

THE CANADIAN ANTI-DUMPING DUTY IN RELATION
TO NATURAL PRODUCTS,
WITH PARTICULAR REFERENCE
TO FRUITS AND VEGETABLES.

By

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INTRODUCTION.

This thesis has been undertaken with the purpose of attempting in some measure, to clarify thought and discussion in the matter of the Canadian Anti-Dumping Duty.

The Canadian fruit and vegetable industry is one of such importance that factors materially affecting its welfare should receive considered attention. The Dump Duty is such a factor, and at the present time is receiving much thought by our legislative bodies and the fruit and vegetable producers, as it would seem that the present status of the Duty is such that the function of an Anti-Dumping Duty is not being carried out towards natural products.

Consideration of the Duty has been confused by the various forms and interpretations given to it in past years, and the material herein contained, it is hoped, will serve to give the history, status and purpose of the Duty. No definite stand has been taken either in supporting or opposing the Duty, but rather the writer has tried to explain and set forth facts which will enable those interested to understand the subject under review.

DEFINITION OF DUMPING.

Jacob Viner defines dumping as "price-discrimination between national markets". This definition is sufficiently broad to include all forms of dumping, such as, Reverse Dumping, Exchange Dumping, Spurious Dumping, Concealed Dumping, etc., as well as the general view of dumping which might be called Straight Dumping. Mr. E. J. Young, M.P. for Weyburn, Saskatchewan, during the 1928 Session of the Dominion Legislature, gave a definition of dumping which is ordinarily accepted in Canada. Mr. Young said: "Goods are being dumped when they are being sold for export to Canada at a lower price than that at which they are being sold for consumption in the country of origin in the usual and ordinary course." This would be applicable to and agree with the Dumping Duty as contained in the Customs Tariff Act.

Dumping as provided against in the Customs Tariff Act and the Customs Act may be considered under two headings, depending upon the method of valuing imported goods. The first type was under the Customs Tariff Acts of 1904 and 1907, and is straight dumping, where a duty was assessed if the price at which goods were sold to Canada was less than the "fair market value of the same article when sold for home consumption in the usual and ordinary course in the country whence exported to Canada". This type of dumping agrees with

the definitions above. The second differs from the first in that the method of valuing goods is different. The Customs Act was amended in 1921 by the addition of a Clause which provided that the value for duty on new and unused goods should be the actual cost of production plus a reasonable profit. This provision was repealed in 1922 and later in the same year a new Clause was enacted whereby the Minister of Customs and Excise might in the case of natural products be authorized to value goods for duty purposes. Under this method of valuation "dumping" might not be dumping in the proper usage of the term.

In popular usage, dumping has taken on a variety of meanings, viz: when a product is sold for less to Canada than in the country of origin, when it is sold for less than the cost of production, when in times of severe competition the price is forced by foreign supplies below what is considered a fair level.

In this discussion, the term "dumping" will be taken to apply to the condition under which the Tariff and Customs provisions of the Statutes of Canada would cause the assessment of a special or dumping duty.

THE EXTENT OF THE CANADIAN FRUIT AND VEGETABLE INDUSTRY. THE
AMOUNT OF IMPORTS AND EXPORTS, COMPETING AND NON-COMPETING.

In any discussion of a tariff problem in relation to a particular industry, the extent of that industry should be known, as well as the amounts of exports and imports of a competing and non-competing nature.

The Investment in Fruit and Vegetable Production.

<u>Area</u>	<u>1911 Acres</u>	<u>1921 Acres</u>	<u>Decrease and Increase</u>
Orchard	403,596	297,053	(d) 106,543
Vineyard	9,836	7,090	(d) 2,746
Small Fruit	17,495	17,741	(i) 246
	<hr/>	<hr/>	<hr/>
	420,927	321,884	(d) 99,043
Vegetables		64,092	
Greenhouses		234 (9,960,369 sq. ft.)	
		<hr/>	
Total		386,210	

Capital Invested.

Estimating the average value of fruit and vegetable land at \$300.00 per acre, the investment would be:

$$385,976 \times \$300.00 = \$115,792,800.00$$

and with the value of the equipment estimated at \$1500.00 per farm, this would be

$$84,514 \times \$1500.00 = \$126,771,000.00.$$

With the value of greenhouses at \$1.50 per sq. ft., there is

an additional

9,960,369 @ \$1.50 = \$14,940,553.00.

This makes a total investment in land, equipment and greenhouses of \$257,504,353.00.

This total is sufficiently large to compel attention and to make worth while a discussion on any tariff problem relative to the fruit and vegetable industry.

Value of Production (on the farm).

	<u>1921</u>
Orchards	\$ 19,146,681.00
Grapes and Small Fruits	7,807,720.00
Vegetables	26,684,574.00
Greenhouse Products	1,247,954.00
	<hr/>
	\$ 54,886,929.00
	<hr/>

Since 1921 the orchard production in British Columbia has steadily increased in quantity until this past year, when the production was equivalent to that of Ontario and Nova Scotia combined. This has, however, not produced a greater total value, for the total value of orchard fruits in 1926 was \$17,391,194.00, being lower than that of 1921.

The Lack of Progress in the Fruit and Vegetable Industry.

Number of Persons Employed or Residing on Fruit and Vegetable Farms

	<u>1911</u>	<u>1921</u>	<u>Decrease</u>
Total Farms of 1 to 50 acres	157,445	126,771	30,674
Estimating three-quarters as being fruit and vegetable farms	118,083	95,079	23,004 (1.)
Average number of inhabitants per farm	5.7	6.18	
Total number of inhabitants	673,073	587,588	85,485 (2.)

(1.) During the same period, the number of all occupied farms was increased by 28,761 or 4.22 per cent., indicating that the trend was from fruit and vegetables to some more prosperous branch of farming.

(2.) During the same period the rural population increased by 502,495.

<u>Population of Canada</u>	<u>1911</u>	<u>1921</u>	<u>Increase</u>
Urban	3,272,947	4,352,122	1,079,175
Rural	3,933,696	4,436,361	502,665

The Decrease in the Number of Orchard Trees and in the
Production of Small Fruits.

