

ISSUES REVIEW

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INSIDE THIS ISSUE

- ◆ Mexico Update
- ◆ US Wins WTO Fireblight Case Against Japan
- ◆ South Africa & Australia Market Access Activities
- ◆ India Food Grade Wax
- ◆ US-Vietnam WTO Accession Talks

A Report for Northwest Fruit Exporters

Mexico: Update on Current Situation

Chronology

After more than 26 months of negotiations with NFE, on December 29, the Mexican Ministry of Economy published a reference price agreement. That agreement was to have applied equally to all NFE members, replaced the 46.58% anti-dumping duty, and was to have gone into effect February 28.

This agreement was considered by NFE, the Ministry of Economy (Economia) and by the judge in Mexico's 9th District Court to constitute the Ministry's compliance with an amparo case NFE had successfully brought against the Ministry. That case cited mistakes Economia made when conducting the original 1997 investigation. That NFE victory provided the opportunity for NFE and the Ministry of Economy to discuss what would constitute compliance; the December 29 price agreement resulted from those lengthy discussions.

On January 17, UNIFRUT requested an injunction against the agreement in Mexico's 16th District Court. In late January, the 16th District Court referred the matter to the 9th District Court that had followed the NFE-Economia negotiations and had accepted the reference price agreement. On January 31, the Mexican growers' association filed a brief in the 9th District Court.

Inexplicably, on February 14, the 9th District Court that had followed and approved the NFE-Ministry of Economy negotiations and the resulting agreement, reversed itself and stated the price agreement could not constitute compliance with the NFE amparo. The Court ordered the Ministry to revoke the 46.58% anti-dumping duty and restart the investigation at the point mistakes were made in March 1997 (in effect, turn back the clock). The 9th District Court also refused to accept the brief it had received from the 16th District Court and returned it to that court. That same day, the 16th District Court granted an injunction retaining the 46.58% duty until a hearing on February 22.

On February 22, the Ministry of Economy argued in the 16th that the price agreement was valid. Nonetheless, the 16th court decided to grant the Mexican growers an injunction maintaining the 46.58% duty until certain questions could be considered. It is not clear when the 16th District Court intends to take up those questions.

Situation

The NFE-Economia agreement did not go into effect on February 28.

The Ministry of Economy is trying to reconcile conflicting instructions from two different district courts. To comply with the 16th court, it must maintain the 46.58% duty. To comply with the 9th court it must remove the 46.58% duty, roll back the clock to 1997 and reinitiate the investigation. Of course,

Mexico Update *(continued)*

if the clock is rolled back to 1997, the negotiated price agreement wouldn't exist, so the case against the agreement in the 16th court should be moot.

If the Ministry of Economy were to comply with the 9th District Court it would remove the 46.58% duty and send questionnaires to NFE members regarding their sales in 1996-97 (and/or another subsequent period). During the following three to five month investigation, no duty should be applied. Following that investigation, a preliminary finding would be announced. At that point, the Mexican government could throw out the case or issue a preliminary duty rate(s).

If a preliminary duty rate(s) was (were) announced, Mexico could then enter into a suspension agreement with the US industry. Such an agreement however, as a practical political matter, would most likely have to be acceptable to the Mexican industry. It is not at all clear what would appease the Mexican industry.

Recent Action

On February 25, Bill Bryant met with U.S. Trade Representative negotiators in Washington, DC to review Mexico's refusal to implement the agreement and to discuss options available to the US government and industry. Bill then met privately with the president's chief agricultural negotiator, Ambassador Johnson. Ambassador Johnson already was planning to meet with the Mexican Minister of Economy on March 8 (in Africa), and agreed he'd raise this issue with the Mexican minister at that meeting.

On March 2, Bill Bryant and Jim Archer met with the Mexican Ministry of Economy in Mexico City to explore options and secure some understanding of how it wanted to conduct the new investigation. The Ministry wants to comply with the 9th District Court and restart the original investigation, but needs some direction on whether it can do that (which involves removing the 46.58% duty while the new investigation is being conducted) and still be in compliance with the 16th District Court (that requires the 46.58% duty to be maintained).

While in Mexico City, Jim Archer and Bill Bryant also met with the US minister counselor for agriculture (FAS/USDA) at the US embassy, and discussed what options were available for the embassy and USDA's involvement.

On March 4, Bill Bryant met with the United States' principal Mexico-negotiators from USTR and USDA. The purpose was to review eight different options that might be available to the US & Mexican governments and to North-west Fruit Exporters, and to begin discussing how best to proceed.

