Volume 1 Number 1, 2000/ p. 22-35 esteyjournal.com

The Estey Centre Journal of
International Law
and Trade Policy

U.S. – Canadian Agricultural Trade Conflicts: Time for a New Paradigm

Linda M. Young
Agricultural Policy Coordinator, Trade Research Center, Montana State University-Bozeman

Relations in cattle and beef trade between Canada and the United States have been tense in the past few years, despite the fact that few barriers to trade remain and that the markets are well integrated. The antidumping and countervailing duty suits brought by a group of U.S. ranchers against imports of Canadian live cattle are likely to be unproductive in facilitating the resolution of remaining issues between the industries. The Canadian and U.S. cattle and beef industries have numerous cooperative interests that provide a basis for a binational commodity group. Alternative methods of resolving trade disputes merit investigation.

Keywords: Canadian cattle industry; cattle and beef trade; dispute resolution; NAFTA; trade remedy law; U.S. cattle industry

Introduction

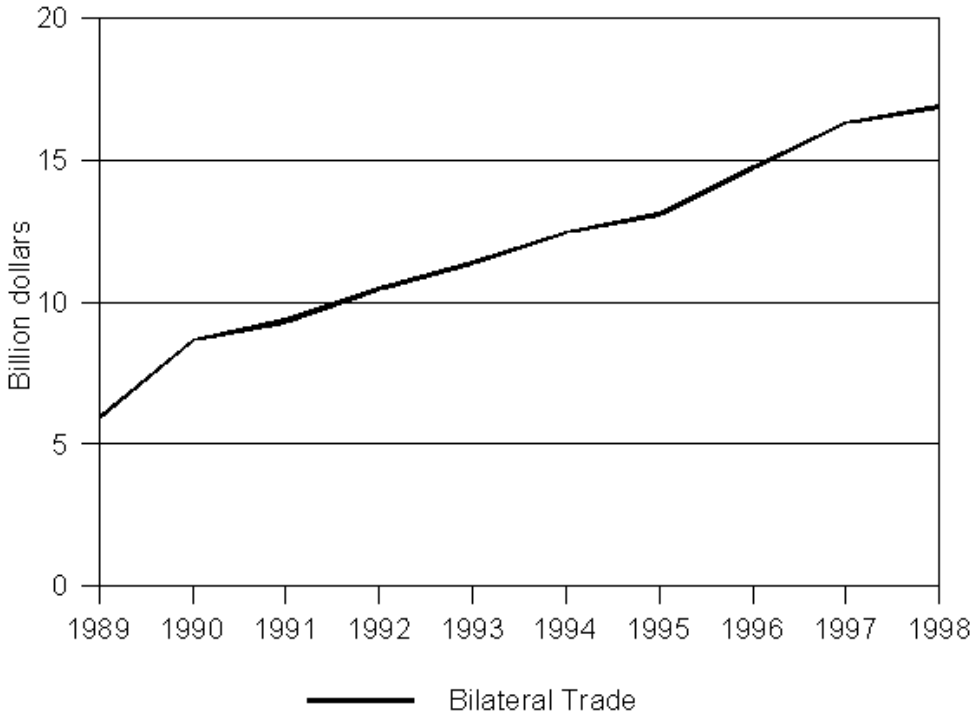
Trade between Canada and the United States in live cattle and beef has been characterized by tension, particularly in the past few years. The antidumping and countervailing duty suits brought by a U.S. industry group against Canadian live cattle imports are unlikely to resolve the underlying issues. In fact, the availability of antidumping and countervailing duty processes may mean that underlying trade tensions are funneled into these dispute resolution processes without the appropriate issues being identified and addressed. It is argued in this paper that careful consideration of the cooperative and competitive inter-

ests of the U.S. and Canadian beef industries is key to resolving current trade tension and avoiding future disputes. Alternative dispute settlement mechanisms are briefly explored.

Background

Since the Canada-United States Free Trade Agreement (FTA) began in 1989, agricultural trade between Canada and the United States has grown from US $5.9 billion to US $16.9 billion in 1998 (figure 1) (USDA 1999a).[1] Over this period, the two countries have moved toward free trade, and currently few tariffs or quantitative restrictions on trade in agricultural products remain. The increase in trade and the reduction of barriers to trade at the border have been accompanied by an increase in tension and conflict in some agricultural sectors. The level of conflict has fluctuated over time and varies between commodities.

