

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 \Rightarrow 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 exports 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”

Phytopsanitary 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 phytopsanitary 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