Number of Trees	<u>1911</u>	<u>1921</u>	<u>Decrease</u>
Apple Trees	16,217,176	12,462,332	3,754,844
Peach Trees	1,895,647	1,196,221	699,426
Pear Trees	967,242	673,902	293,340
Plums and Prunes	1,712,350	1,252,173	460,177
Cherries	1,237,074	886,587	350,487
			<hr/>
			5,558,274

Small Fruits - Products	<u>1910</u>	<u>1920</u>	
Strawberries (qts)	18,686,662	15,658,346	3,028,316
Currents and Gooseberries (qts)	3,830,609	1,983,834	1,846,775
Other Small Fruits (qts)	9,000,208	843,407	8,156,801

The value and importance of the fruit and vegetable industry noticeably declined from 1911 to 1921. Recent trends show no opposite tendency, although it may be that rather than continued decline, it is now more in a stationary state. During the ten year period of 1911 to 1921, the imports of various fruits and vegetables increased 2 per cent. to 300 per cent. over the figures obtaining in 1911.

The tendency has been a shifting from fruit and vegetable farms to farms of other types, and an increase in the amount of imports. This may have been in part due to the working out of the principle of comparative advantage, but is in doubt in large measure due to the severe competition from

the fruit and vegetable industry of the Western United States, where expansion has been tremendously rapid.

During 1921, a substantial measure of protection was afforded the apple growers when 90 cents a barrel was placed as the tariff on apples. Since that time no important tariff measures have been instituted in support of the fruit and vegetable industry. Should the industry decline still further, it is important to consider such measures as the Dump Duty in order that vested interests will not be too severely injured through glutted markets and price slaughtering from foreign dumping.

Imports and Exports of Fruits and Vegetables,
Competing and Non-Competing.

The following tables set forth in detail the imports into Canada of fresh, dried or preserved fruits and vegetables, of kinds produced and not produced in Canada.

FRUIT AND VEGETABLE IMPORTS

FRESH FRUITS:

(a) OF A KIND PRODUCED IN CANADA:

<u>COMMODITY</u>		<u>1911</u>	<u>1921</u>	<u>1926</u>
		<u>Quantity</u>	<u>Quantity</u>	<u>Quantity</u>
(1)	Apples - Bbls.	190,785	139,199	150,580
	" - Lbs.	29,571,675	21,575,845	23,380,200
	Apricots)			
	Nectarines)			
	Quinces) Lbs.	8,927,486	11,504,657	22,863,321
	Pears)			
Berries - wild - not shown in lbs.				
	Blackberries)			
	Gooseberries)			
	Raspberries) Lbs.	3,022,457	2,581,651	3,207,335
	Strawberries)			
	Cherries - Lbs.	519,259	866,186	501,051
	Currants - Lbs.	1,960	2,647	217
	Grapes - Lbs.	6,232,286	7,702,330	12,565,121
	Melons - No.	1,196,668	3,268,221	3,774,596
(2)	" - Lbs.	1,495,860	4,085,276	4,718,245
	Peaches - Lbs.	8,971,460	10,928,262	14,898,566
	Plums - Bu.	97,244	106,464	190,754
(3)	" - Lbs.	5,834,460	6,387,840	11,445,240
Other Fruit - not shown in lbs.				
TOTAL POUNDS -		64,576,903	65,634,694	93,579,296
INCREASE -		-	1,057,791	27,944,602
(1) - 155 Lbs. per Bbl.				
(2) - 1 $\frac{1}{4}$ " " Melon.				
(3) - 60 " " Bu.				

	<u>1911</u> <u>Quantity</u>	<u>1921</u> <u>Quantity</u>	<u>1926</u> <u>Quantity</u>
(b) <u>OF A KIND NOT PRODUCED IN CANADA:</u>			
Bananas, bunches	2,163,574	2,054,607	2,703,432
Cranberries, Bus.	32,351 (1)	43,080	51,895
Other fruits not shown in quantities.			

(1) $2\frac{1}{2}$ Bus. per Bbl.

(a) OF A KIND PRODUCED IN CANADA:

<u>COMMODITY</u>	<u>1911</u> <u>Value</u>	<u>1921</u> <u>Value</u>	<u>1926</u> <u>Value</u>
Apples	655,245	729,421	800,059
Apricots)			
Quinces)	294,182	664,295	1,065,687
Nectarines)			
Pears)			
Berries - wild	5,683	10,240	10,161
Blackberries)			
Gooseberries)	343,767	515,487	613,572
Raspberries)			
Strawberries)			
Cherries	67,949	168,160	81,071
Currants	211	355	38
Grapes	349,597	846,448	826,531
Melons	104,666	385,144	412,600
Peaches	299,909	583,401	643,001
Plums	239,899	404,534	495,035
Other Fruit	28,965	22,933	64,977
	<u>\$2,390,073</u>	<u>\$4,330,418</u>	<u>\$5,012,732</u>
	-	<u>\$1,940,345</u>	<u>\$ 682,314</u>

	<u>1911 Value</u>	<u>1921 Value</u>	<u>1926 Value</u>
(b) <u>OF A KIND NOT PRODUCED IN CANADA:</u>			
Bananas	2,054,674	5,257,135	4,277,828
Cranberries	100,081	208,521	205,204
Guavas)	1,419	10,875	9,607
Mangoes)			
Lemons)	716,031	1,332,185	1,346,696
Limes)			
Oranges)	3,186,252	7,115,667	8,331,042
Grapefruit)			
Pineapples	288,846	445,523	520,165
Total Value	<u>\$6,347,303</u>	<u>\$14,369,906</u>	<u>\$14,690,542</u>
Increase	-	<u>\$ 8,022,603</u>	<u>\$ 320,636</u>

(a) OF A KIND PRODUCED IN CANADA:

FRESH VEGETABLES:

