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This is a tale of an international trade dispute, an apparent legal victory for the U.S. rice industry and a fight over who gets to pay for it.

It's also a story about how depressed market conditions are pitting some rice farmers against the processing segment of their industry in a battle that probably wouldn't draw a second thought if rice prices were higher.

It doesn't call for a cake and balloons, but the U.S. rice industry just observed the one-year anniversary of the Mexican government's placement of duties on imports of long-grain milled rice from the United States. It is those duties (announced last June 5) that led to the dispute over the spending of rice check-off funds.

It started earlier, though. In December of 2001, in a petition to the Mexican government, American exporters were accused by the Mexican Rice Council of selling Mexico milled rice for less than it was sold for in the U.S. – a practice commonly called "dumping."

U.S. companies make fairly wide use of anti-dumping statutes themselves. There is also an anti-dumping provision provided for in the World Trade Organization (WTO), an entity both Mexico and the United States are members of.

So the fact that Mexico has anti-dumping laws is not surprising. What is "very surprising," to Bob Cummings, USA Rice Federation vice president of international policy, is the way Mexico has employed them.

Fill this out

In late 2001, when Mexico announced the initiation of an investigation they sent questionnaires to American exporters of long-grain milled rice. It was at the discretion of the exporters as to whether they'd fill out the questionnaires.

It wasn't an easy call: the queries are laborious and expensive. In gathering needed data, mills perused records on a sale-by-sale basis paying close attention to the sales/prices of rice sent to Mexico and rice deals made domestically. This was done in an attempt to match the two up to show one market wasn't exploited illegally.

The companies that participated were: Arkansas-based Riceland Foods, California's The Rice Company, and Louisiana-based Farmer's Rice Milling.

"When I spoke with these companies during their filling out of the paperwork (which also entails being audited by the Mexican government when finished) people were working overtime and weekends because the process was so intense," says Cummings.

The USA Rice Federation believed the anti-dumping investigation was an industry wide threat that demanded an industry wide response. That response cost money.

"We received a small amount of initial funding for this through a USDA program," says Cummings. "That's important because we made an argument to the U.S. government that this investigation had the potential to threaten our market access in Mexico. They agreed and provided us with some money to defend the rice industry."

But the USDA money wasn't nearly enough and the Federation decided to dip into funds it controlled to pay attorneys. There were no questions raised about the fund tapping in August 2001, when the Mexican government issued its preliminary findings.

To those in the U.S. rice industry the determination was welcome news: the Mexican rice industry had suffered no injury because of U.S. long-grain milled rice prices. And because no injury was suffered there was no need for anti-dumping duties on U.S. rice.

"We were very happy to hear that because it corresponded to the U.S. rice industry's protestations that there'd been no dumping," says Cummings.

That's where the farmer protest comes in.

It isn't their only grievance with the rice powers, but it's the biggest. When the USA Rice Council said in its newsletter last year that it had spent in excess of \$500,000 of rice farmers' check-off money in defense against a Mexican dumping charge, that raised alarms among a group of Arkansas rice farmers.

Check-off dollars for lawyers

"Farmers had nothing – *nothing* - to do with the charges in Mexico," says John Alter, a producer from Dewitt, Ark. "That was the processors all the way. What they did or didn't do has nothing to do with any farmer. Yet, we're the ones footing the bill for their lawyers.

"Now, you've got these processors claiming big profits every year and farmers going out of business left and right. But (through check-off funds) we're still paying for their attorneys! What's wrong with this picture?"

Dwight Ellis, president of the upstart Arkansas Rice Growers Association (ARGA), is of the "firm conviction" that the way rice farmers' check-off dollars are spent needs more scrutiny – at least when looking at the funds spent on things other than research.

"The research side of the check-off funds is just doing a wonderful job," says Alter. "I don't think you'll find a soul that's unhappy with the results of those research dollars.

However, we've got serious questions – as every farmer in the state should – about how the promotion side of our check-off money is being spent."

It grates, says Ellis, that the USA Rice Federation has, "spun paying these attorneys with check-off money as 'defense of the industry.' However, farmers weren't polled or asked if our money could be funneled for that purpose. It's my firm belief that most farmers aren't even aware of what has happened to their money. This has been kept under the radar. Most farmers have been too busy trying to scrap a living."

Growing membership?

