

6.2 CHAPTER 19 DISPUTES

6.2.1 Red Raspberries

The first of the issues referred to a Chapter 19 panel for review, examining a U.S. International Trade Administration (ITA) anti-dumping order against red raspberries from Canada, has now been reported¹⁴².

The panel found that one of the three companies had been properly subject to anti-dumping duties under U.S. law. In the other two cases the panel remanded back to the ITA its conclusions that home market sales were inadequate to determine the fair market price. The panel instructed the ITA to provide further explanations within 30 days before determining if the evidence that the ITA had used constitutes "substantial evidence" as required under ITA rules.

A number of U.S. practices were reviewed by this panel. The definition of "such or similar" merchandise under the anti-dumping law was scrutinized and the circumstance under which the ITA can disregard sales of such or similar merchandise in the home market and use "constructed value" to determine foreign market value was examined. The panel found that the equation of unlike products (fresh raspberries and bulk-packed raspberries) was properly denied by the ITA and that a constructed value could be used to determine the level of the anti-dumping duty (AD). The panel found that in the other two cases the ITA appeared arbitrarily to have decided on the inadequacy of home market sales of like products.

Giving the ITA a second opportunity to provide reasons, rather than making an immediate ruling that the record does not support the ITA decision, demonstrates a "benefit of the doubt" approach to ruling on previous practices, while at the same time indicating that rules respecting data collection and reasoning will have to be followed, and seen to be followed, rather than relying on arbitrary assumptions.

The panel process took 283 days, 32 less than the maximum allowed by the FTA and about half the usual time required for review through the U.S. courts. However, the remand to the ITA of 30 days was extended, at their request, by ten additional days. The parties to the dispute will have fifteen days to consider the information once it is received. How the panel will proceed following comment is as yet unclear, and estimates range from 20 to 90 more days before the final panel results will be available, for a total of 428 days.

¹⁴² Article 1904 Binational Panel USA-89-1904-1 *In the matter of Red Raspberries from Canada: Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow and Mukhtiar & Sons Packers, Ltd. v. United States Department of Commerce, International Trade Administration*. December 15, 1989.