<u>COMMODITY</u>	<u>1911 Quantity</u>	<u>1921 Quantity</u>	<u>1926 Quantity</u>
Potatoes, Bu.	387,515	466,069	-
" Lbs.	23,250,900	27,964,140	26,129,680
Tomatoes, Bu.	112,474	293,760	329,781
" Lbs.	5,623,700	14,688,000	16,489,050
Vegetables, n.o.p., not shown in lbs.			
TOTAL POUNDS -	<u>28,874,600</u>	<u>42,652,140</u>	<u>42,618,730</u>
INCREASE exclusive of other vegetables		<u>13,777,540</u>	<u>- 33,410</u>

(a) OF A KIND PRODUCED IN CANADA:

<u>COMMODITY</u>	<u>1911 Value</u>	<u>1921 Value</u>	<u>1926 Value</u>
Potatoes	\$413,443	\$531,492	\$481,933
Tomatoes	240,333	847,920	1,110,587
Vegetables, n.o.p.	999,936	1,745,011	2,559,744
	<hr/>	<hr/>	<hr/>
TOTAL VALUE	\$1,653,712	\$3,124,423	\$4,152,264
	<hr/>	<hr/>	<hr/>
INCREASE	-	\$1,471,711	\$1,027,841
		<hr/>	<hr/>

(b) OF A KIND NOT PRODUCED IN CANADA:

	<u>Quantity</u>	<u>Quantity</u>	<u>Quantity</u>
Potatoes, Sweet, Bu.	43,723	56,603	51,586
	<hr/>	<hr/>	<hr/>
INCREASE -	-	12,880	5,017
		<hr/>	<hr/>
	<u>Value.</u>	<u>Value.</u>	<u>Value.</u>
Potatoes, Sweet,	\$51,084	\$108,783	\$114,152
	<hr/>	<hr/>	<hr/>
INCREASE -	-	\$ 57,699	\$ 5,369
		<hr/>	<hr/>

FRUITS - DRIED, CANNED OR PRESERVED.

(A) OF A KIND PRODUCED IN CANADA:

<u>COMMODITY</u>	<u>1911</u> <u>Quantity</u>	<u>1921</u> <u>Quantity</u>	<u>1926</u> <u>Quantity</u>
Dried Apples lbs.	140,094	1,102,853	1,174,553
Apricots "	-	686,862	989,664
Prunes & Plums "	9,301,561	10,494,520	14,776,062
Peaches "	-	1,154,843	1,621,878
Fruits Canned " (1)	4,501,874	13,482,596	9,032,563
Jellies, Jams Etc.	3,946,735	1,434,109	2,283,599
Total Pounds	17,890,264	28,355,783	29,878,319
	<hr/>	<hr/>	<hr/>
Increase	-	10,465,519	1,522,536
		<hr/>	<hr/>

(1) - 85% of total imports.

(B) OF A KIND NOT PRODUCED IN CANADA:

Currents lbs.	11,000,240	4,934,917	4,889,109
Dates "	3,543,081	4,097,068	11,727,978
Figs "	4,759,673	2,670,145	4,694,301
Raisins "	21,023,665	24,979,194	33,811,732
Fruits Canned " (1)	794,448	5,900,942	9,101,354
Total Pounds	41,121,107	42,582,266	64,224,474
	<hr/>	<hr/>	<hr/>
Increase	-	1,461,159	21,642,208
		<hr/>	<hr/>

(1) - 15% of total imports.

(A) OF A KIND PRODUCED IN CANADA:

	<u>Value</u>	<u>Value</u>	<u>Value</u>
Dried Apples	11,260	39,043	35,144
Apricots	-	164,497	150,634
Plums & Prunes	459,985	1,459,102	1,109,827
Peaches	-	210,351	171,216
Fruits Canned (1)	226,441	1,961,693	884,133
Jellies, Jams etc.	<u>316,793</u>	<u>397,745</u>	<u>332,615</u>
Total Value	<u>\$1,014,479</u>	<u>\$4,232,431</u>	<u>\$2,683,569</u>
Increase	-	<u>\$3,217,952</u>	<u>\$1,548,862</u>

(1) - 85% of value of total imported.

(B) OF A KIND NOT PRODUCED IN CANADA:

Currants	551,562	849,893	334,263
Dates	159,647	603,346	792,204
Figs	202,384	337,432	418,504
Raisins	1,139,983	5,482,589	2,325,285
Fruits Canned (1)	<u>39,960</u>	<u>833,754</u>	<u>642,355</u>
Total Value	<u>\$2,093,526</u>	<u>\$8,107,014</u>	<u>\$4,512,611</u>
Increase	-	<u>\$6,014,478</u>	<u>\$3,594,403</u>

(1) 15% of value of total imported.

VEGETABLES - CANNED, DRIED ETC:

(A) OF A KIND PRODUCED IN CANADA:

<u>COMMODITY</u>	<u>1911</u> <u>Quantity</u>	<u>1921</u> <u>Quantity</u>	<u>1926</u> <u>Quantity</u>
Tomatoes and) other Vegetables) canned.)	lbs. 7,465,909	8,293,193	13,756,578
Pickles & Sauces	"(1) 5,169,180	(1) 2,998,270	3,951,340
	12,635,089	11,291,463	17,707,918
Decrease	-	1,343,626 (increase)	6,416,455

(1) 10 lbs. to the gal.

	<u>Value</u>	<u>Value</u>	<u>Value</u>
Tomatoes and) other Vegetables) canned.)	421,909	1,124,041	1,235,560
Pickles & Sauces -	601,373	500,148	529,805
Total Value	\$1,023,282	\$1,624,189	\$1,765,365
Increase	-	\$600,907	\$141,176

NOTE

Although the trade returns do not itemize the kinds of canned vegetables, pickles and sauces it is presumed that practically, if not all, are of a kind produced in Canada.