Figure 1 US-Canadian Agricultural, Food, and Kindred Products Trade, 1989-1998



Source: Economic Research Service 1999.

In the past few years there has been an increase in the number of trade incidents between Canada and the United States involving live cattle and beef. For example, the state governments of South Dakota, North Dakota, and Montana separately blockaded or increased inspections of trucks carrying imports of beef, hogs, and grain into the United States for two weeks in September 1998. The governors of these states were quoted as say-

ing that the goals of increased inspections were to ensure that imported cattle and meat were free of specified diseases and drugs, and to ensure that Canadian grain was not infected with karnal bunt or mixed with wild oats. Other incidents include occasional protests against Canadian imports staged by U.S. producers in northern tier states and the repeated introduction of legislation into the U.S. Congress to require labelling of beef by country of origin (Marks 1999; Brester and Smith 1999). Some U.S. states considered or passed (but did not enact) legislation to restrict imports from Canada (White 1999).

In November 1998, the Ranchers-Cattlemen Action Legal Foundation (R-CALF) filed countervailing duty and antidumping suits against imports of live cattle from Canada. (R-CALF also filed an antidumping suit against live cattle imports from Mexico, which will not be considered further in this paper.[2]) Due to the obligatory nature of these processes, the suits were investigated despite the fact that this issue had been addressed on several occasions by the United States International Trade Commission (USITC). Previous USITC investigations, in 1987, 1993, and 1997, evaluated competitive conditions within the Canadian cattle industry and analyzed the impact of imports of Canadian cattle and beef on the U.S. market (USITC 1987; USITC 1993; USITC 1997). All three investigations reported evidence that Canadian domestic policies and trade actions did not violate trade agreements with the United States or the General Agreement on Tariffs and Trade (GATT). The repetitive nature of these investigations is worth noting.

It may be instructive to compare the causes and consequences of trade tension in U.S.-Canadian beef trade to those in other industries. Trade between the United States and Canada has also been contentious in wheat and barley. Some aspects of that conflict can be explained by the strikingly different policies and institutions for barley and wheat marketing that exist on either side of the U.S.-Canadian border. In Canada a state trading enterprise, the Canadian Wheat Board, has monopoly control over the export of wheat and barley. In Canada the marketing of wheat and barley is tightly controlled from producer to the export customer. In contrast, in the United States wheat and barley is marketed through private marketing channels. Such stark differences in institutions, as well as unequal access to each other's markets, can account for some of the tension that exists in the trade relationship. These institutional differences also partially explain the lack of motivation for wheat and barley producer groups to coalesce across the U.S.-Canadian border.

