

In their decision, the CITT noted that many statistics such as production, market share, and capacity utilization, indicated that the industry performed well in 1994 and 1995; although imports likely caused a reduction in profitability levels, the CITT found that the industry could remain viable thus imports were not causing material injury. However, the CITT also concluded that without the imposition of dumping margins on imports from the United States and the targeted European countries, the domestic industry would continue to experience lower profitability levels, lost sales, reduced production, and lost market share. This threat of material injury warranted the imposition of dumping duties against these countries.

The Case Outcome

World Trade Organization regulations require countries to review the imposition of antidumping duties every five years. On November 3, 2000, the CITT conducted its first review, reaffirming the imposition of dumping duties. In February 2005, the CITT and Canada Border Services Agency (CBSA) -- the successor to Revenue Canada--launched a second, more complete review of the antidumping duties. While CBSA made a determination on June 30, 2005 that the elimination of antidumping duties would lead to the continuation of dumping by all firms, the CITT determination is still pending.

Canadian imports of the refined sugar products subject to antidumping duties have virtually ceased since 1995 due to the high protection level. Canadian producers have increased their share of the refined sugar market from 86.8 percent in 1994 to 97.3 percent in 2004.

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Nevertheless, Canada was still a leading export market for U.S. sugar refiners in 2004, accounting for 15 percent of total exports which makes it the second largest destination of U.S. exports of refined sugar following Mexico. The original antidumping duty order excluded a number of specialty sugar products, and the 2000 order expanded the number of excluded products. The Canadian Sugar Institute reported during the 2005 investigation that most U.S. imports occurred under these exclusions. As can be seen from Figure 1, imports from the United States did begin to increase following the increase in product exclusions in 2000. However, U.S. exports to Canada are still only a fraction of their earlier levels, and remain over 130 percent lower than import levels in 1994.

References


Tomatoes

Introduction

Tomato producers are some of the few U.S. agricultural producers that have been both the target and instigator of antidumping investigations over the past ten years. The long history of antidumping-related trade restrictions on the North American tomato trade began in 1996 when a coalition of U.S. tomato producers filed an antidumping petition claiming that Mexican growers were selling tomatoes in the United States at less than normal value, and these imports were causing injury to the domestic industry. The International Trade Commission (ITC) and Department of Commerce (DOC), the agencies charged with administering U.S. antidumping law, made preliminary determinations that led to the imposition of antidumping duties on Mexican tomatoes. Shortly thereafter, the United States reached a suspension agreement with Mexican growers which lifted the antidumping duties. Under the agreement, Mexican growers agreed to sell tomatoes in the United States only at or above an agreed upon reference price. Although the suspension agreement dissolved in 2002, both parties soon agreed to renew the agreement under threat of the imposition of new antidumping duties.

Meanwhile, U.S. and Canadian tomato growers filed antidumping petitions against each other in 2001, neither of which resulted in the permanent imposition of antidumping duties. Specifically, in April of 2001 U.S. producers requested that antidumping duties be imposed on imports of greenhouse tomatoes from Canada to offset the injury caused by unfairly priced imports. Seven months later, in November of 2001, Canadian producers filed a similar petition in retaliation requesting protection from all U.S. tomato imports. The ITC determined in April of 2002 that U.S. tomato producers were not injured by imports of greenhouse tomatoes from Canada, a decision that terminated the investigation without the permanent imposition of antidumping duties. Soon thereafter, the Canadian International Trade Tribunal (CITT) made a similar determination regarding U.S. imports of tomatoes.

Background: The North American Tomato Market

The United States is the second largest producer of tomatoes in the world, following China. U.S. production reached 28.1 billion pounds of tomatoes in 2004 valued at approximately $2.1 billion. In 2002, tomatoes were grown on nearly 450,000 acres on over 19,000 farms in the United States.182

The fresh and processing tomato industries consist of two very different markets. For example, tomato varieties are bred to serve the requirements of either the fresh or processed markets, and while processing tomatoes may be machine harvested all fresh market tomatoes are hand-picked.183  Fresh-market tomato prices are higher and more

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183 Processing varieties typically have a higher percentage of soluble solids, for example.
variable than processing tomato prices due to larger production costs and the perishable nature of the product that results in greater market uncertainty. The fresh market accounted for approximately 12.8 percent of total tomato production in terms of quantity, but over 60 percent in terms of value, in 2004.

Although fresh tomatoes are grown in virtually every state in the country, twenty states have commercial-scale production. Florida and California typically account for over 70 percent of U.S. fresh tomato production, while Ohio, Pennsylvania, Virginia, and Tennessee produce smaller quantities of tomatoes for the fresh market. The most common varieties of tomatoes produced for the fresh market are the common round, roma and cherry tomatoes. Tomatoes from Florida are typically available from October through June, while those from California are available from June through November. The small amount produced in other states reach peak production between June and October.

U.S. production of fresh tomatoes has grown significantly over the past several decades, in part due to higher yields that have resulted from the adoption of new varieties of tomatoes and increased use of drip irrigation. Once planted, tomato plants take approximately 90 days to mature; they then bear fruit for four to six weeks. U.S. production primarily takes the form of “mature green” tomatoes, which are harvested prior to ripening and then ripened using ethylene gas. Fresh tomatoes are highly perishable, thus the price fluctuates dramatically based on current supply -- which in turn depends on weather conditions during the growing season. When prices are too low to justify harvesting expense, growers may abandon tomatoes on the vine. Once harvested, growers sell the tomatoes to packers that distribute the tomatoes through various marketing channels.

