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NAFTA TOMATO DUMPING CASES

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INTRODUCTION

NAFTA tomato conflicts have a long history. Currently all three NAFTA countries are involved in tomato dumping cases or in a review of the suspension agreement. Only Mexico has not instigated tomato dumping cases against its NAFTA partners. To put the current U.S./Canadian tomato dumping cases in perspective, I will first discuss the U.S./Mexican tomato dumping case. Then I will turn to the U.S./Canadian tomato cases and speak about market conditions that could explain selling below total production costs. I will conclude with an analysis of the impact of the United States dumping case on Canada.¹

BACKGROUND ON THE U.S./MEXICAN TOMATO DUMPING CASES

With low tariffs, the U.S. tomato industry has used trade remedy laws to seek protection for their industry. The pre-NAFTA tariff rates for tomatoes were specific duties that had eroded in value over time as the general price level for tomatoes increased. In 1993, the weighted average ad valorem equivalent tariff for Mexican tomatoes was 4.0 percent during the winter season and 5.3 percent during the rest of the year (U.S. Department of Agriculture, 2000).

The traditional North American tomato conflict has been between Florida and Mexico, where producers compete in the field-grown tomato market during the winter season. In 1970 and 1973, Florida growers tried unsuccessfully to use marketing orders to impose additional barriers to

¹ This paper was presented on March 8, 2002. Footnotes update developments to May 31, 2002.

Mexican imports (Bredahl, Schmitz, and Hillman 1987). In 1978, Florida producers tried to use dumping legislation against Mexico, but in 1980 the U.S. Department of Commerce (DOC) found that Mexican producers were not dumping winter vegetables. Failed efforts to obtain temporary import relief under Section 201 of the *Trade Act* of 1974 (safeguard law) followed in 1995 and early 1996.

A second dumping case was initiated in 1996 and Commerce made a preliminary determination of dumping. On October 28, 1996, Commerce announced a suspension agreement with principal Mexican producers/exporters to settle the dispute and on November 1, 1996, DOC suspended the anti-dumping investigation. Signers of the suspension agreement agreed to honor a minimum U.S. import price of \$5.17 per 25-pound box of tomatoes from Mexico. As long as the suspension agreement is in effect, the dumping investigation remains suspended. The suspension agreement covers all fresh tomatoes from Mexico except for greenhouse cocktail tomatoes sold on the vine.

Initially Florida also set a minimum price of \$5 per 25-pound box through their marketing cooperative, the Florida Tomato Growers Exchange, but that pricing strategy was abandoned after the 1999/2000 season in favor of a voluntary minimum pricing strategy. In 1998, the minimum suspension price regime was altered to provide one minimum price during the winter Florida/Sinaloa season of \$5.27 per 25-pound box and another during the summer California/Baja California season of \$4.30 per 25-pound box. In 1997 and 1998 the California Tomato Growers Exchange set a domestic floor price but abandoned that strategy in 1999. (However since 2001, California has had a minimum export price plan in effect.) Currently this suspension agreement is undergoing a statutory five-year review.²

² On May 31, 2002, DOC received notification from a group of Mexican producers/exporters that they intended to withdraw from the suspension agreement. The agreement is not valid unless producers/exporters representing at least 85 percent of the traded volume participate and the withdrawal will bring the share of participants below this level. The effective date of withdrawal is July 20, 2002 at which time the original dumping case will resume.

DOC has the authority to negotiate suspension agreements but rarely uses this option. U.S. antitrust laws prohibit competitors from restraining trade but an exception is made when a group petitions the government for proper relief under trade statutes (*Florida Journal of International Law*, 1997). Still, use of the suspension agreement is approached with care because of possible antitrust law implications. Suspension agreements have been used only for a handful of agricultural cases. Currently the only agricultural suspension agreement in effect is the U.S./Mexican tomato agreement.