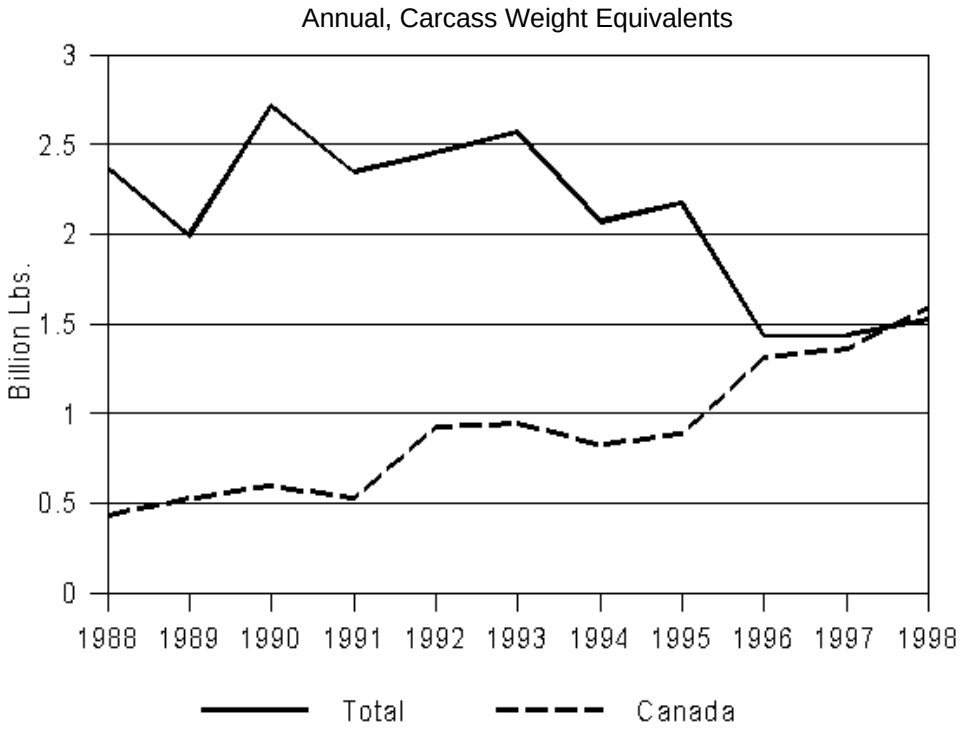
The U.S. and Canadian Beef Markets

Since 1989, trade between the United States and Canada in cattle, beef, and veal has increased, with U.S. imports from Canada increasing more than U.S. exports to Canada. The United States has had an increasing trade deficit in cattle and beef trade with Canada (figure 2). For example, in 1998 the United States imported 1.31 million head of

cattle from Canada and exported 116 thousand head of cattle to Canada, and in the same year the United States imported 823 million pounds and exported 261 million pounds of beef to Canada (USDA 1999b).

In contrast to the marked differences that exist in grain policies, U.S. and Canadian beef policies are quite similar (Young 1999; Young and Marsh 1998). In both countries the government provides inspection services, research and advisory programs, and marketing and export promotion programs, although the importance of these programs varies between countries and over time. An important role for government in both countries is provision of regulations for meat inspection and food safety.

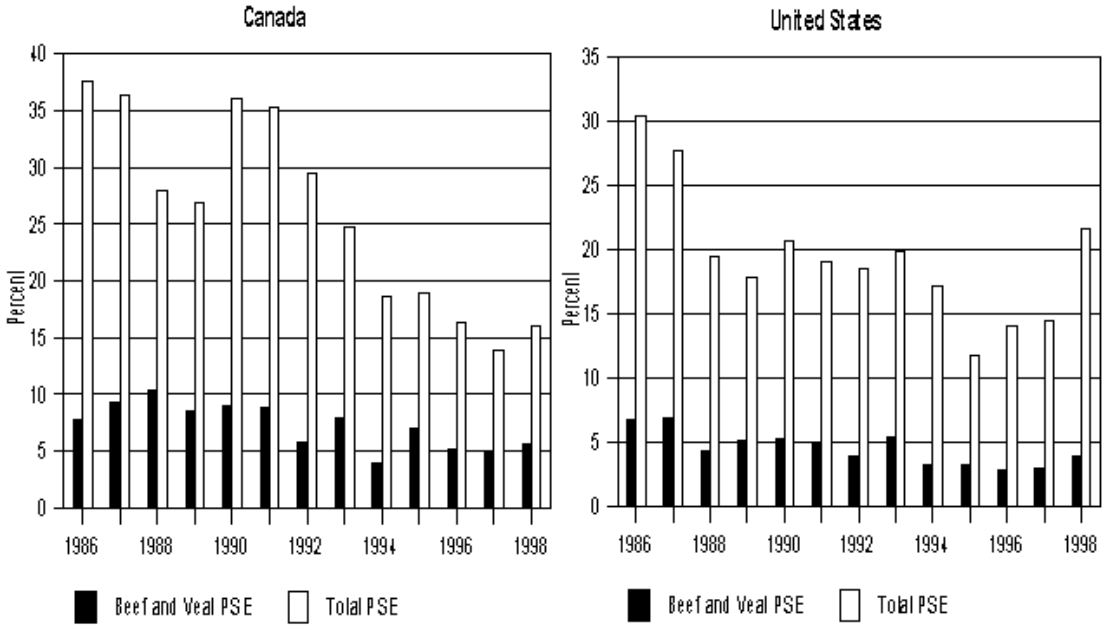
Figure 2 US Beef, Veal, and Live Animal Net Imports, Total and Canadian



Source: Brester and Marsh 1999.