Approximately seven percent of U.S. fresh tomato production is exported. As can be seen in Figure [I], Canada is by far the most important market for U.S. tomatoes, accounting for 78 percent of exports in 2004. Other leading markets include Mexico, Japan, Belgium and the Netherlands. The total quantity of exports fluctuates annually, in part due to fluctuations in U.S. supply.

Annual per capita consumption of tomatoes has increased in recent years, growing 15 percent between the early 1990s and early 2000s to approximately 18 pounds per person. In fact, the tomato is now the fourth most popular fresh-market vegetable in the United States. Imports currently account for one-third of U.S. tomato consumption, up from one-fifth in the early 1990s. As can be seen in Figure [II], Mexico is by far the largest supplier of tomatoes to the United States, accounting for approximately 84 percent of total U.S. imports in 2004.

U.S. imports of Mexican tomatoes vary in size and variety throughout the year, although Mexican tomato imports peak during the winter and early spring in direct competition with Florida production. U.S. imports of winter tomatoes are primarily from the Mexican

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184 Tomatoes are one of the highest valued crops produced in Florida, accounting for one-third of the state’s vegetable cash receipts.
Figure I

U.S. Exports of Tomatoes

Source: U.S. Census Bureau.

Figure II

U.S. Imports of Tomatoes

Source: U.S. Census Bureau.
state of Sinaloa, while imports between June and November are primarily from Baja California. By the early 1990s, Mexican producers in both states had adopted many of the same technologies that have increased production yields in the United States. In contrast to the United States, Mexico produces primarily “vine ripe” tomatoes which are ripened while still on the vine. Moreover, Mexico also produces “extended shelf life” (ESL) varieties of tomato that are perceived as qualitatively different from the tomatoes produced in Florida, and have proved popular in U.S. supermarkets. Although historically common round tomatoes accounted for most Mexican tomato production, in recent years Mexico has expanded their production of other varieties including cherry and roma tomatoes.

Although the discussion above focused on field-grown tomatoes, U.S. consumption of hothouse tomatoes, those produced in greenhouses and using hydroponic techniques, has increased significantly in recent years; consumption of greenhouse tomatoes alone increased nearly 30 percent between 1998 and 2001 to 614 million pounds. Proponents of hothouse tomatoes claim that these tomatoes are physically different from field-grown tomatoes, with thinner skin, higher water content, and superior color, texture and taste. Others claim instead that there is a continuum of quality between field-grown and hothouse tomatoes – citing the difference between mature green and vine ripe tomatoes. Prices for hothouse tomatoes tend to be higher than field-grown tomatoes, although this may vary depending on market conditions. Historically, U.S. consumption of hothouse tomatoes has been met through imports from Canada, the Netherlands, and Mexico. However, U.S. production of hothouse tomatoes has expanded in recent years to take advantage of this market niche. Four U.S. firms account for the majority of greenhouse tomato productions in states including Arizona, California, Colorado, Texas and Virginia. U.S. production of greenhouse tomatoes reached 229 million pounds, or 36.2 percent of domestic consumption.

U.S. imports of tomatoes from Mexico increased dramatically between 1994 and 1996, in part due to liberalizations under the North American Free Trade Agreement (NAFTA). NAFTA created a special safeguard tariff-rate quota (TRQ) mechanism to govern the U.S.-Mexico tomato trade in 1994. Under the TRQ, U.S. imports of Mexican tomatoes within the quota were assessed the lower, preferential tariff rate, while imports in excess of the quota would have to pay the much higher most-favored nation tariff rate. The quota levels and within-quota tariffs vary by the growing season, as shown in Table 1. Under the NAFTA, the within-quota tariff was gradually eliminated over a five- or 10-year period, while the quota level increased by 3 percent per year. Mexico, which does not impose any quantitative restrictions on U.S. tomato imports, also phased out their tomato tariffs under NAFTA. U.S. tariffs on tomato imports from Canada were eliminated in 1998, although NAFTA does allow for an increase back to most-favored nation rates through 2008.

185 In contrast, Florida tomatoes are preferred for slicing in many food service operations.
186 Hydroponics is a method of growing tomatoes in nutrient solutions made up of water and fertilizer, with or without the use of an artificial soil-like medium.
Imports from Mexico may have also have grown quickly between 1994 and 1996 due to the devaluation of the Mexican peso in December 1994 that led to an economic crisis throughout 1995. Because of the devaluation, tomato production costs in Mexico fell dramatically, at least in terms of their dollar value. Moreover, the domestic price of tomatoes fell significantly in Mexico compared to U.S. prices, thereby encouraging producers to export more tomatoes to the U.S. market. U.S. producers filed their first antidumping petition in this environment.