U.S./CANADIAN GREENHOUSE TOMATO DUMPING CASES

The 2001 tomato dumping cases involved a new product—greenhouse tomatoes—and additional grower groups. In March 2001, the U.S. greenhouse industry brought a dumping case against Canadian greenhouse growers. Canada is the largest NAFTA producer of greenhouse tomatoes and a small producer of field-grown tomatoes for the fresh market. Canadian greenhouse tomatoes exported to the United States are in the market at the same time as U.S. greenhouse tomatoes and both Florida and California field tomatoes (Cook, 2002).

One of the key issues in the case is the definition of the relevant industry, specifically whether greenhouse and field-grown tomatoes are “like” products. The U.S. greenhouse producers argued that greenhouse and field-grown tomatoes are not “like” products; the Canadians argued that they are. The definition of the industry is important for determining injury. In the preliminary injury finding, the U.S. International Trade Commission (ITC) stated that the relevant industry was just greenhouse tomatoes but that it intended to re-examine this issue in any final phase of the investigation because the evidence was mixed (U.S. International Trade Commission, 2001). After DOC issued preliminary dumping margins,

Canada proposed a suspension agreement but it was not accepted.³ Currently, both sides are waiting for the final ITC ruling expected in April 2002.⁴

In November 2001, Canadian growers brought a dumping case against the United States for tomato exports of any type for the fresh market, not just greenhouse tomatoes as in the U.S. case.⁵ Canada imports mostly field-grown tomatoes although some greenhouse tomatoes are imported to augment the low Canadian winter supply. The Canadian case also covers any tomatoes originating in or exported from the United States (Canada Customs and Revenue Agency, 2001).

This case affects Mexican tomatoes. During the winter season, almost all Mexican field tomatoes for export are grown in Culiacan, Sinaloa, and then sent by truck to Nogales, AZ, where the tomatoes are marketed to both the United States and Canada. Many of the marketing firms in Nogales are owned by large Mexican growers; in 1997, 63 percent of the volume of tomatoes imported through Nogales was sold by Nogales-based Mexican grower-owned marketing firms (Calvin and Barrios, 1998).

³ In April, an attorney for the Canadian side was quoted as saying there was “not enough middle ground for a deal” (*The Packer*, 2002f). There was some speculation that the Ontario industry thought it would have low margins compared to British Columbia and might try to obtain segregated treatment (*The Packer*, 2002a). Ontario growers filed an appeal to NAFTA to obtain a separate dumping margin from BC Hot House Foods (*The Packer*, 2002e). This competition between Ontario and British Columbia might account for the lack of a middle ground.

⁴ On April 12, 2002 the ITC ruled that Canadian greenhouse exports had not caused damage to the U.S. industry and dismissed the U.S. case against Canada (U.S. International Trade Commission 2002). The ITC determined that greenhouse and field-grown tomatoes were “like” products.

⁵ On March 25, 2002 the Canada Customs and Revenue Agency issued its preliminary determination on dumping margins which ranged from 0 to 71 percent (Canada Customs and Revenue Agency, 2002). The U.S. side offered an undertaking proposal (the Canadian term for a suspension agreement) on April 15, 2002, but this proposal was rejected in early May.

Table 1: U.S. and Canadian Greenhouse Tomato Production, 1998-2000.

Year	Canada	United States*
	—metric tons—	
1998	115,970	106,594
1999	158,042	129,727
2000	182,736	123,831