TOTAL IMPORTS:

OF A KIND PRODUCED IN CANADA:

	<u>1911</u>	<u>1921</u>	<u>1926</u>
Fresh Fruits	2,390,073	4,350,418	5,012,732
Fresh Vegetables	1,653,712	3,124,423	4,152,264
Fruits, preserved, etc.	1,014,479	4,232,431	2,683,569
Vegetables, Canned, etc.	<u>1,023,282</u>	<u>1,624,189</u>	<u>1,756,365</u>
	\$6,081,546	13,311,461	13,604,930

OF A KIND NOT PRODUCED IN CANADA:

Fresh Fruits	6,347,303	14,369,906	14,600,542
Fresh Vegetables	51,084	108,783	114,152
Fruits, Canned, etc.	<u>2,093,536</u>	<u>8,107,014</u>	<u>4,512,611</u>
	\$8,481,923	22,585,703	19,227,305

<u>TOTAL IMPORTS</u>	<u>14,563,469</u>	<u>35,897,164</u>	<u>32,822,235</u>
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EXPORTS:

FRUITS

	<u>1911</u>	<u>1921</u>	<u>1926</u>
Apples, Bbl.	523,658	1,358,499	1,388,493
\$	1,756,884	8,299,099	6,250,186
Berries, \$	82,921	377,230	497,472
Other			
Fruits, \$	136,177	570,252	109,258
Dried, Lbs.	2,844,267	2,098,628	4,410,026
\$	184,707	322,777	458,890
Canned or			
Preserved, Lbs.	-	-	7,618,172
\$	220,157	751,520	658,097
Cider, Gals.	184,792	72,544	46,566
\$	27,707	52,565	28,337
Juices & Syrups			
n.o.p., Gals.	-	-	381,376
\$	-	-	383,260
Total			
Fruits, \$	<u>2,520,553</u>	<u>10,393,422</u>	<u>8,385,500</u>

VEGETABLES

Beets,			
sugar, Ton	-	11,502	45,097
\$	-	103,175	270,782
Potatoes, Bu.	994,348	5,036,769	7,083,149
\$	622,592	9,657,612	9,327,274
Turnips, Bu.	1,477,994	1,786,755	2,449,535
\$	208,611	460,506	629,316
Canned, Lbs.	-	4,779,126	10,341,023
\$	28,797	408,203	668,434
Pickles, \$	-	-	834,548
Other, \$	243,193	152,123	289,245
Dried, Lbs.	-	219,005	-
\$	-	59,747	-
Total			
Vegetables, \$	<u>1,534,228</u>	<u>10,841,366</u>	<u>12,019,599</u>

TOTAL EXPORTS:

Fruit	2,520,553	10,393,422	8,385,500
Vegetables	<u>1,534,228</u>	<u>10,841,366</u>	<u>12,019,599</u>
<u>TOTAL, \$</u>	<u>4,054,781</u>	<u>21,234,788</u>	<u>20,405,099</u>

Available statistics are not as complete regarding exports as they are regarding imports. Those detailed above, however, show that there is a considerable export trade in fruits and vegetables, which in recent years has exceeded in amount the imports of a kind produced in Canada. This fact may suggest that there is already a greater supply of produce than can be utilized for home consumption, and that there is little need of tariff measures of any sort.

It must be recognized that in a country so vast as Canada, there must be a certain amount of importing and exporting of the same commodity if it be a natural product, due to geographical situation. The expenses of a long rail haul may be more than offset by buying from a nearby point in the United States and allowing the distant point to export by water. An example of this might be an import by the cities of Ontario of apples from eastern New York, while British Columbia could export to Great Britain by steamship through the Panama Canal.

Imports of American produce are much less than they might otherwise be, were it not for the determination of the Canadian producer to market as much as possible in his own country. This has been particularly evident in late years in the case of British Columbia fruit on the prairie provinces. At one time the market was largely held by American produce. British Columbia has gradually increased her hold on this

market until she now virtually controls it. A very excellent example is afforded in the marketing of last year's crop (1928). Through the activities of the Interior Committee of Direction which has a certain price fixing function under the Produce Marketing Act, the amount of apples imported into the prairie provinces was negligible. This was made possible by the constant arranging of prices by the Committee of Direction, which would successfully sell Canadian fruit against the competition of American shipping houses. Were it not for activities such as these and the prompt usage of markets information, there is no doubt but that the amount of imports would be far greater than is the case at present.

A further reason for importations is the difference in the time of maturity of the crops in Canada and the United States. With most fruits and vegetables, two weeks would be a fair average of the difference in growing seasons. With some kinds of produce, such as strawberries from Georgia, tomatoes from Mexico and cherries and melons from California, the differences are much greater. The public appetite for new supplies of any fruit or vegetable is considerable, particularly in the early summer. With foreign supplies available before the Canadian crop is ripe, importations take place. As a result of this difference in season, the market is satiated before home grown supplies are completely used up.

Perishables must be processed, as in the canning or freezing of strawberries, while more lasting products, such as apples, may be exported. The necessity for taking such action works a hardship on many producers, since they, in a sense, sell the "left overs". This difference in season is in large measure responsible for there being imports and exports of the same commodities.



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THE HISTORY OF THE DUMP DUTY.

The enactments, amendments and rescinded portions of the Customs Act, the Customs Tariff Act and the Orders in Council relating thereto, of the Anti-Dumping Legislation in Canada, from their first passage to the present time.

The following section, while lacking in interest, is written to give properly the order and material of the various Acts, and the status of these Acts. At the present time the "Dump Duty" is largely misunderstood by those who attempt to discuss it, and, regrettable as the fact is, the members of the Dominion House of Parliament seem little better qualified in this respect than the man in the street. In-so-far as possible, with the material which has been available, I have followed a strict chronological order and have given an exact definition of the various Acts, Amendments and Orders in Council.

In the year 1904, the Anti-Dumping Legislation was first passed in Canada. At that time the leader of the Government was the famous Sir Wilfred Laurier, and the Honorable W. S. Fielding was Minister of Finance. On June 7, 1904, the Minister of Finance in bringing down the proposed changes to the tariff advocated the Dump Duty.