<table>
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<tr>
<th>Product</th>
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<th>Phase-Out Period (years)</th>
<th>Initial Quota (metric tons)</th>
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</tr>
<tr>
<td>March 1 - July 14</td>
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<td>5</td>
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<tr>
<td>Sept. 1 – Nov. 14</td>
<td>4.6</td>
<td>5</td>
<td>None</td>
</tr>
<tr>
<td>Nov. 15 – Feb. 28</td>
<td>3.3</td>
<td>10</td>
<td>172,300</td>
</tr>
<tr>
<td>Cherry Tomatoes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May 1 – Nov. 30</td>
<td>3.3</td>
<td>5</td>
<td>None</td>
</tr>
<tr>
<td>Dec. 1 – April 30</td>
<td>3.3</td>
<td>Immediately</td>
<td>None</td>
</tr>
</tbody>
</table>

Antidumping and U.S.-Mexico Tomato Trade

On April 1, 1996, a coalition of U.S. tomato producer associations filed an antidumping petition claiming that Mexican producers were selling fresh tomatoes in the United States at less than normal value and these imports were causing or threatening to cause material injury to the domestic industry. The ITC made a preliminary determination on May 16, 1996 that there was “reasonable indication” that the domestic industry was either injured or threatened with injury due to imports from Mexico, thus allowing the investigation to proceed. This determination was made primarily based on evidence that increasing imports of tomatoes from Mexico were depressing U.S. tomato prices.

As noted above and seen in Figure [II], U.S. tomato imports from Mexico rose dramatically between 1994 and 1996. Between 1994 and 1995, Mexican imports increased 57.7 percent; Mexican imports rose an additional 18.9 percent in January and February of 1996 compared to a year earlier. Mexico’s share of the U.S. tomato market increased from 19.8 percent in 1994 to 30.0 percent in 1995. The average unit value of imports, as illustrated in Figure [III], fell 18 percent between 1994 and 1995, from $0.42 to $0.35 per pound, and fell an additional 32 percent in the first two months of 1996.

187 Petitioners included Florida Tomato Growers Exchange, Florida Fruit and Vegetable Association, Florida Farm Bureau Federation, South Carolina Tomato Association, Inc., Gadsden County Tomato Growers Association, Accomack County Farm Bureau, Florida Tomato Exchange, the Florida Department of Agriculture, and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers. The petition excluded tomatoes grown for processing.
compared to a year earlier. U.S. tomato prices fell during this period, leading to a loss of revenue for tomato producers, particularly in Florida.

Figure III

U.S. Imports of Tomatoes
Average Unit Price

Source: U.S. Census Bureau.

As noted above, one reason for the increase in the quantity of Mexican tomato imports and decrease in price was undoubtedly the Mexican peso crisis of 1995 which lowered production costs in terms of dollars and increased the disparity between U.S. and Mexican tomato prices. Florida also suffered a poor growing season in 1995/1996 due to heavy rains and cold temperatures, which caused Florida shipments of tomatoes to be unusually low.

On November 1, 1996, the DOC released its preliminary determination that tomatoes from Mexico were being sold at less than normal value in the United States, paving the way for the temporary collection of antidumping duties that averaged 17.56 percent. The firm-specific preliminary dumping duties, which ranged from 4.16 to 188.45 percent, are listed in Table 1. During the investigation, the DOC collected price and cost data from the six largest tomato producers in Mexico, which accounted for 40 percent of U.S. imports from Mexico. The dumping margins were calculated from the difference between the weighted-average export price and the weighted-average “normal value” over the period of investigation. Like in many antidumping investigations, the DOC

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188 The period of investigation was defined as March 1, 1995 through February 29, 1996.
defined the normal value as the price set by Mexican producers in their domestic market. However, the DOC determined that in certain growing seasons, certain types of tomatoes were sold at prices in the Mexican market below the grower’s cost of production. Under antidumping regulations, these sales were excluded from the calculation of normal value. Instead, the DOC used a constructed value, based on the cost of production, as the normal value for these types of tomatoes in the specific growing seasons.

Table 1

<table>
<thead>
<tr>
<th>Firm</th>
<th>Antidumping Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Camalu</td>
<td>4.16</td>
</tr>
<tr>
<td>Echavarria</td>
<td>11.89</td>
</tr>
<tr>
<td>Lomeli</td>
<td>26.97</td>
</tr>
<tr>
<td>Eco-Cultivos</td>
<td>188.45</td>
</tr>
<tr>
<td>RLP</td>
<td>10.26</td>
</tr>
<tr>
<td>Tamazula</td>
<td>28.30</td>
</tr>
<tr>
<td>Yory</td>
<td>11.95</td>
</tr>
<tr>
<td>All Others</td>
<td>17.56</td>
</tr>
</tbody>
</table>

On the same day that the DOC made its preliminary determination, the DOC and Mexican tomato producers signed a final suspension agreement, temporarily “suspending” the antidumping investigation and the imposition of the preliminary dumping duties. In exchange, Mexican tomato growers agreed to sell all tomatoes at or above an established reference price. The reference price for the initial period was calculated as the average of the lowest average monthly price in the United States for fresh tomatoes from Mexico during the years between 1992 and 1994, or $0.21 per pound. The agreement also specified that the export price of each individual entry could not be below the normal value by more than 15 percent of the weighted average amount by which the export price was lower than the normal value for all imports. In other words, the agreement limited the degree to which individual transactions could be priced below “normal” value. The normal value was calculated in much the same way that the DOC calculated normal value during the antidumping investigation, as described above. The agreement was scheduled to remain in place through November 1, 2001.

As can be seen in Figures [II], under the suspension agreement U.S. imports of tomatoes from Mexico remained fairly consistent between 1997 and 2001; imports fluctuated between 1.2 billion pounds and 1.6 billion pounds. The average unit price of imports from Mexico during this time ranged from $0.392 to $0.425 per pound.