*Estimates

Source: Statistics Canada and U.S. International Trade Commission

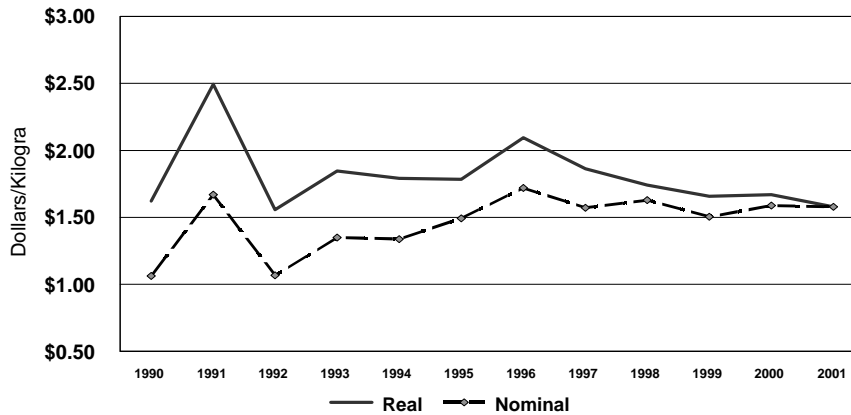
Canada has stated that tomatoes shipped in bond from Mexico to Canada will not be included in any dumping margins (*The Packer*, 2002b). Very few tomatoes are now shipped in bond, perhaps less than 10 percent. Shipping tomatoes from Mexico to Canada in bond would incur additional costs and reduce marketing options in Nogales. Currently, tomatoes arrive in Nogales, and shippers then select tomatoes to prepare orders for buyers. To meet buyer specifications, a shipper might use tomatoes from several truckloads to fill the order. If some incoming truckloads were off-limits because they were in bond shipments to Canada, shippers would have less marketing flexibility. Shippers might, however, be able to make adjustments to the way they prepare their loads to reduce this problem.

NAFTA GREENHOUSE TOMATO INDUSTRY

Greenhouse tomato production has increased in all three NAFTA countries. Canada is the only country that routinely provides public greenhouse production statistics so exact numbers on total NAFTA supply are not available. Between 1998 and 2000, Canadian production of greenhouse tomatoes increased 58 percent (Table 1). The only published information on U.S. production is based on ITC surveys for 1998–2000. Total U.S. production is estimated to have increased 16 percent over this period, although production from the largest firms increased 27 percent (U.S. International Trade Commission, 2001). Mexican production has also increased but by an unknown amount.

As production increased, prices fell. The U.S. Department of Agriculture provides no shipping point prices for greenhouse tomatoes so trade statistics are used to analyze price trends. Figure 1 shows the annual

Figure 1: Average Unit Value for U.S. Imports of Canadian Tomatoes, 1990-2001.



Source: U.S. Department of Commerce; Economic Research Service

unit value of U.S. tomato imports from Canada from 1990 to 2001. The nominal price declined 8 percent from 1996 to 2001 (falling from \$1.72 per kilo to \$1.58); however, the price increased from the low of \$1.50 in 1999. Deflating the price series by the fresh vegetable consumer price index shows that the real price per pound declined 25 percent from 1996 to 2001 (from \$2.09 per kilo to \$1.58).

The large greenhouse operations represent a considerable fixed investment, mostly made before the recent declines in price. The three largest U.S. firms have over 100 acres of greenhouses each.⁶ Canadian firms tend to be smaller. In 2001, all Canadian greenhouse growers had fewer than 100 acres each (Agriculture and Agri-Food Canada, 2001a). Many growers in all three NAFTA countries are struggling financially with large loans to repay. Two of the big three U.S. greenhouse firms declared bankruptcy in 2000 and 2001. One firm was purchased by another operation. The other entered Chapter 11 bankruptcy proceedings and is still in operation (U.S. International Trade Commission, 2001).

⁶ ITC reports that the cost of constructing a new greenhouse is \$500,000 per acre (U.S. International Trade Commission, 2002).

Because of the high fixed costs, growers are unlikely to reduce quantity temporarily when prices are low. In a downturn, growers still need to maintain their markets and labor force. The three largest U.S. greenhouse producers grow only tomatoes so shifting to other greenhouse crops is probably not a short-run option. Growers can, of course, adjust some inputs to reduce costs.

The industry has had to face rapid growth in supply, falling prices, and a high-fixed-cost technology adopted when prices were higher. Firms could face market prices below their cost of production. In the short run, the competitive solution is to sell if the market price is greater than the variable costs of harvest and marketing. This behavior is clearly not sustainable over the long run. But even in profitable years firms are most likely to sell below cost of production occasionally since perishable commodity prices are so variable. Greenhouse tomato prices also follow a strong seasonal price pattern with higher prices in the winter and lower prices during the summer.