On March 10, the issue will be explored between USTR Ambassador Johnson and the Mexican Under Secretary of Economy at a meeting in Washington, DC.

NFE is working with sub-cabinet US and Mexican government officials in both Mexico City and Washington, DC. The immediate objective is to determine how and when the new investigation will be conducted. Other conversations are exploring various options.

Japan WTO Case on Fireblight

It was leaked to the Swiss press on March 11 that the WTO has internally decided to rule in favor of the US in the fireblight case against Japan. The US had won a previous case and an appellate challenge, and took Japan back to the WTO when it did not comply with the WTO decision.

In this recent case the US argued that Japan should not be requiring any fireblight buffer zones nor any orchard inspections. According to leaked sources, the WTO has agreed with the US position. A public release of the report is expected in May.

Japan WTO Case on Fireblight *(continued)*

This case is important not only because it might finally result in the opening of the Japanese apple market, but because the precedent could be applied in both South Africa and Australia as well. BCI has already begun coordinating with APHIS and USTR to ensure this precedent is quickly applied to the barriers maintained by both of these countries.

South Africa & Australia: Market Access Activities

NFE is already working to apply the WTO fireblight precedent (set in the earlier WTO decision) in South Africa and Australia. In addition, negotiations and data exchanges on other pests are underway.

Eric Rosenberg, BCI, is working with USDA's Animal and Plant Health Inspection Service (APHIS) to finalize a letter to South Africa's Directorate of Plant Health and Quality (DPHQ) regarding six pests of concern.

The pests, including European canker, brown rot, and a variety of mites also have been raised by Australia's Quarantine Inspection Service (AQIS).

NFE/BCI, with the assistance of Mike Willett at the Northwest Horticultural Council, has been working with plant pathologists in Washington, Oregon, and Idaho to collect documentation on the rarity of these pests in Pacific Northwest commercial apple orchards.

South Africa and Australia are awaiting the WTO decision on fireblight, before determining how to move forward with negotiations on fireblight and these other pest issues.

India Food Grade Wax

Last week, Matt Lantz, BCI, met with USDA Foreign Agricultural Service (FAS) officials in Washington, DC regarding the status of food grade waxes in India.

USDA reported that the Indian subcommittee that addresses food additives met on February 8 and discussed this issue. That subcommittee announced it needed more information on food grade waxes, and could not make a recommendation.

The following day, an Indian tabloid newspaper erroneously reported the subcommittee had rejected food grade waxes.

On February 18, the US embassy's deputy chief of mission and agricultural counselor met with the new Ministry of Health secretary and reported that the secretary was responsive. The US officials again stressed that India should defer to Codex standards for food grade waxes.

The problem, according to FAS, is that while the health minister is responsive, the issue bogs down at the technical level.

India is in potential violation of its WTO obligations by not notifying the WTO SPS Committee of this regulatory change, by refusing to accept Codex tolerances without providing scientific justification, and by possibly not holding their domestic producers to the same standards.

India intends to overhaul its food regulatory system. That should include repealing the current food additive regulations, including those on wax. It is unclear when that will occur, but NFE/BCI is working to ensure the necessary wax regulatory revision is included among the pending changes.

US-Vietnam WTO Accession Talks to be Held Next Week

The next round of Vietnam World Trade Organization (WTO) accession talks between the United States and Vietnam will be conducted from March 14 to 16 in Washington, DC. Vietnam is seeking WTO accession by the end of the year.

In order to gain membership in the WTO, Vietnam must negotiate bilateral trade agreements with interested countries.

Last week, on behalf of Northwest Fruit Exporters, BCI met with representatives of the US Trade Representative's office (USTR) to ensure that Vietnamese tariff concessions for apples will be obtained as part of Vietnam's WTO entry requirements. USTR is also pushing for transparency in Vietnamese Customs procedures to ensure that duties are charged on invoice prices and not inflated reference prices.

New Zealand-Thai "FTA" Details

Negotiations on a Closer Economic Partnership (CEP) Agreement between New Zealand and Thailand were concluded in November 2004. Details were recently announced.

The Agreement is scheduled to be signed in the second quarter of 2005, and to enter into force from July 1, 2005.

In New Zealand, the CEP Agreement will be submitted to Parliament for consideration along with a National Interest Analysis in the spring.

Regarding Thai tariffs on New Zealand apples, once in effect, Thailand has agreed to immediately eliminate its 10% duty on New Zealand apples. US apple imports will still face the 10% or 3 Thai Baht/kg most favored nation rate.

Additional information on the agreement can be found at: <http://www.mfat.govt.nz/tradeagreements/thainzcep/overview.html>