On May 31, 2002, Mexican tomato producers gave the DOC notice that they were withdrawing from the 1996 suspension agreement. As a result, the DOC terminated the suspension agreement and resumed the antidumping investigation, including the

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189 The agreement was signed by Mexico’s Confederacion de Asociaciones Agricolas del Estado (C.A.A.D.E.S.) and Confederacion Nacional de Productores de Hortalizas (C.N.P.H.).
collection of the duties as specified under the preliminary determination in 1996. One problem that had developed with the 1996 agreement was that Mexican shippers could start new companies that were not signatories to the agreement. As a result, signatories of the agreement were competing with other non-signatory Mexican producers that could sell at much lower prices. Moreover, the agreement no longer covered substantially all imports of tomatoes from Mexico. However, on November 8, 2002 the DOC and Mexican tomato growers reached a new suspension agreement—thus terminating the antidumping investigation again, at least temporarily. The new agreement, which was signed on December 4, 2002, was virtually identical to the 1996 agreement and is scheduled to remain in place until 2007.

Antidumping and the U.S.-Canada Tomato Wars

On March 28, 2001, six U.S. greenhouses filed an antidumping petition with the U.S. government claiming that Canadian producers were selling greenhouse tomatoes in the United States at less than normal value, and these imports were causing material injury and threatening to cause material injury to the domestic industry. The DOC initiated an official investigation on April 24, 2001; the ITC made a preliminary determination that there was sufficient evidence of injury for the investigation to continue on May 14, 2001.

As illustrated in Figure [IV], U.S. imports of Canadian greenhouse tomatoes increased dramatically in the period leading up to the antidumping petition, growing 121 percent in quantity between 1999 and 2000 and an additional 18 percent between 2001 and 2002. The value of Canadian greenhouse imports increased to $156 million in 2000 from just $2.5 million in 1990. Meanwhile, the U.S. domestic industry’s share of the U.S. greenhouse tomato market increased from 32.2 percent to 36.2 percent between 1998 and 2001. Prices for greenhouse tomatoes in the United States declined from 1998 to 1999, but recovered in 2000 and 2001. Two U.S. producers of greenhouse tomatoes went into bankruptcy in 2000.

On September 28, 2001, the Canadian Tomato Trade Alliance (CTTA), an association of greenhouse tomato producers, filed an antidumping petition claiming that imports of all U.S. tomatoes, including field tomatoes, were imported at less than normal value, thereby causing injury to the Canadian industry. Press reports indicated that the petition was in direct retaliation to the one filed by U.S. producers. The Canadian Customs and

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191 The new agreement was signed by Confederacion Nacional de Productores de Hortalizas (C.N.P.H.) as well as Caades Sinaloa, A.C., Consejo Agricola de Baja California, A.C., Asociacion Mexicana de Productores de Hortalizas de Invernadero A.C., and Union Agricola Regional de Sonora, Productores de Hortalizas Frutas y Legumbres.
Figure IV

U.S. Imports of Greenhouse Tomatoes

Source: U.S. Census Bureau

Figure V

U.S. Exports of Tomatoes to Canada
Average Unit Price

Source: U.S. Census Bureau.
Revenue Agency (CCRA) initiated an official investigation on November 9, 2001. The
Canadian International Trade Tribunal (CITT) made a preliminary determination that
there was reasonable evidence that dumped imports were causing injury to the domestic
industry, thus allowing the investigation to move forward.

Although virtually all U.S. tomato imports from Canada are greenhouse tomatoes,
Canada also produces field tomatoes for domestic production. Although Canada’s
production of greenhouse tomatoes increased 192 percent between 1996 and 2001,
production of field tomatoes actually decreased by 151 percent over the same period.
Canadian imports of tomatoes from the United States increased between 1998 and 2000,
before decreasing slightly in 2001, as can be seen in Figure [I]. The average unit price of
U.S. imports increased slightly over this period, as illustrated in Figure [V].

On October 5, 2001, the DOC released it preliminary finding that there was evidence that
Canadian producers were dumping greenhouse tomatoes in the U.S. market, thus paving
the way for the collection of antidumping duties. The DOC revised these dumping
margins on February 19, 2002; the final firm-specific dumping margins, which ranged
from 1.53 to 18.1 percent, are listed in Table [2]. To calculate these dumping margins,
the DOC calculated the difference between the weighted average export price and the
weighted average “normal value” over the period of investigation. Averages were
taken for each grade and size within a particular product category. The DOC defined
the normal value as the price set by Canadian greenhouse tomato producers in their
domestic market. However, the DOC disregarded any sales that were found to be made
below the producer’s cost of production. Instead, a calculated value based on the
producers cost of production was included in the calculation of the average normal value
over the period.

<table>
<thead>
<tr>
<th>Final</th>
<th>Antidumping Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>BC Hot House Foods, Inc.</td>
<td>18.21</td>
</tr>
<tr>
<td>Red Zoo Marketing</td>
<td>1.86</td>
</tr>
<tr>
<td>Veg Gro Sales, Inc.</td>
<td>3.85</td>
</tr>
<tr>
<td>J-D Marketing, Inc.</td>
<td>1.53</td>
</tr>
<tr>
<td>Mastronardi Product Ltd.</td>
<td>14.89</td>
</tr>
<tr>
<td>All Others</td>
<td>16.22</td>
</tr>
</tbody>
</table>

The Canadian Commissioner of Customs and Revenue followed with its preliminary
determination on March 25, 2002, also allowing for the collection of antidumping duties.
The agency released its final determination on June 24, 2002; weighted average dumping
margins ranged from 0.26 to 70 percent. Firm specific margins are included in Table [3].

