

CHRONOLOGY OF THE U.S.-CANADA WHEAT DISPUTE

Four U.S. government agencies and the WTO have all identified trade distorting practices on the part of the Canadian Wheat Board

June 1990: The U.S. International Trade Commission conducted a general fact-finding (Section 332) investigation on conditions of competition between the U.S. and Canadian durum market. The ITC concluded Canada's subsidized transportation system for the Canadian Wheat Board was problematic.

June 1992: At U.S. lawmaker request, the U.S. General Accounting Office studied marketing boards in various countries, including the Canadian Wheat Board. It confirmed the Canadian government had backfilled huge deficits in the CWB pool account due to insufficient income from wheat export sales to cover initial payments to producers.

February 1993: A bi-national dispute settlement panel established under the Canada-U.S. Free Trade Agreement reviewed whether Canada was violating Article 701(3) of the agreement by selling durum to the United States for less than the cost of acquisition (plus any storage, handling or other costs incurred). The bi-national panel defined "acquisition price" as only the CWB's initial payment to producers, ignoring interim and final payments, the subsidized transportation system, grading and inspection fees and CWB administrative costs. U.S. producers were outraged at this inequity in the agreement and have been fighting since to correct it.

January 1994: The bi-national panel released an audit report from Arthur Andersen and Co. concerning prices and associated costs for 105 sales of Canadian durum wheat by the CWB to the United States. Not surprising, the panel found that 102 of those sales were above the aforementioned, faulty definition of acquisition price. When actual costs were included, an analysis found that at least 93 – if not all - of the sales were made at less than the CWB's actual cost for the grain.

July 1994: The U.S. ITC found in an investigation under Section 22 of the U.S. Agricultural Adjustment Act that imports of Canadian wheat were interfering with domestic farm policy. The Canadian government promptly settled, agreeing to tariff-rate quotas on sales to the United States. For hard red spring wheat, there was a tariff of \$1.36 per bushel for imports exceeding 38.6 million bushels. For durum, there was an interim tariff of \$.65 per bushel on imports above 11 million bushels and a \$1.36 per bushel tariff kicking in on imports above 16.5 million bushels. The TRQs limited Canadian wheat sales to the United States in 1994 and 1995.

MYTHBUSTER: A Canadian Wheat Board claim of a 14-0 record in trade challenges is false.

Since the Canada-U.S. Free Trade Agreement was enacted in 1989, there have been several studies and investigations into Canada's wheat trade practices — most not aimed at any specific trade action. Only five situations have actually involved litigation. In each situation, U.S. wheat producers have made steady progress in chipping away the armor of the Canada's government grain monopoly and its pervasive web of control.

June 1996: The GAO reviewed the influence of state trading on international agricultural trade. Regarding the CWB, the GAO concluded that the board benefited from 1) the Canadian government's subsidies to cover periodic operational deficits; 2) a monopoly over both the domestic food use and export wheat markets, and 3) from pricing flexibility through delayed producer payments.

October 1998: The GAO studied Canadian grain exports to the United States, the operations of the CWB and trade remedies applicable to state trading enterprises. The report confirmed that the CWB "receives Canadian government subsidies in a number of direct and indirect ways," but concluded available information regarding CWB contracts was insufficient to determine whether it was complying with existing trade laws.

October 1999: In the course of an investigation into Canadian cattle exports to the United States, which resulted in a temporary duty, the Department of Commerce did not find that Wheat Board pricing policies for feed barley to Canadian cattle producers could legally be interpreted as a subsidy on cattle. *The case had nothing to do with wheat or the Board itself.*

February 2002: In response to a complaint filed by the North Dakota Wheat Commission under Section 301 of the U.S. Trade Act of 1974 and results of its own agency investigation as well as a fact-finding investigation of the ITC, the U.S. Trade Representative found that "the Government of Canada grants the Canadian Wheat Board special monopoly rights and privileges which disadvantage U.S. wheat farmers and undermine the integrity of the trading system." The USTR concluded "that the monopoly CWB has taken sales from U.S. farmers, and is able to do so because it is insulated from commercial risks, benefits from subsidies, has a protected domestic market and special privileges, and has competitive advantages due to its monopoly control over a guaranteed supply of wheat."

The USTR outlined a four-prong approach to level the playing field for American farmers, including: 1) a dispute settlement case against the CWB in the World Trade Organization, 2) U.S. countervailing duty and antidumping petitions, 3) ensuring access for U.S. wheat to the Canadian market, and 4) comprehensive and meaningful reform of monopoly state trading enterprises through the WTO agriculture negotiations.

March 2003: In response to countervailing duty petitions filed in September 2002 by the North Dakota Wheat Commission, the U.S. Department of Commerce imposed preliminary duties to counter Canadian government subsidization of 3.94 percent on hard red spring and durum wheat imports.

May 2003: In response to anti-dumping petitions filed simultaneously with the anti-dumping petitions in September 2002 by the North Dakota Wheat Commission, the DOC imposed additional preliminary duties of 6.12 percent on hard red spring and 8.15 percent on durum wheat imports from Canada.