Asked if ARGA's concerns could be an attempt to gain members through stirring up dissent, Ellis insists it isn't. "This isn't about accusing anyone of bad faith or actions. This is simply an attempt to gain fairness for farmers," he says. "I want to take the high road here. I want to do my level best to get the (rice-growing) states back together to pull growers out of the dumps."

That's one of the reasons ARGA (which is now 3 years old and represents some 26 percent of Arkansas rice acreage) came about, says Alter. "For too long, we've allowed someone else – i.e. the rice mills – to take care of our business. We started requesting information from the U.S. Rice Council last June. They never engaged our questions. Instead, they sent us to a law firm. We've been corresponding with that law firm ever since. That raised all kinds of red flags," says Alter.

"We want to know where our money is going and how much is being spent. In one instance, they told us they'd released in excess of \$500,000 (for legal fees). Well, what does that mean? That could be \$1 over that or an infinite amount.

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"ARGA isn't against or fighting against rice mills. However, my first obligation is to feed my family and sell my product in any forum that the market wants – not with a bias towards milled rice. The way things are now, there is a bias. It's not the farmers' job to keep rice mills afloat."

The U.S. rice industry's initial victory was short-lived because the Mexican government's ruling was only a preliminary one. In June of 2002, the Mexican government published their final determination. That document turned the tables almost 180 degrees.

"They found injuries, anti-dumping penalties were assessed and we were dumbfounded," says the USA Rice Federation's Cummings. "The way anti-dumping duties work is they're assigned to individual exporters who submit questionnaires. Those who don't submit the documents are lumped together under an 'all other' duty."

"I find it very interesting that the two companies that submitted questionnaires (Riceland Foods and Farmers Rice Milling) had zero duties assigned them. The third company, The Rice Company, had a duty rate of 3.96 percent assessed them. That's very low."

The "all others" rate, however, was 10.18 percent. That rate was to be applied to all U.S. companies that ship long-grain milled rice to Mexico. That duty held even when the exporter had never shipped such rice in the past.

"In the petition that the Mexican rice industry sent to their government, they alleged the rate of dumping was 10.18 percent. How they came up with that number was they said U.S. companies were selling rice to Mexico that was for 10.18 percent less than they sell it for in U.S. markets. We, quite frankly, couldn't believe what had happened. We saw no basis for that rate," says Cummings.

Rolling back NAFTA?

Many are convinced the duties were slapped on rice not because of dumping but in an effort to torpedo the North American Free Trade Agreement (NAFTA).

Cummings claims the duties struggle must be viewed in a NAFTA context. Why? Because American commodities besides rice were subject to either anti-dumping investigations, safeguard investigations (which is yet another way to keep out imports), reference price schemes or other things. All of these investigations were denying market access to U.S. agricultural exports. Other U.S. commodities affected include: apples, high fructose corn syrup, pork, live hogs, beef and dried beans.

"We believe this is an obvious effort by the Mexican government to turn back NAFTA. On Jan.1, 2003, according to NAFTA, all the duties on U.S. rice going to Mexico went to zero. Except for the anti-dumping order, there are no more rice duties."

But before zero rice tariffs could take effect, last summer Mexico's final determination was released. When the shock wore off a bit, the main players in the U.S. rice industry decided to do two things. One, "we decided to file an internal appeal within the Mexican administrative structure. Our attorneys advised us that there were several technical flaws in the way the Mexican government carried out their investigation and, therefore, they were liable to have their decision overturned on those technicalities. So we went down that road," says Cummings.

Second, rice brass decided to get political.

"We said, 'this is no longer simply a legal issue. It's now a political issue and it's clear that, for whatever reason, the Mexican government is responding to their domestic industry and providing protection where it's not warranted.' So we (along with the aforementioned commodities) engaged in an information campaign with the Bush administration and Congress to get political response."

In addition to the internal appeal, the rice federation thought it important that the U.S. government bring a WTO case against Mexico.

"We don't think Mexico is living up to its legal obligations under the anti-dumping code of the WTO."

The U.S. government has yet to go to Geneva and file a WTO case (which, once filed, normally takes 18 to 24 months to complete). However, says Cummings, "we've gotten very favorable responses from our government about the merits of our case. With rice, we have one of the clearest examples on how the Mexicans haven't followed their own laws or international obligations. The Bush administration is now seeing a pattern in many commodities where Mexico is attempting to turn back NAFTA."

