

CASE STUDY GENERAL DISCUSSION

Dispute Resolution Corporation. This private voluntary dispute resolution mechanism was established by a tri-national committee of the three governments. A new corporate entity was set up to function as an arbiter of disagreements on commercial transactions. Individual companies interested in participating in this process sign up as members of the new corporate entity. This mechanism has been used most effectively in fruits and vegetables where there is technical expertise in areas such as grades and standards by the participating governments and industry participants. In addition, Perishable Agriculture Commodities Act (PACA)-type systems are used in the arbitration setting of the new corporation even though these laws are not available in all countries.

Mexican Tomato Floor Price. The question was raised as to whether the floor price agreement on tomatoes, established some time ago by agreement of the United States and Mexico, might become a precedent for future settlements. While this remedy defused the issue at the time, a floor price remedy is not viewed by the U.S. Department of Justice or USDA as a desirable outcome. The policy position is very clear that this remedy not be applied in the future.

Antidumping and Countervailing Duties. There was discussion at several points in the workshop, including in this session, on whether antidumping and countervailing duty mechanisms work, or are even suitable for use, in agriculture. The burden of the duties and process costs fall on producers, industry associations, and firms. Most cases are long, protracted and very expensive. The process is by nature adversarial and legalistic. The only contribution of the free trade agreement is to provide an appeal mechanism which may extend the period of cost and uncertainty. Because the legislation and rules derive from industrial sectors, many of the concepts, definitions and measurement requirements of an action are unsuited to agricultural production and

markets. Discussion generally indicated unsuitability of antidumping and countervailing duty actions to the agricultural sector.

Wheat and Grain Disputes. One of the most contentious issues in grains disputes is the Reference Price for Dumping (often referred to as ‘the acquisition cost’). In a dumping action, whether the Canadian Wheat Board (CWB) engages in dumping can turn on what price is used as the reference price. Payments to producers by the CWB (annual pooled returns) are based on sales throughout the year and transparency of selling price does not exist. ITC ruled in a 1994 action that the relevant reference price was the ‘initial’ payment which, by convention in Canada, is targeted to be about 70-75 percent of the final payment. If, as is often argued, ‘final’ pooled returns paid to producers is taken as the acquisition price, the very process of pooling means that some (statistically half) of all sales are made below acquisition cost. Any pooling or forward contracting process in a variable market will generate these consequences. What is the appropriate reference price is left unanswered.

Increased U.S. Subsidies. As supplemental lump sum (decoupled) payments and loan deficiency payments increase relative to the other countries, more contentious relationships can be expected to develop. This occurs because costs of production in the United States relative to Canada can be expected to increase. With subsidies, there is less adjustment to low market prices in the United States (relative to Canada), and some of the benefits of higher returns are capitalized into inputs especially land. The eventual pain of adjustment, if it occurs, will also be greater in the United States than in Canada. Overall, the pain for all countries increases because production levels do not adjust.

The EU as a Trade Distorting Force. EU policies were recognized as a major disruptive market force that makes rationalization of trade relationships within NAFTA very difficult. For example, EU wheat production and subsidized exports lower all wheat prices; extremely heavily subsidized EU oats represent one-third of U.S. imports, pushing down domestic prices. However, U.S. policies have also become a disruptive force. Clearly, there is a need for more effective negotiation with other countries if NAFTA is to make progress.

Cattle/Beef Disputes. The unstable nature of agriculture, specifically the cyclical pattern of livestock prices and production, mean that there will be periods when below-cost sales occur. Similarly, market determined prices in an exporting region will always be below those in an importing region. In this economic environment, it is essential that there be some mechanism for sorting out which charges of dumping really make sense, and which relate to market reality. Trade remedy law does not do a good job of reflecting basic economic phenomena. Are there reasonable options outside of TRL, preferably within NAFTA, that would be more effective in resolving disputes?

Reasons for the R-CALF Dispute. The difficult financial situation of cattlemen over several years, and the frustration of many in the United States with lack of government or association contribution to a solution were significant contributors to the formation of R-CALF. It was also argued that once the process was underway, the involvement of CWB issues provided the opportunity to keep the heat on Canada and the CWB. If there had been a continental barley market, this dispute may not have been taken place. If the current feeder cattle program which has increased the flow of U.S. feeder cattle into Canada had been in place earlier, this dispute may not have occurred. Opening the border was viewed as the answer.

The Avocado Dispute. It was expected that the opening of the U.S. market for avocados would benefit small producers. There was considerable discussion of whether these benefits to small producers were realized. Only 57 growers were certified as being approved orchards. Small Mexican producers could have benefitted because of increased demand, which raised the general price level. While it is clear that fruits and vegetables are dominated by a few firms throughout, all producers may benefit. Because of the importance of avocados to California, there was a significant political factor involved in the settlement of this dispute even though scientific evidence was applied.

Sugar. Sugar policy in the United States has generated significant economic rents for producers and created an entire industry dependent on public support. An indication of the current magnitude of producer rent is the fact that the U.S. price is 21 cents/lb. at a time when the world price is between 5 and 6 cents/lb. An additional amount would be added for higher prices on HFCS.

It was also indicated that sugar companies on balance have high debt and financial problems, with attempts to sell facilities to producer groups. The effect of NAFTA on opening up access to the United States for Mexican sugar was to reduce, on a one-to-one basis, sugar from other countries. This situation contributed to elimination of sugar production in some areas of Canada, and it suggests that any opportunities for access of Cuban sugar would be reduced.

Dairy. Most discussion focused on Canadian supply management. It was reported that very recent data show the value of dairy quota to be accelerating, at \$27,000/cow in British Columbia and \$23,000/cow in Ontario. It was suggested that dairy policy has been a rural adjustment policy, and concerns are expressed about the means of protecting the capital value if deregulation occurs. It was suggested that the likelihood of significant regulatory change was greater in poultry than in dairy. There was no agreement on the interconnection in Canada between poultry, dairy and other agricultural policy.