August 2003: The DOC issued a final ruling in the anti-dumping and countervailing duty investigations indicating that the Canadian Wheat Board receives subsidies and dumps wheat into the U.S. market. The finding was for a countervailing duty of 5.29 percent for hard red spring and durum, and anti-dumping duties of 8.87 percent for spring wheat and 8.26 percent for durum wheat.

October 2003: As part of a checks and balance process in U.S. anti-dumping and countervailing duty challenges, the U.S. International Trade Commission must also find that injury is occurring to U.S. industry as a result of dumped and/or subsidized imports for duties to be imposed. The ITC determined that imports of durum from Canada were not injuring U.S. durum farmers. The ITC found imports of Canadian hard red spring wheat have materially

injured U.S. hard red spring wheat farmers. The preliminary bonding requirement of a combined 13.55 percent on durum was lifted, while a combined 14.15 percent was imposed on imports of hard red spring wheat from Canada.

December 2003: The Canadian Wheat Board announced it did not have enough money to cover its 2002-03 fiscal year pool account for hard red spring wheat to cover initial payments to Canadian farmers made in the fall of 2002. By Canadian federal law, the government had to cover the CWB's deficit amounting to 20.4 cents (U.S.) per bushel and totaling \$65 million (U.S.).

April 2004: In response to a request to the World Trade Organization from the U.S. Trade Representative, a dispute settlement panel issued a finding that Canada unfairly discriminates against wheat imports from the United States. The WTO report indicated Canada's wheat distribution system is unfair, discriminatory and in violation of international trade rules. Canada has required that U.S. wheat be segregated within its handling systems and has further prevented competition by charging more to transport U.S. wheat by rail.

Separately, the panel concluded that the Government of Canada is not in violation of its WTO obligations related to a provision that requires state trading enterprises to make "purchases or sales solely in accordance with commercial considerations." The panel recognized the potentially harmful and trade-distorting effects of state trading enterprises, but determined that the WTO Agreement as currently written does not provide an adequate remedy. USTR Robert Zoellick said, "The finding regarding the Canadian Wheat Board demonstrates the need to strengthen rules on state trading enterprises in the WTO. The United States will continue through the WTO negotiations to aggressively pursue reform of the WTO rules in an effort to create an effective regime to address the unfair monopolistic practices of state trading enterprises like the Canadian Wheat Board."

POSITION: U.S. wheat producers will fight for their interests until there is fair and open commercial competition for wheat in the North American market.

July 2004: The U.S. Court of International Trade dismissed on a technical basis regarding the date of filing for an appeal by the North Dakota Wheat Commission of the ITC's finding with regard to injury to U.S. durum growers from Canadian durum imports. It was an appeal of the ITC's determination as part of challenges against dumped and subsidized Canadian durum.

August 2004: A World Trade Organization review of an appeal filed by the U.S. government upheld a previous finding that the CWB is in compliance with existing trade agreement language regarding the operation of state trading enterprises.

The WTO then accepted the full report of the original dispute settlement panel, which included findings of violations by the Canadian government in regulatory hurdles that prevent the import of U.S. grain and higher rail transportation rates for imported grain. The WTO has given Canada a reasonable amount of time to bring its practices into compliance with WTO rules.

March 2005: In response to an appeal filed by the Canadian Wheat Board, a bi-national panel formed under the North American Free Trade Agreement ruled that the U.S. Department of Commerce should separately evaluate the impact of three Canadian government financial guarantees afforded to the CWB. As part of an anti-dumping finding issued by the DOC in August 2003, a 4.94 percent duty has been in place to offset the combined subsidization by the Canadian government of CWB borrowings, initial payments to farmers, and credit sales to foreign buyers. The panel dismissed the CWB appeal of the 0.35 percent duty against Canada's government-owned and leased railcars.

June 2005: In response to a separate appeal by the Canadian Wheat Board, a different NAFTA bi-national panel ordered the U.S. International Trade Commission to further explain its previous finding of injury and causation from imports of Canadian hard red spring wheat. A determination of injury and causative link to the imports is needed to retain both the 8.86 percent anti-dumping duty and the 5.29 percent countervailing duty on imports of Canadian hard red spring wheat, imposed preliminarily in March and May of 2003 and confirmed in October 2003. The ITC now has 90 days to review the matter. A decision can be expected around Sept. 6.

August 2005: As ordered by the NAFTA dispute panel in March, the U.S. Department of Commerce separately quantified subsidy rates for financial guarantees provide by the Canadian government to the CWB, calculating the borrowing guarantee to be 1.14 percent and the guarantee of the initial payment to producers to be 1.05 percent. The loan guarantee to CWB customers was also deemed an export subsidy, but because the support is tied to third-country markets and not the United States, no countervailing offset was provided. The net effect is that the countervailing duty will be reduced from its previous level of 5.29 percent to 2.54 percent.

October 2005: ITC issued a remand determination that U.S. hard red spring wheat growers are not being materially injured, or threatened with injury, by reason of imports of hard red spring wheat from Canada found to be subsidized and sold in the United States at less than fair value. The ITC was required to consider three factors in its decision: whether the volume of subject imports is significant; the effect of subject imports on U.S. market prices; and the impact of subject imports on domestic producers.

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