194 The period of investigation was defined as January 1, 2000 through December 31, 2000.
195 Product categories were defined by both color and type of tomato.
To make the determination, CCRA sent questionnaires to the 40 largest U.S. exporters representing 70 percent of U.S. tomato imports. Of these, 15 exporters and 9 producers provided enough information for the CCRA to set a firm-specific antidumping margin. The uncooperative firms were assigned a dumping margin equal to the highest dumping margin of those firms that submitted questionnaires, 70 percent.

Table 3
Final Dumping Determination
Canadian Tomato Imports from the United States

<table>
<thead>
<tr>
<th>Exporter</th>
<th>Weighted Average Margin of Dumping (% of Export Price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ace Tomato Growers</td>
<td>11.0</td>
</tr>
<tr>
<td>Ag-Mart Produce, Inc.</td>
<td>0.26</td>
</tr>
<tr>
<td>DiMare Homestead</td>
<td>45.0</td>
</tr>
<tr>
<td>DiMare Ruskin, Inc.</td>
<td>2.0</td>
</tr>
<tr>
<td>Gargiulo Inc., California</td>
<td>17.0</td>
</tr>
<tr>
<td>Gargiulo Inc., Florida</td>
<td>37.0</td>
</tr>
<tr>
<td>Gulfstream Tomato Growers, Ltd.</td>
<td>70.0</td>
</tr>
<tr>
<td>Harllee Packing Inc.</td>
<td>11.0</td>
</tr>
<tr>
<td>Live Oak Farms</td>
<td>4.0</td>
</tr>
<tr>
<td>Nova Produce</td>
<td>42.0</td>
</tr>
<tr>
<td>Oceanside</td>
<td>8.0</td>
</tr>
<tr>
<td>Oxbow – Wheatfield</td>
<td>70.0</td>
</tr>
<tr>
<td>Pacific Tomato Growers</td>
<td>33.0</td>
</tr>
<tr>
<td>Six L's Packing Co., Inc.</td>
<td>28.0</td>
</tr>
<tr>
<td>Sobey's Produce Inc.</td>
<td>3.0</td>
</tr>
<tr>
<td>Sun Pacific</td>
<td>2.0</td>
</tr>
<tr>
<td>Taylor &amp; Fulton, Inc., Florida</td>
<td>13.0</td>
</tr>
<tr>
<td>Taylor &amp; Fulton, Inc., Virginia</td>
<td>15.0</td>
</tr>
<tr>
<td>The DiMare Company, Newman</td>
<td>16.0</td>
</tr>
<tr>
<td>Triple E Produce Group</td>
<td>5.0</td>
</tr>
<tr>
<td>Ultimate Flavour</td>
<td>9.0</td>
</tr>
<tr>
<td>Village Farms</td>
<td>51.0</td>
</tr>
<tr>
<td>West Coast Tomato, Inc.</td>
<td>34.0</td>
</tr>
<tr>
<td>WholeSale Produce Supply Co.</td>
<td>32.0</td>
</tr>
<tr>
<td>Uncooperative Firms</td>
<td>70.0</td>
</tr>
<tr>
<td>All Others</td>
<td>26.0</td>
</tr>
</tbody>
</table>
Like in the DOC investigation, dumping margins were calculated using the difference between the weighted average export price and the weighted average “normal value” over the period of investigation. Averages were taken for each type, color, size, packing configuration, and grade in 60 day increments. The CRRA defined the normal value as the price set by U.S. tomato producers in their domestic market. However, CRRA disregarded any sales that were found to be made below the producer’s cost of production. Instead, a calculated value based on the producers cost of production was included in the calculation of the average normal value over the period.

On April 2, 2002, the ITC made its final determination that there was no evidence that Canadian greenhouse tomatoes were causing or threatening to cause injury to the domestic industry, thus terminating the antidumping investigation without the imposition of dumping duties. Commissioners noted that U.S. shipments of greenhouse tomatoes were actually higher and the U.S. accounted for a larger share of the total U.S. market for greenhouse tomatoes in 2001. Moreover, because prices were actually higher in 2001 than in years past, there was no evidence that Canadian imports were suppressing domestic prices. Although domestic greenhouse growers had negative returns in 2000, in 2001 producers earned the highest profits since 1998 despite record high Canadian imports.

A public hearing had been scheduled by CITT on the Canadian antidumping investigation for June 24, 2002. However, days before the hearing the Canadian greenhouse tomato industry sent a letter to CITT stating that it was withdrawing its request for the imposition of antidumping duties and requesting that CITT terminate the investigation. On June 26, 2002, the CITT made its determination that U.S. tomatoes were not causing injury to Canadian producers, thus ending the U.S.-Canada tomato wars of 2001/2002. CITT noted in their final determination that Canadian greenhouse tomato growers had increased their sales and market share during the period of investigation, and there was no evidence that U.S. imports were depressing Canadian prices.

As can be seen in Figure [IV], U.S. imports of greenhouse tomatoes from Canada continued to increase between 2001 and 2004. The quantity of U.S. exports of tomatoes to Canada gradually decreased until 2003, although unit values increased. The antidumping petitions of 2001 led to the creation of the North American Tomato Trade Workgroup, a coalition of tomato organizations designed to improve communication across the borders and avoid future trade disputes. The group also worked to harmonize labeling and grading standards across the three countries.