In both countries the beef industry has received less government subsidization than many other crops. Producer subsidy equivalents (PSEs) are a measure of government support to the industry and are the sum of specified government subsidies to the sector as a percentage of commodity receipts. Figure 3 illustrates PSEs for the U.S. and Canadian beef and veal industries compared to the average PSE for agriculture in those countries (OECD 1999). Subsidization of the beef and veal sectors in the United States and Canada, to the extent that it is accurately reflected in the PSE, is relatively low compared to other com-

Figure 3 Percentage PSE for Beef and Veal and Total PSE, 1986-1998



Source: OECD 1999.

modities. For example, in the United States cattle producers have never received the regular price or income support that has been given to many grain crops.

The U.S. and Canadian cattle and beef markets are well integrated (USITC 1997; Young and Marsh 1998; Marsh 1999). This assessment is based on the following criteria: (1) prices in the two countries move together, and shocks in one market are transmitted to the other market through adjustments of supply and demand, and as a consequence prices differ by transportation costs; (2) trade occurs between the two countries; and (3) input markets are similar. Previous research indicates that these criteria are satisfied with respect to the beef market (Young and Marsh 1998; USITC 1997).

Due to the integrated nature of the U.S. and Canadian markets, and their relationship with the world market, reduction of imports from Canada to the United States would not have a large impact on the aggregate U.S. slaughter price. Marsh states "it would be tantamount to preventing Kansas cattle from entering Nebraska … ." (Marsh 1999, p.7). Total beef supplies in the North American market are more important in determining prices than the quantity of beef moving across the border.

U.S. Antidumping and Countervailing Duty Suits

Industries can petition for consideration of an antidumping or countervailing duty suit to seek protection from imports that are being sold at less than fair value or being subsidized by the government of the exporting country (Coughlin 1991). For consideration, a petition must have the support of the producers of 50 percent of domestic output. The Department of Commerce (DC) and the USITC have separate responsibilities in consideration of antidumping and countervailing duty suits. The determination of whether or not dumping or government subsidization has occurred is made by the DC. If their findings are positive, duties are calculated and importers are required to post a bond. At this point the USITC determines whether or not "material injury occurred." If material injury is not found, the case is terminated. A more complete description of these processes can be found in Coughlin (1991). Under the North American Free Trade Agreement (NAFTA), appeals of the decision can be made to binational dispute settlement panels.

Department of Commerce investigations into the 1999 countervailing duty suit found some Canadian programs that are countervailable. However, the estimated net countervailable subsidy was calculated at 0.77 percent, below *de minimis* requirements, and the case was dropped (USITC 1999a). While the DC found that cattle from Canada were sold at less than fair value, and antidumping duties were imposed for a period of time, the USITC ruled that material injury had not occurred, and the duties were terminated (USITC 1999b).

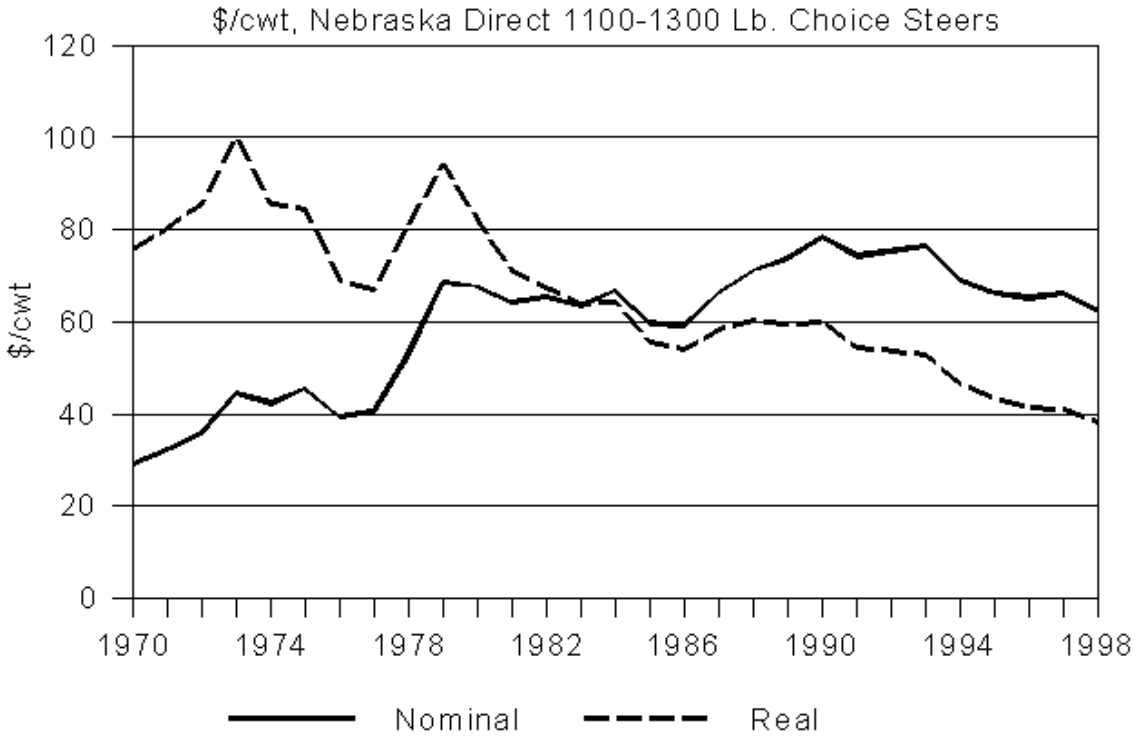
Need for a New Paradigm of Dispute Settlement

