Grain Related Trade Disputes: A Post – CWB World

James Rude
University of Alberta
I have been asked to address two main questions:

1) How important have grain-related trade disputes been in the Canadian grains industry?
2) What is the likely impact on trade disputes from the forthcoming changes to the grain system?

I will focus on the second question, while using the first question as input to predict the prospects of future trade disputes.

Will the elimination of the CWB single desk authority increase exports of Canadian wheat and malt barley to the US?

- Some speculate that the CWB may have used caution in directing export sales to the US in order to avoid trade disputes.
- There is no empirical evidence of this.
  - Gravity models of trade flows could shed some light but no one has asked the question.
- Historic share of US exports to total exports: wheat 11%, canola 10%.
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
  • AgrilInvest ← 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
At its simplest level, “dumping” is price discrimination between domestic and export markets

- Margin = Normal Value – 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
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”
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 loss 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