References


196 The period of investigation was defined as January 1, 2000 through December 31, 2000.
197 Citing the same statistics, one Commissioner dissented from the ITC finding, ruling that Canadian greenhouse tomato imports were causing material injury to the domestic industry.


Wheat

Introduction

In September 2002, the North Dakota Wheat Commission, the Durum Growers Trade Action Committee, and the U.S. Durum Growers Association filed an antidumping petition with the Department of Commerce (DOC) and International Trade Commission (ITC) claiming that producers from Canada were selling durum wheat and hard red spring wheat in the United States at less than fair value, and these imports were causing or threatening to cause material injury to the domestic industry. The ITC determined that the domestic industry was materially injured by imports of hard red spring wheat but not by imports of durum wheat from Canada, both of which were found by the DOC to be sold in the United States at less than fair value. Antidumping duties were imposed on Canadian imports of hard red spring wheat between May 2003 and October 2005 when the United States was forced to revoke the antidumping duties due to a decision by a NAFTA dispute settlement panel.

Background: The U.S. Wheat Market

Wheat is the second largest grain produced in the United States in terms of value following corn. In the 2003/04 marketing year, total U.S. production of wheat reached 2.3 billion bushels. There are six primary classes of wheat grown in the United States. During the 2003/04 marketing year, hard red winter wheat accounted for approximately 36 percent of total domestic wheat production; in comparison, hard red spring wheat accounted for 22 percent, soft red winter wheat accounted for 16 percent, durum wheat accounted for 4 percent, and hard and soft white wheat together accounted for 17 percent of total wheat production. Leading producers of wheat include Kansas, North Dakota, Oklahoma, Washington and Montana. In total, there were 243,568 farms growing wheat in 1997; of these, 46,268 farms grew spring wheat, 6,887 farms grew durum wheat, and 40,737 farms grew winter wheat, while the remaining farms grew unspecified types of wheat.

Wheat varieties are in part distinguished by their planting season. For example, spring wheat is planted in the spring and harvested in the late summer or early fall, whereas winter wheat is planted in the fall, lying dormant during the winter and harvested in the mid- to late summer. Another primary physical characteristic that distinguishes wheat varieties is the protein content of the kernel. Although the protein content depends in part
on weather and varies from year to year, soft wheat has a kernel with relatively low protein content and thus is generally best used to produce cakes, crackers, biscuits, and pastries. In contrast, hard wheat has a kernel with higher protein and gluten content. For example, durum wheat is a type of hard wheat grown mainly in the spring that is used to make semolina, a key ingredient in pasta. Other types of hard wheat are produced into flour for use in bread production. In general, higher protein wheat is more expensive than lower protein wheat. The 2002 antidumping petition targeted hard red spring wheat and durum wheat, thus this study focuses on hard wheat varieties.

Different regions of the country grow different types of wheat. While areas with abundant rainfall and moderate temperature produce soft wheat, those regions in which summers are hot and rainfall is moderate grow more hard wheat. In the United States, hard red spring wheat is grown primarily in the Northern Plains such as North Dakota, Montana, Minnesota, and South Dakota; the wheat is planted in April and May and harvested during August and September. Durum wheat production is concentrated in North Dakota, Montana, Arizona, and California.

U.S. wheat farmers benefit from a number of federal farm programs. For example, under the Farm Security and Rural Investment Act of 2002, wheat growers can participate in federal direct fixed payments, counter-cyclical payments, marketing loans, and crop insurance programs. The 2002 law decoupled payments from current production, factor use, and commodity price levels, thus providing lump sum income transfers which have increased the wealth of U.S. farmers. These programs can significantly impact production decisions by U.S. wheat farmers. For example, according to the U.S. Department of Agriculture, the crop insurance program increased the number of durum wheat acres planted in North Dakota despite the lower price of durum wheat in 1999 and 2000. When the crop insurance program for durum wheat was terminated in March 2001, the number of acres of durum wheat planted in North Dakota fell by approximately one-third in a single year. In the period leading up to the antidumping petition, government payments under all wheat programs decreased as market prices increased. Not only did decoupled payments fall, but loan program and counter-cyclical payments for all types of wheat were lower in 2001 than in 2000, and almost stopped in 2002 and 2003.

After harvest, farmers typically sell their wheat to local grain elevators which dry and condition the wheat. The wheat is then distributed from the grain elevators to grain trading companies, domestic mills, and feedlots or ports for export, usually by rail. The United States is the largest exporter of wheat in the world, accounting for 26 percent of total world wheat sales. In total, nearly half of U.S. wheat production is exported each

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200 Drier weather conditions result in the production of wheat with higher protein content.
201 For example, under the direct payment program the U.S. government pays farmers a fixed annual rate of $0.62 per bushel of wheat — the farmer collects payments on 85 percent of the average number of bushels historically produced by the farmer. When the sum of market price and direct payment rate is less than a fixed target price, the federal government also makes counter-cyclical payments. Both programs increase expected income and reduce risk for farmers. The Crop Revenue Coverage (CRC) program is a government-backed insurance program that reduces domestic producers’ risk from crop failure and price fluctuations. In general, farmers pay 40 to 50 percent of the total cost of the insurance program while the U.S. Department of Agriculture pays the remainder.
year. Leading foreign destinations for U.S. wheat in the 2003/04 marketing season included Egypt, Japan, Mexico, and Nigeria.