The hypothesis underlying this paper is that the U.S.-Canadian beef markets are approaching a single market and formal mechanisms available to resolve disputes have not kept pace with this evolution. In fact, the channeling of trade tension into antidumping and countervailing duty suits may be counterproductive to dispute resolution. In order to have a formal hearing of their case, R-CALF had to use available antidumping and countervailing procedures. These procedures limit the scope of the investigation and may prevent identification of underlying sources of tension. As the actual interests of the groups were not addressed, the repetitive nature of these investigations is likely to continue.

Issues Underlying Trade Tension

Poor economic conditions are hypothesized to be the most important issue underlying tension in beef trade, with issues in policy harmonization between the two countries also playing a role. Like many other agricultural industries, the U.S. beef and cattle industry has faced declining real prices for the last 35 years, as illustrated in figure 4. Per capi-

Figure 4 Nominal and Real Fed Cattle Prices

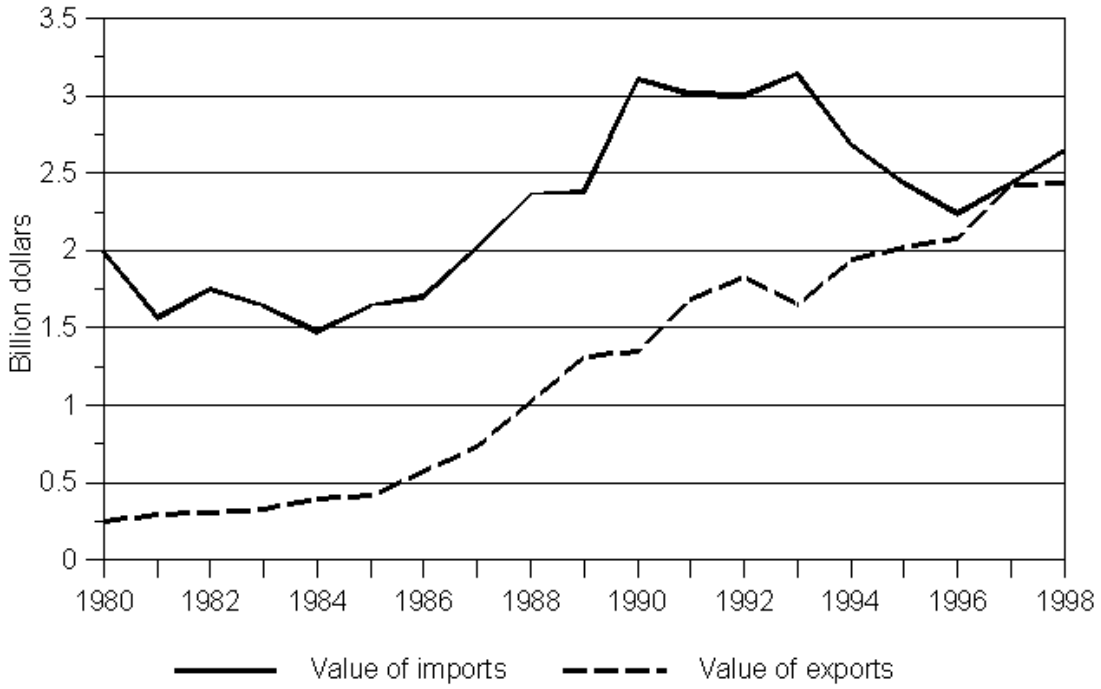


Source: Brester and Marsh 1999.