On that occasion he said, in part:

"As time rolls on, changing conditions arise, and it is the duty of the government and of all men in parliament to observe these changing conditions and adapt their tariff

legislation to the conditions which may confront us. In the world's trade, many new conditions have grown up, and we are particularly interested in the conditions which have arisen in the great high tariff countries. We cannot meet these by mere academic discussions of the principles of free trade or protection. Mr. Cleveland, on a memorable occasion, used an expression which is very frequently quoted, 'It is a condition and not a theory which confronts us.' We recognize that fact in tariff matters as in many other matters, and we say that many new conditions have arisen and are arising of which we are obliged to take notice. In low tariff countries or in free trade countries, Great Britain for example, these disturbing conditions seldom exist. England conducts her business generally upon rational lines. She sells at a profit, and what is known as the system of dumping or slaughtering is hardly known in connection with British trade. But, Sir, in the case of all high tariff countries these objectionable conditions arise. It seems to be the inevitable result of high tariff policy that monopolies, trusts and combines will flourish. They may possibly exist in low tariff countries, but they flourish under a high tariff policy as they could not possibly flourish under other conditions. We find to-day that the high tariff countries have adopted that method of trade which has not come to be known as slaughtering, or perhaps the word more frequently used is dumping; that is to say, that the trust or combine, having obtained command and control of its own market and finding that it will have a surplus of goods, sets out to obtain command of a neighbouring market, and for the purpose of obtaining control of a neighbouring market will put aside all reasonable considerations with regard to the cost or fair price of the goods; the only principle recognized is that the goods must be sold and the market obtained."

And further on, he said:

"We propose therefore to impose a special duty upon dumped goods. That special duty, subject to a limitation which I will mention, will be the difference between the price at which the goods are sold, the sacrifice price, and the fair market value of those goods as established under the customs law of the country. But this is subject to a qualification, they are subject to a limitation. If an article is sold in the country of production, then that will be the evidence of dumping, and the difference between the fair market value in the country of production and the price at which it is sold--or if hon. gentlemen prefer, dumped--that difference shall constitute the special duty, within the limitations. As regards certain articles upon which our

duties are low and upon which we grant protection in the form of bounties as well as in the form of duties, as respects certain of these items in the iron schedule chiefly, the limitation shall be 15 per cent ad valorem; that is to say, that special duty shall be the difference between the fair price and the dumping price provided it shall not exceed 15 per cent ad valorem. The additional duty over and above the present duty I call the special duty, and it is so called in our resolutions. Then in case of other articles, the limit is 50 per cent of the present duty. It is a duty over and above the existing duty, and it is limited by these two conditions; In one case, or in a few cases of like character, the limitation is that it shall not exceed 15 per cent, and in the other case it shall not exceed one-half of the duty."

On June 28, 1904, the Honorable W. S. Fielding moved in the House of Commons the following:

"Resolved, that whenever it shall appear to the satisfaction of the Minister of Customs or of any officer of customs authorized to collect customs duties, that the export price or the actual selling price to the importer in Canada of any imported dutiable article, of a class or kind made or produced in Canada, is less than the fair market value thereof (as determined according to the basis of value for duty provided in the Customs Act in respect of imported goods subject to an ad valorem duty), such article shall, in addition to the duty otherwise established, be subject to a special duty of customs equal to the difference between such fair market and said selling price; provided, however, that the special customs duty on any article shall not exceed one-half of the customs duty otherwise established in respect of the article, except in regard to the articles mentioned in items 224, 226, 228 and 231 of schedule A. the special duty of customs on which shall not exceed fifteen per cent ad valorem, nor more than the difference between the selling price and the fair market value of the article as aforesaid.

"The expression 'export price or 'selling price' herein shall be held to mean and include the exporter's price for the goods, exclusive of all charges thereon after their shipment from the place whence exported directly to Canada.

"The foregoing provisions respecting a special duty of customs shall apply to imported round rolled wire rods not over three-eighths of an inch in diameter, notwithstanding that such rods are on the customs free list; provided, however, that the special duty of customs on such wire rods shall not

exceed fifteen per cent ad valorem.

"If at any time it shall appear to the satisfaction of the Governor in Council, on a report from the Minister of Customs, that the payment of the special duty herein provided for is being evaded by the shipment of goods on consignment without sale prior to such shipment, or otherwise, the Governor in Council may in any case or class of cases authorize such action as is deemed necessary to collect on such goods or any of them the same special duty as if the goods had been sold to an importer in Canada prior to their shipment to Canada.

"If the full amount of any special duty of customs be not paid on goods imported, the customs entry thereof shall be amended and the deficiency paid upon the demand of the collector of customs.

"The Minister of Customs may make such regulations as are deemed necessary for carrying out the provisions of the foregoing sections and for the enforcement thereof.

"Such regulations may also provide for the temporary exemption from special duty of any article or class of articles, when it is established to the satisfaction of the Minister of Customs that such articles are not made in Canada in substantial quantities and offered for sale to all purchasers on equal terms.

"The special duty aforementioned shall not apply to goods of a class subject to excise duty in Canada."

An amendment was moved by the Minister of Finance on August 8, 1904, to insert after "equal terms", at the end of the last paragraph but one, referring to the regulations which may be made in carrying out these provisions, the following:

"Such regulations may further provide for the exemption from the special duty of any article whereon the duty in schedule A. is equal to fifty per cent ad valorem or upwards, or where the difference between the fair market value of the goods and the selling price thereof to the importer as aforesaid amounts only to a small percentage of their fair market value."

This section of the Customs Tariff Act appears the with almost/identical wording given above in the Statutes of Canada, 1904, Chapter 11, Section 19, Customs Tariff.

In the Statutes of 1907, the wording was changed somewhat, although making the same provisions. This then, became the since famous Section 6 of the Customs Tariff Act, the first paragraph of which is so often quoted, and is reproduced below, reading as follows:

"6. In the case of articles exported to Canada of a class or kind made or produced in Canada, if the export or actual selling price to an importer in Canada is less than the fair market value of the same article when sold for home consumption in the usual and ordinary course in the country whence exported to Canada at the time of its exportation to Canada, there shall, in addition to the duties otherwise established, be levied, collected and paid on such article, on its importation into Canada, a special duty (or dumping duty) equal to the difference between the said selling price of the article for export and the said fair market value thereof for home consumption; and such special duty (or dumping duty) shall be levied, collected and paid on such article, although it is not otherwise dutiable.

"Provided that the said special duty shall not exceed fifteen per cent ad valorem in any case."

By itself this clause alone was not effective and further assistance is given in the Customs Act, in certain sections of which a basis is laid down for the appraisal of goods for duty purposes.