Human consumption accounts for about 80 percent of all wheat consumed in the United States, with much smaller amounts used for livestock feed and seeding. As previously noted, durum wheat is primarily used in pasta, whereas hard red spring wheat is used in bread and other bakery products. As the protein level of wheat depends on weather, flour millers often blend hard red spring wheat with lower-protein hard red winter wheat to reach desired protein level for their products. In the period leading up to the antidumping petition, U.S. consumption of both hard red spring wheat and durum wheat declined sharply. Specifically, U.S. consumption of hard red spring wheat decreased from 324 million bushels in marketing year 2000/01 to 182 million bushels in marketing year 2002/03, whereas U.S. consumption of durum wheat declined from 68 million bushels in 2000/01 to 61 million bushels in 2002/03. Analysts attributed the decrease in consumption to the sudden popularity of diets low in carbohydrates, as well as expanding production of bread with an extended shelf-life. Since 2003, U.S. consumption of wheat has stabilized.

**Figure 1**

Imports of Durum and Hard Red Spring Wheat

![Graph showing imports of durum and hard red spring wheat from 1996 to 2004.](chart.png)

Source: U.S. Census Bureau.

U.S. demand for hard red spring wheat and durum wheat is met with both domestic production and imports. However, virtually all U.S. imports of durum wheat and hard red spring wheat originate in Canada, as indicated in Figure [1]. Although the United States imports modest amounts of desert durum wheat from Mexico, the volume of
imports from all other countries is very small. The Canadian Wheat Board (CWB), a marketing agency for more than 85,000 Canadian growers, accounts for more than 90 percent of all Canadian durum and western red spring wheat production and is the largest single seller of wheat in the world. U.S. imports of wheat from Canada are generally sold directly to wheat mills, thus the imports bypass local grain elevators in the United States. Instead, Canadian imports begin competing with domestically-produced wheat when the wheat is sold to large-scale grain traders; these traders then distribute the wheat to both the domestic and export market. Domestically-produced and Canadian imports of hard red spring wheat and durum wheat are highly interchangeable, although some argue that Canadian wheat is of a more consistent quality.

In the period leading up to the antidumping petition, domestic production of durum wheat decreased from 110 million bushels in the 2000/01 marketing year to 79 million bushels in 2002/03 as both the number of acres harvested and average production yields declined. Although the number of acres planted with hard red spring wheat increased during this period, drought conditions in 2002/03 lowered average yields drastically which in turn reduced the production of hard red spring wheat from 502 million bushels in 2000/01 to 357 million bushels in 2002/03.

Figure 2

Imports of Durum and Hard Red Spring Wheat from Canada

![Bar chart showing imports of durum and hard red spring wheat from Canada from 1996 to 2004.](source: U.S. Census Bureau)

Wheat imports from Canada increased during much of this same period; figure [2] illustrates the quantity of imports of durum wheat and hard red spring wheat from Canada between 1996 and 2004. The volume of hard red spring wheat imports from Canada rose
from 41 million bushels in marketing year 2000/01 to 46 million bushels in 2001/02, and then fell drastically to 11 million bushels in 2002/03. The market share of Canadian hard red spring wheat increased from 12.8 percent in 2000/01 to 15.9 percent in 2001/02, and then dropped sharply to only 5.8 percent in 2002/03. Although drought conditions reduced production of Canadian durum wheat in marketing year 2001/02, the volume of durum wheat imports from Canada increased significantly from 12 million bushels in 2000/01 to 18 million bushels in 2001/02, and then decreased to 13 million bushels in 2002/03. The market share of durum wheat imports from Canada followed similar trend; Canada’s share of the U.S. market for durum wheat rose from 18.0 percent in marketing year 2000/01 to 29.3 percent in 2001/02, and then declined to 20.8 percent in 2002/03, a level slightly higher than in 2000/01.

**Figure 3**

Average Import Price of Durum and Hard Red Spring Wheat from Canada
(Calculated Unit Price per Kilogram)

The price of both durum and hard red spring wheat is determined in the global marketplace; U.S. and Canadian producers are price-takers in these markets. As illustrated in Figure [3], the average import price of hard red spring wheat from Canada trended downward in the period leading up to the antidumping petition. The average price received by U.S. farmers for hard red spring wheat also fell during the period from $2.94 per bushel in marketing year 2000/01 to $2.89 per bushel in 2001/02, but rose dramatically to $3.84 per bushel in 2002/03. In contrast, the price of durum wheat imports from Canada trended upward during the period leading up to the antidumping petition. Prices for domestically produced durum wheat increased as well during the
period. The average price received by domestic durum wheat producers rose from $2.66 per bushel in 2000/01 to $4.04 in 2002/03.

Based on the data collected by the ITC during the course of the antidumping investigation, the domestic hard red spring wheat industry shifted from a positive financial performance in 2000 to significant net losses or zero net returns in 2001, but recovered somewhat in 2002 after the volume of imports from Canada dropped sharply and prices rose significantly. The data for durum wheat farms in North Dakota suggested that the financial health of the domestic durum wheat industry declined from 2000 to 2001, but then improved in 2002; in fact, net returns and total product returns reached levels even higher than those reported in 2000.

