

# ***Grain Related Trade Disputes: A Post – CWB World***

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# Can a rearview mirror predict?

I will consider three broad groupings of disputes and consider whether they could happen again?

- I. 1993-1995: Mississippi floods ... import surge ... followed by possibility of a §22 AAA action → VER (Bi-national commission & milling and durum wheat TRQs)
  - Can it happen again: Unique set of circumstances (Section 22 and EEP gone) but nothing unique to CWB
  - But a large import surges draw attention and they will draw a response (best case: safeguard  worst case: *see below*)
  
- II. WTO Dispute Settlement (Art XVII issues)
  - 2002 U.S. allegations that CWB operated in a non-commercial manner ... 2004 panel rules “not inconsistent with WTO provisions”
  - Can it happen again: issues specific to CWB single desk
  
- III. Contingent Protection (Trade Remedy Cases)
  - 2001 §301 investigation → 2003 affirmative final determinations in countervail and anti-dumping investigations.
  - NAFTA panel review ... in series of decisions measures were gradually eliminated



# Countervailing Duties & Subsidies

- Cases initiated by parties with *standing* (e.g. NDWC)
- Investigations involve a two-part test:
  - 1) Demonstrate existence of a subsidy
  - 2) A material injury test if import causes/threatens to cause injury
- In 2002 case what was considered a subsidy?
  - Government guarantees (borrowing/lending/initial payment) & provision of hopper cars
- Future worries in terms of potential *actionable* subsidies
  - AgriInvest ← NISA was ruled “*generally available*” in hog case
  - AgriStability ← CAIS not consider in *Live Swine* but likely “*generally available*”
  - Crop insurance is crop specific *but would they dare?*
  - Export credit guarantees

# Anti-dumping

At its simplest level, “dumping” is price discrimination between domestic and export markets

- $\text{Margin} = \text{Normal Value} - \text{Export Price}$

Antidumping investigations involve a two-part test:

- 1) Demonstrate evidence that dumping exists  positive margin
- 2) A material injury test if import causes/threatens to cause injury

Biases in dumping margins

- “Below-cost” domestic sales that are not in “the ordinary course of trade” can be disregarded
  - Compounded comparing individual prices to annual average COP
  - Inflation of COP by adding only those profits from sales above cost
- “Constructed value test” to determine normal value ... dramatically increases the probability (and size) of positive dumping margin because a fully loaded unit cost is used to determine the normal value

# Anti-dumping (continued)

## Biases in injury determination

- More likely to find injury because of cyclical returns
- Less bias ...number of cases are overturned in final injury determination

## Antidumping actions are directed at firms not governments

- If extra trade consists of individual producer deliveries is there less chance of an AD case? What about the multinationals?
- If positive determination ...firm specific margins only for largest exporters and weighted average margin for “all others” not specifically considered
- If firms under investigation refuse or *fail* to provide required information in a “*reasonable period*” the dumping margins can be determined based on “facts available”

# Phytosanitary Barriers

Another avenue to bring trade actions:

- less likely because US measures are based on international standard setting bodies and are based on scientific principles
- principle of equivalency applies in NAFTA
- cooperation between CFIA and APHIS w.r.t “master phytosanitary certificates”  
*e.g. recognition of Karnal Bunt free states: US → C issue*

There may be potential sore points e.g. maximum pesticide residue limits or pesticide regulation; or even issues with vomitoxin. But in general don't lose sleep over SPS issues

## **•What steps should policy makers, farmers and firms take to reduce impact of trade disputes?**

Watch the volume of trade/ consult/ utilize existing international forms

Advocacy for international trade challenges ... other resources other than CWB to settle disputes