The dumping duty was originally designed to prevent dumping of manufactured goods and no special provision was made for the appraisal of the various market values of perishable goods such as fruits and vegetables.[#]

[#] Discussed at greater length in a later section.

Strong representation induced the Dominion Government to amend the Customs Act in June, 1921, as follows:

"Add to Clause 7, Section 40, a new subsection (2):

"(2) Provided that the value for duty of new or unused goods shall in no case be less than the actual cost of production of similar goods at date of shipment direct to Canada, plus a reasonable profit thereon, and the Minister of Customs and Excise shall be the sole judge of what shall constitute a reasonable profit in the circumstances."

This new Clause set forth a definite basis for evaluation which during the fruit and vegetable shipping season of 1921 was effectively used.

In 1922, under strong pressure from those who were averse to any tariff assistance, the above Clause was repealed.

Again, in 1922, urgent representation on the part of those favoring tariff assistance caused the Government to amend the Customs Act by inserting Clause 47 A (now Clause 43 of the Revised Statutes) which reads as follows:

"If at any time it appears to the satisfaction of the Governor in Council on a report from the Minister of Customs and Excise, that natural products of a class or kind produced in Canada are being imported into Canada, either on sale or on consignment, under such conditions as prejudicially or injuriously to affect the interests of Canadian producers, the Governor in Council may, in any case or class of cases, authorize the Minister to value such goods for duty, notwithstanding any other provisions of this Act, and the value so determined shall be held to be the fair market value thereof."

No action was taken under this Clause until Order in Council No. 1088 was passed on July 13, 1926, which authorized the Minister of Customs and Excise to value fruits and

vegetables for duty. The fixed values were set by Appraisers' Bulletin No. 3209, issued July 14, 1926; and further Bulletins were issued on July 20, 1926 and September 2, 1926. It is said that the fruit and vegetable trade welcomed the publication of these values as it removed any doubt as to whether Dumping Duties would or would not be collected, and had a stabilizing effect upon the market. As the Canadian-grown supply of fruits and vegetables became exhausted, the values fixed were cancelled so that they were only applicable during the time when Canadian products of a like kind were available in substantial quantities.

During the season of 1927, Appraisers' Bulletins fixing the fair market values of fruits and vegetables were issued on June 1, June 14 and June 24. In these Bulletins, the period during which each commodity of Canadian production was available in substantial quantities was set out so that the values were effective only during such period. Where products were imported and Special or Dumping Duty assessed, if the importer could prove that Canadian products of a like kind were not available in substantial quantities to his market, the Department of National Revenue favorably considered an application for the refund of such Special Duty.

Early in the Session of the House of Parliament for 1928, Mr. E. J. Young, Member of Parliament for Weyburn, Saskatchewan, and a leader of the Free Trade group in the

House, placed on the Order Paper of the House of Commons a resolution, reading as follows:

"That in the opinion of this House, Section 43 of the Customs Act, Revised Statutes, 1927, Chapter 42, giving the Governor in Council power to authorise the Minister of Customs and Excise to place a fixed value for Duty on imports of natural products of a class or kind produced in Canada should be repealed."

This resolution was later withdrawn but on March 19 and March 30, the Orders in Council which gave the Minister of National Revenue authority to fix values on natural products for Duty were cancelled and on March 28, the Department of National Revenue issued a Bulletin cancelling all values fixed by the Minister.

Without the Orders in Council authorizing the Minister to make valuations for duty purpose, the Dumping Duty was applied strictly as under Section 6 of the Customs Tariff Act.

In the agitation which ensued following the cancellation of the Orders in Council referred to above, a good deal of attention was given to the Dumping Duty and the Department of Justice ruled that the provisions of the Dumping Clause as contained in the Customs Tariff Act (Section 6) and of the Valuation Clause as contained in the Customs Act (Section 43) did not permit of the broad interpretation which they had been given--that while the Dumping Clause was still good to provide against dumping in the narrow sense, the Minister had no power under the Valuation Clause to deal with dumping in the broader sense.

Since the time of the cancellation of the Orders in Council as referred to above, and the Ruling brought down by the Department of Justice, the Dumping Duty has been applied as under Section 6 of the Customs Tariff Act. To my knowledge no further Acts, Amendments or Orders in Council have been passed relative to this subject.



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THE APPLICATION OF THE ANTI-DUMPING DUTY IN ITS VARIOUS FORMS.

Strictly speaking, there has been since 1904, only one Anti-Dumping Duty. In the previous section, it was shown that the Dump Duty proper is Section 6 of the Customs Tariff Act. Various interpretations have been given to this section by means of valuation clauses in the Customs Act. All these clauses which may, at different times, have given different interpretations, are, however, together with Section 6, referred to as the Dump Duty.

The original Dumping Clause, as enacted in 1904, was designed to apply to manufactured goods. It was made quite clear by the Honorable W. S. Fielding, when introducing the clause, that what he had in mind was a dumping of manufactured articles, in respect of which dumping in the narrow sense of the term had occurred and was feared for the future. Sir Wilfred Laurier, speaking before an audience in Toronto in 1907, referred to the Dump Duty and is quoted as having given the same expression as that of Mr. Fielding.

Section 6 provides that a special or Dumping Duty shall be assessed when a product is sold for a lesser price in Canada than in the country of origin. With such a provision the protection to such natural products as fruits, vegetables or poultry products is almost of scant value. These products are highly perishable and of necessity are quite rapidly moved through the channels of distribution. Usually by the

time that dumping has been acted upon, the goods are in the hands of the retailer or consumer. The duty is then paid by some middleman who already has sold the goods, yet may lose on the transaction because of the duty exacted. This destroys the confidence of the dealers and causes them to demand a wide margin for operating.

With manufactured products, the sale price in foreign countries may at times be difficult to ascertain and this is especially so with natural products. On such goods no definite price ranges are set, these often selling for what they will bring. This again makes the operation of the Dump Duty, as under Section 6, difficult to administer.