The Antidumping Petition

On September 13, 2002, the North Dakota Wheat Commission, the Durum Growers Trade Action Committee, and the U.S. Durum Growers Association filed an antidumping petition claiming that producers from Canada were selling durum wheat and hard red spring wheat in the United States at less than fair value, and these imports were causing or threatening to cause material injury to the domestic industry.202 During the investigation, the ITC defined two domestic industries; one consisted of all domestic growers of durum wheat and the other included all growers of hard red spring wheat. On November 25, 2002, the ITC made a preliminary determination that dumped imports from Canada were causing injury to both domestic industries, thus allowing the investigation to move forward.

On May 8, 2003, the DOC released its preliminary determination that durum wheat and hard red spring wheat from Canada were being sold in the United States at less than fair value. Temporary antidumping tariffs of 8.15 percent on durum wheat and 6.12 percent on hard red spring wheat from Canada were imposed through August 28, 2003, when the DOC issued its final affirmative determination. The final weighted-average dumping margin imposed on durum wheat was 8.26 percent and compared to 8.87 percent on hard red spring wheat. However, on October 6, 2003, the DOC slightly revised the final dumping margin for hard red spring wheat to 8.86 percent.

The DOC typically calculates the dumping margin as the average difference between the average normal value over the investigation period and export prices associated with individual transactions.203 In this case, the normal value was determined based on domestic market prices in Canada. However, whenever the DOC calculates normal value using domestic prices it compares the domestic prices to the average cost of production in the country under investigation; when a substantial quantity of sales are made at prices below the country’s average cost of production then these sales are excluded from the calculation of normal value. In this case, some sales of hard red spring wheat failed the “Cost-of-Production” test and were therefore excluded from the normal value calculation. Moreover, the DOC determined that some representative Canadian producers did not

202 The North Dakota Wheat Commission represented growers of hard red spring wheat
203 The period of investigation was from July 1, 2001 through June 30, 2002.
provide all the necessary information to calculate the average cost of production, so the agency used “facts otherwise available” to calculate the cost of production for these producers.\textsuperscript{204}

On October 20, 2003, the ITC determined that the domestic industry producing hard red spring wheat was materially injured by imports from Canada after considering the volume of the dumped imports, the effect of imports on domestic prices, and the total impact on the domestic wheat producers. However, the ITC determined that the domestic durum wheat industry was not materially injured or threatened with material injury by imports of durum wheat from Canada. Specifically, the ITC ruled that because the prices of durum wheat imports from Canada were predominantly higher than those of the domestic producers, the volume of durum wheat imports from Canada could not depress domestic price significantly or prevent price increases. Despite the higher volume of durum wheat imports from Canada, the ITC determined that the lower net returns of domestic durum wheat industry in marketing year 2001/02 were due to decreases in payments from government programs such as crop insurance and disaster payments, as well as an increase in total direct and overhead expenses. The lower net returns were not related to Canadian imports to a significant degree.

The Case Outcome

As noted above, during the antidumping investigation the volume of durum wheat imports from Canada dropped considerably from 18 million bushels in marketing year 2001/02 to 13 million bushels in 2002/03, whereas the volume of hard red spring wheat imports from Canada declined more sharply from 46 million bushels in 2001/02 to 11 million bushels in 2002/03. Despite the decrease in imports, U.S. production of hard red spring wheat continued to drop, thus domestic prices for hard red spring wheat rose during the period. Although the ITC ruled in their final determination that this change in the volume of imports was due to the investigation, Canadian producers argued that the sharp decrease was due to drought conditions in both Canada and the United States.

In 2004, the volume of hard red spring wheat imports from Canada continued to decline, but imports of durum wheat from Canada rose rapidly. However, imports of durum wheat still remained far below the levels in 2001 and 2002, as seen in Figure [2]. The average unit import price of hard red spring wheat increased sharply, from $0.15 per kilogram in 2003 to $0.21 per kilogram in 2004. In contrast, the average unit import price of durum wheat decreased from $0.19 per kilogram in 2003 to $0.17 per kilogram in 2004, as illustrated in Figure [3].

On November 24, 2003, the CWB filed a request for a panel review with the U.S. Section of the North American Free Trade Agreement (NAFTA) Secretariat. On June 7, 2005, a NAFTA dispute settlement panel directed the ITC to reconsider its previous affirmative material injury determination regarding imports of hard red spring wheat from Canada. Specifically, the panel questioned whether in making its determination the ITC compared

\textsuperscript{204} Specifically, the DOC calculated the cost of production using both the information submitted in the petition and information submitted by other respondents.
prices at the same level of trade, as well as issues relating to the role of price underselling and the impact of hard red spring wheat imports on the domestic industry.

In the new investigation ordered by the panel, the ITC reexamined purchase prices of domestically-produced and imports of hard red spring wheat as reported by U.S. millers. The ITC subsequently determined that the underselling by Canadian hard red spring producers was not statistically significant. In addition, the ITC determined that the decline in the volume of hard red spring wheat imports from Canada in the 2002/03 marketing year was not clearly related to the antidumping investigation. After considering the Panel’s decision and its remand instructions, in October 2005 the ITC determined that the domestic industry producing hard red spring wheat was not materially injured or threatened with material injury by imports of hard red spring wheat from Canada. As a result, the U.S. eliminated antidumping duties on Canadian imports of hard red spring wheat.

References