COSTS TO THE CANADIAN INDUSTRY OF THE U.S. DUMPING CASE

Whether or not the United States wins the dumping case, Canada has already incurred high costs. There are two big greenhouse tomato-growing areas in Canada—Ontario with 72 percent of total Canadian tomato greenhouse production in 2000 and British Columbia with 21 percent (Agriculture and Agri-Food Canada, 2001b). Ontario has spent C\$3 million on legal fees defending itself against U.S. dumping charges and the case is not over yet (*The Packer*, 2002c). The value of the Canadian greenhouse tomato industry in 2000 was C\$288 million. Assuming that the British Columbia industry spent an equal amount, costs so far are a little over two percent of the total value of the crop.

DOC announced preliminary dumping margins on October 2, 2001 and began collecting duties from Canadian growers. Table 2 shows the preliminary, the revised preliminary, and the final U.S. dumping margins against Canada. After issuing preliminary margins, DOC continued to fine-

Table 2: U.S. Dumping Margins for Canadian Greenhouse Tomatoes.

<i>Firm</i>	<i>Preliminary margins</i>	<i>Revised preliminary margins</i>	<i>Final margins</i>
	—percent—		
BC Hot House	50.75	33.95	18.21
Red Zoo	23.17	23.17	1.86
Mastronardi	5.54	5.54	14.89
Veg Gro	2.45	2.45	3.85
J-D Marketing	0	0	1.53
All others	32.36	24.04	16.22

Source: U.S. Department of Commerce

tune their calculations. It is not unusual for margins to change during the course of an investigation. In the preliminary announcement, BC Hot House Foods (BCHH) and Red Zoo received margins of 50.75 percent and 23.17 percent, respectively. The revised preliminary margins, announced on October 19, 2001 lowered BCHH's margin to 33.95 percent. The high margins produced an uncertain environment for Canadian greenhouse growers who plant in December to begin harvesting in March. Commerce released the final dumping margins on February 19, 2002. Three of the Canadian companies had very small margins and two had significantly higher margins—BCHH and Mastronardi (Red Zoo's margin had decreased to 1.86 percent).⁷

Under the shadow of a dumping case, the rapid growth of Canadian greenhouse production has reportedly come to a halt, at least until the case is resolved. Producers have also reacted to rising costs (particularly higher fuel costs) and lower prices (U.S. Department of Agriculture, 2002). However, much of the change in the last few years has occurred in British Columbia. BCHH appears to have struggled to market its rapidly increas-

⁷ On March 28, 2002 DOC issued an amended final determination of dumping duties (*The Packer*, 2002d). The duty for Mastronardi declined from 14.89 percent to 0.52 percent. Other changes were very small: BCHH declined from 18.21 percent to 18.04 percent, Red Zoo declined from 1.86 percent to 1.85 percent, and J-D Marketing declined from 1.53 percent to 0.83 percent. The duty for Veg Gro did not change. The "all other" duty increased from 16.22 percent to 16.53 percent since *de minimis* duties are not included in the calculation for this category.

ing supply of tomatoes. British Columbia's tomato greenhouse area increased 147 percent in three years (1997–2000) while the total Canadian area increased only 75 percent. British Columbia is much more dependent on exports than the rest of the Canadian industry. In 1999, 82 percent of British Columbia's greenhouse tomato production was exported, compared with 46 percent from Ontario. Until 2002, BCHH was the mandated marketer for almost all production in British Columbia. In January of this year, the British Columbia Vegetable Marketing Commission (BCVMC) allowed four growers, representing a substantial portion of tomato production, to start another marketing company, Global Greenhouse Produce. This action appears to be in response to low returns from BCHH to growers in recent years. The BCVMC, which controls production through area quotas, did not allow any tomato expansion in 2001 and 2002 and it did not allow growers to switch from tomatoes to other greenhouse crops.

CONCLUSIONS

Dumping investigations may pick up other events that do not necessarily imply dumping from an economist's perspective (Barichello, 2003). Selling below cost of production, particularly for a perishable commodity, can simply represent rational profit-maximizing behavior during a short-run downturn in the market (Regmi, 2000). The greenhouse tomato industry is facing growing pains. A stable and profitable economy for this sector requires a steady increase in consumer demand for greenhouse tomatoes consistent with the growth in production.

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