There are many ways in which the duty may be evaded. As an example, there might be sub rosa rebates, that is, to buy at a certain price and the shipper return a portion of the receipts to the buyer. This would, of course, be more advantageous with those items having a specific duty than with those under an ad valorem duty. As the Customs generally assess duties, I believe on invoice values, an invoice can be made containing higher prices than it is the intention of the buyer to pay the seller, on some preconceived arrangement of their own.

The chief objection to the original Dumping Duty was that goods were brought in and sold before action could be taken, for the Clause states that they must be sold for a

lesser price in Canada. Such sales may satisfy a portion or all of the market. The damage as far as the Canadian producer is concerned has then already been done, no matter how much duty may be collected. Having a perishable product, the grower must move it, often at very low prices. The greatest objection has been that the remedy was applied after the disease was contracted and that which was wanted was a preventive measure rather than a curative one.

The original clause was the only one from 1904 to 1921. In the latter year, an evaluation clause as quoted in the previous section was added to the Customs Act. This provided that the value for duty purposes was the cost of production plus a reasonable profit. Naturally, this provided ample protection, as it is the same in principle as the scientific tariff. When goods were sold or invoiced for less than their cost of production, they were considered as dumped goods and a special or dumping duty was assessed. This interpretation of the Dump Duty was applied throughout the 1921 shipping season, and it is said, applied effectively.

In 1922, the above clause was repealed and a new clause enacted which provided that (in the case of natural products) the Minister of Customs and Excise might be authorized to set fair market values of goods for duty purposes, if it appeared that foreign goods of a class or kind produced in Canada were being imported under conditions as to affect

prejudicially or injuriously the interest of the Canadian producer.

As has been before mentioned, no action was taken on this clause until 1926, when the Honorable H. H. Stevens was Minister of Customs. During the period 1922 - 1925 (inclusive) the status of the Dump Duty to the producers of natural products was Section 6 of the Customs Tariff Act.

In 1926, the Minister of Customs was authorized to fix values for duty. This condition prevailed throughout the shipping seasons of 1926 and 1927, Appraisers' Bulletins being issued several times fixing values. The fair market value was not always a market value at all but was what the Minister might consider a fair value in order to give protection to Canadian producers. The value fixed might have no relationship whatever to the actual selling price at the time of export in the country of origin.

It has been said that the Dumping Duty as applied under this clause was misused and did not really carry out the proper purpose of a Dumping Duty. It is true that there were cases of this, for instance, values were set upon lettuce and, unfortunately, allowed to remain throughout a whole year. On the other hand, it has been stated that the fixing of values and the publishing of bulletins containing these values were welcomed by the trade since any doubt was removed as to whether Dumping Duties would or would not be collected,

and tended to have a stabilizing effect upon the market. There are no statistics which would go to show that prices of fruit in Canada were definitely increased or not by the application of fair market values set by the Minister of Customs. Instances are cited by those pleading for each side of the question; these are difficult to judge. If the fair market values set are really fair, then there is no reason to suppose that the Dumping Duty is being applied in any other way than for its intended purpose. There is, however, a considerable difficulty in maintaining a fair administration under such a clause, and as has been ruled by the Department of Justice, the application of such a clause is illegal, according to the status of Section 6 of the Customs Tariff Act.

During the past year (1928), the Dumping Duty has again been on the same basis as in 1904-21. Protection against dumping, as discussed previously, is, on this basis very inadequate. During the past shipping season, several instances of severe competition were occasioned, which under Section 6, cannot properly be termed dumping, yet is so considered by the Canadian producer.

It is interesting to note that during the period of 1904 to the present, there have been but three years in which the operations of the Anti-Dumping Duty have been considered by the Canadian producer as being adequate. These years were 1921 under the "Cost of Production" Clause and

1926 and 1927 under the "Fair Market Value" Clause. Protests in reference to the lack of effectiveness of the present Dump Duty have been particularly vigorous during the past season, due perhaps, to the fact that one misses greatly the thing one had, but not the thing one did not have, which latter was previously the case.



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THE TYPE OF PROTECTION DESIRED BY THE FRUIT AND VEGETABLE GROWERS AND SOME ARGUMENTS IN SUPPORT.

As has been pointed out, the Anti-Dumping Duty as it at present obtains under Section 6 of the Customs Tariff Act does not provide the protection against dumping which is suitable to the conditions pertaining to natural products, particularly fruits, vegetables and poultry products. The type of protection desired is one that will tend to prevent dumped goods from entering into the markets of Canada, rather than is now the case, of goods entering, paying the duty, and breaking the market. This was partially prevented during 1926 and 1927.

As to the type of protection from dumping, the fruit and vegetable growers are agreed on one point--that it should be greater than at present. Some believe that a Dump Duty based upon price discrimination between national markets, if it be so legislatively framed as to be effective quickly, would be sufficient, whether the power rested with Parliament, the Governor General in Council or at the discretion of the Minister of National Revenue. Many feel that valuations based upon the cost of production should be the basis for dump duty protection. This, however, is unsound, as it allows no provision for changes of valuation during periods of low or high prices, the vicissitudes of the business cycle which the farmer must experience. Should the cost of production

be chosen as a basis, a choice must first be made as to whether the cost is that at home or abroad. The cost of production at home would appear to be unfair as it contravenes the law of comparative advantage, and cuts off from the Canadian consumer the opportunity of obtaining goods from more efficient foreign production. If the cost of production abroad is chosen, the purpose of the duty is largely negated, for to cite extreme cases, the Canadian producer cannot hope to compete in cost with such articles as Egyptian onions or Mexican tomatoes.

During the past year, discussion of the Dump Duty has brought forward a new term and a new conception of the protective needs. This has been called a "glut" duty, and involves periods of severe price competition rather than the thought of dumping. In heavy crop years prices are lowered by large supplies, not only in Canada but particularly in the United States as well. This was evident in 1928 when the threat of American importations of apples kept the prices at such a level on the prairie provinces that it is estimated the British Columbia grower of apples will receive approximately one-half of his cost of production. Were prices to be permanently low, it would be to the advantage of the consumer to have no protection afforded the Canadian producer under these conditions. Heavy importations under "glut" conditions would seriously injure the Canadian producer, forcing

many out of the industry. Conditions would be reached where fruit might be relatively cheap in one year and very expensive the next.