The U.S. government is apparently paying attention. In a meeting with his Mexican counterpart recently, Secretary of State Colin Powell reportedly brought up access problems that Mexico has put in the way of U.S. agricultural exports.

Back to the money

When the Rice Federation had good reason to think the anti-dumping case was indeed coming – "say, the fourth quarter of 2001" – representatives went to both the USDA and USTR (U.S. Trade Representatives) to sound the alarm bell and protest innocence.

At that time, Cummings says the U.S. government had nothing new to offer the rice industry, "until we could go to them and say, 'Mexico is either not living up to their own legal requirements or are violating their WTO agreements.' Essentially, the U.S. government told us what Mexico was doing was legal and the rice industry needed to defend itself. They said, 'If you have problems after the process is over, come back and if your complaints are valid, we'll help you.'"

Cummings says the rice industry – the Rice Council and the Rice Millers Association (RMA) as charter members of the federation – then had discussions in committee (which, says Cummings "included farmers") about the importance of the Mexican market and what signals would be sent if Mexico was allowed to turn the clock back on NAFTA. Also broached: would other Latin American countries follow suit with tariffs if Mexico succeeded in putting on "bogus" anti-dumping duties?

"Plus, we were innocent. There was no dumping," says Cummings. "So the decision was made to defend ourselves and we went through a very open process in selecting an attorney. There were more than five attorneys who bid for the job."

Over time, in a series of meetings of both the RMA and Rice Council and state organizations, committee members were asked for funding to pay legal expenses. Cummings says that on at least two occasions, the two entities were presented with information on the status of the case and estimates for the legal fees. They agreed to provide funding at about 76 percent Rice Council with the balance paid by millers. Cummings says the reason for that percentage breakdown is it represents the ratio of reserves held by each group at the federation level.

Was there any inkling that farmers might be unhappy at having their check-off dollars spent in such a way?

"There was active discussion," says Cummings. "What are we spending the money on? Why are we spending the money? What're the lawyers saying? Other options? As to what other farmers were saying, I don't know. Those are fairly representative bodies. We sent out correspondence to Rice Council members explaining and educating them about where the money was going."

"In January 2003, we finally got to zero tariffs. So now, our sales in Mexico will be based on the economics. If I'm a Mexican importer, I'll buy rough or milled not based on a tariff level but on what makes the most sense economically. Most folks in the industry see the market as continuing as a substantially rough one."

If the U.S. files a WTO case against Mexico and wins, is there a chance to recoup any of the check-off funds?

"I don't think there is," says Cummings. "But should the U.S. government take our case to the WTO, they'll fund that effort. Up to now, the industry has defended itself. From here on, it'll be a government lawyer that deals with the case."

Right now, it's important to understand that this isn't just a rice story, insists Cummings.

"In the larger picture, it isn't just rice. This is apples, beef, pork, beans and other things. While we're focusing on rice, this shows a pattern of Mexico trying to turn NAFTA back. If they succeed the implications are very bad."

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Quotes





| @CT - COTTON # 2 - ICEFU | Last | Chg |
|--------------------------|-------|-------|
| Oct 10 | 88.50 | 0.08 |
| Dec 10 | 84.87 | -0.35 |
| Mar 11 | 83.47 | -0.26 |

| C - CORN - CBOT | Last | Chg |
|-----------------|--------|-------|
| Sep 10 | 403'6 | -1'4 |
| Dec 10 | 419'4 | -1'0 |
| Mar 11 | 434'2s | -12'0 |

| S - SOYBEANS - CBOT | Last | Chg |
|---------------------|--------|-----|
| Sep 10 | 1001'0 | 1'4 |
| Nov 10 | 1002'4 | 3'4 |
| Jan 11 | 1008'4 | 1'6 |

| RR - ROUGH RICE - CBOT | Last | Chg |
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Finally, after nearly a year of correspondence and Freedom of Information Act requests, rice farmer John Alter has copies of checks in hand. They show that, indeed, just over \$500,000 of rice check-off money was spent on legal fees.

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"It doesn't mater if they spent \$10 or \$10 million over the \$500,000," says Alter. "Either way, it isn't right. That's what's important. Farmers' money that was for the sole purpose of promotion has been used to pay lawyers defending a Fortune 500 company.

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"Farmers are drowning in debt and aren't being represented well. We've got to stand up and do for ourselves. Obviously, no one else is going to. It's time for someone to start asking questions."

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