In support of the idea of a "glut" or emergency duty, the producers point out that although fruit might be cheap in the heavy crop years of the American producer, and Canada created as a surplus market, when supplies were short the consumer in Canada would go begging for his fruit. An illustration of this is afforded in the experience of the past two years. Supplies were plentiful during 1928 and prices low in Canada, due not only to a large home grown supply, but also to the attempt of the western United States to market a portion of their surplus in Canada. The reverse was true in 1927. Crops in that year were smaller and the buying power of the American markets was high. Apples, in particular, sold for a greater amount there than in Canada. Had there been no home grown supplies, the Canadian consumer would have, of necessity, been forced to pay dearly. An even greater implication is made at times, namely, that were there little or no Canadian industry, American shippers would consciously endeavor to extract the extreme price from the Canadian market.

So much for the support of a glut duty. In consideration of an ordinary Dumping Duty, perhaps slightly more protective than is its status at present, there are a few

arguments which are eminently fair and one or two others which should receive consideration.

In a sense, and particularly is this true of British Columbia, fruit growing is an infant industry. Products to the south of us are products of an older culture. This older culture provides a greater age in orchards and the accompanying greater productivity. More time has been afforded to eliminate poor producing and undesirable varieties. Experience, an asset of extreme value in the industry, has to a greater extent been gained by the American grower. Marketing and distributing organization likewise have the benefit of a longer time to acquire knowledge, and a more lengthy period over which to spread their cost of being built up. When the Canadian industry, and in particular, the industry, as it obtains in British Columbia, has had a similar period of time in which to develop, it can confidently be expected that cost will be similar. A survey conducted in the Wenatchee and Yakima districts of Washington in 1926 shows costs to be not a great deal less than is found to be the case in a survey conducted over several years in the Okanagan and Kootenay districts of British Columbia.

Because fruits and vegetables are natural products, consideration must be greater than with manufactured goods. An orchard requires ten years of careful attention before it begins to produce. After that time the production can never

be determined. The action of climate, weather, season, hail, frost, etc., all operate to make crops large or small. An orchard cannot be shut down, as can a factory, without very serious damage being caused. The grower must stay and produce, or lose all. Some consideration must be given to these facts in determining what the nature of an adequate Anti-Dumping Duty should be.

One thing that can never be changed, yet, it is declared, should be provided against, is the difference in season due to climatic influences. Maturity in the south comes at an earlier date than it does in Canada. In a market with the taste for the new supplies of each fruit, the American goods find a ready sale at good prices. Canadian supplies sufficient to fill the needs of the market are later available, only to experience the market partly satisfied and prices on a downward trend. As the Canadian crop ^{comes} on in its height, American goods are being sold at low prices to clean up the balance of their supplies. This indeed works a hardship on the home grower. It is said that the best price the Canadian grower secures in his own market is the lowest price which the American shipper receives. This is partially true. Strictly speaking, under a dumping duty nothing can be done to change this situation, largely because the goods in question are natural products. Another proposal to remedy this condition will be discussed in the next section.

Those viewing the protective needs of the fruit and vegetable industry with fair mindedness, feel that the protection afforded at present by the Customs Tariff is sufficient, but that there is the possibility of serious loss occasioned by abnormal conditions of supply which must be guarded against. This brings in the idea of an emergency duty.

Whether in consideration of the discussion above, it is thought that the Dump Duty should be so modified as to include provisions to provide for these conditions and contingencies, is a matter of opinion. It does seem, however, that some thought should be directed towards this particular problem.

THE SEASONAL TARIFF.

The Seasonal Tariff is a measure which is distinctly different from an Anti-Dumping Duty, but because of its application to some of the conditions discussed in the previous section, will be briefly considered here.

When the Seasonal Tariff was first discussed in Canada, and an application made to the Tariff Advisory Board by the Canadian Horticultural Council for its adoption, there was not, to the writer's knowledge, any similar provisions or legislation in foreign countries. Today it is stated there are twenty-three countries which have Seasonal Tariffs.

This type of tariff is one which is applied during a certain period each year, generally when home supplies of goods are most available. In Canada, the fruit and vegetables producers have had an application before the Tariff Board for a Seasonal Tariff for five years. They wish to have an increased measure of protection afforded to home grown supplies when such supplies are available. When no Canadian supplies are available, it is no advantage to have protection.

The application made would increase present duties to some extent as in the proposed item below:

Tariff Item 95 -- Strawberries, Loganberries & Raspberries

	<u>British</u> <u>Preference</u>	<u>Inter-</u> <u>mediate</u>	<u>General</u>
<u>At Present</u>			
Blackberries, gooseberries, raspberries, strawberries, cherries and currants, n.o.p.; the weight of the package to be included in the weight for duty per pound	1½¢	1¾¢	2¢

	<u>British Preference</u>	<u>Inter- mediate</u>	<u>General</u>
<u>Proposed</u> Strawberries, loganberries, and raspberries per pound; the weight of the package to be included in the weight for duty. Imported from 1st June to 31st July	2 $\frac{1}{2}$ ¢	2 $\frac{3}{4}$ ¢	3¢

This illustrates the type of duty contemplated.

One distinct accomplishment would be to remedy in large measure the disadvantage of the Canadian producer because of his later season. While his supplies were available, a higher duty would protect the home market, but would allow importations at other times.

This section is merely to put forward the idea of a Seasonal Tariff and to show how it might apply to some conditions at present prevailing. Some of the work demanded at this time, but not fulfilled by an Anti-Dumping Duty might be accomplished under a well designed and properly administered Seasonal Tariff.

SUMMARY.

1. A definition of "Dumping" is given.
2. The extent of the Canadian fruit and vegetable industry, and the amounts of imports and exports, competing and non-competing, is shown.
3. The history of the Canadian Anti-Dumping Duty is reviewed.
4. The application of the Anti-Dumping Duty in its various forms is discussed.
5. The type of protection desired by the fruit and vegetable growers, and some arguments in support, are given.
6. The Seasonal Tariff is briefly discussed, to show its possible relationship to the Anti-Dumping Duty.

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