ta beef demand has declined since the late 1970s. In 1976 per capita consumption of beef was 94 pounds, declining by 40 percent, to 67 pounds, some 20 years later. Although total meat consumption rose slightly over the period, beef's share declined from 50 to 32 percent in the last 20 years. The cattle industry is known for its production cycles, caused primarily by production lags. However, despite variation in inventories, the industry has not grown significantly. U.S. beef exports have grown (figure 5), but still account for only around 9 percent of U.S. production. Poor economic conditions in the industry may heighten the attention given to imports, particularly highly visible imports of Canadian cattle, carcasses, and beef.

The Ranchers-Cattlemen Action Legal Fund (1999) argues that antidumping and countervailing duties are necessary to assist U.S. cattle producers. R-CALF also claims that Canadian imports of live cattle have harmed U.S. prices and have delayed price recovery in the cattle cycle. In addition, R-CALF claims that American cattle producers lose between one and two billion U.S. dollars a year due to unfair imports (Friesen 1998). R-Calf's petition claimed that Canadian cattle are dumped into the U.S. market with margins of US $50-150 per head and that Canadian government subsidies for cattle are worth

Figure 5 Value of US Imports and Exports of Cattle and Beef, Billion Dollars



Source: Marsh 1999.

around US $100 per head (R-CALF 1999).

However, economic analysis of the impact of the temporary antidumping duty indicates that such tariffs would have done little to improve conditions for the industry. Brester, Marsh, and Smith (1999) note that as the U.S. packing industry is characterized by excess capacity, reductions in live cattle imports would reduce fabrication line efficiencies and increase costs. These costs would be passed on to processors, producers, and consumers. In addition, "if increases in carcasses and/or boxed beef imports offset reductions in live cattle imports, then U.S. and Canadian slaughter and feeder cattle prices will be affected only to the extent that increased costs are imposed on the processing sector ... . U.S. cattle prices could actually decline by a small amount over the long term as a result of the tariff." (Brester, Marsh, and Smith 1999, p. 3) This economic analysis points out that the U.S. and Canadian beef industries share cooperative interests, an argument that is developed in the next section.

Elements of Successful Conflict Resolution

Ideas about how to move from a repetitive cycle of conflict and tension between the U.S. and Canadian beef industries to a more productive resolution of underlying issues can be drawn from a diverse literature addressing conflict settlement. This literature contrasts positional bargaining with interest-based bargaining. In positional bargaining, parties perceive themselves as opponents who are negotiating over a fixed amount of resources. Parties negotiate over positions, namely, statements of what each party desires, presented as settlement options to the issue in question. Positional bargaining is generally a win-lose or compromise-oriented process (Moore 1996, p. 70). When both parties begin with positions, or statements of a desired outcome, the process of identifying the underlying issues, which is key to a long-term resolution of the issue, may be shortchanged. Interests are the underlying needs and concerns of the parties involved. Interest-based approaches to conflict resolution emphasize integrative approaches that meet the needs of both parties to the greatest extent possible.

Use of antidumping and countervailing duty suits discourages industry groups from undertaking a meaningful investigation of the underlying issues or interests. Industry groups do not need to investigate underlying concerns, as these proceedings, once initiated, are obligated to use prescribed definitions and criteria in making their determinations. The lack of correspondence between underlying issues and the criteria used in antidumping and countervailing duty investigations may result in misattributed conflict, namely, debate over the wrong issue or between the wrong parties (Deutsch 1973). Reducing imports from Canada is a position; however, as discussed above, it is one that will do little to improve economic conditions in the U.S. industry over the long run.

Factors important to the success of interest-based negotiations are interdependence of the parties and the expected length of the relationship (Axelrod 1984; Deustch 1973; Moore 1996). The expected length of the relationship between the two industries discussed here is substantial and should increase the impetus for conflict resolution. The interests of the U.S. and Canadian beef industries can be divided into cooperative and competitive categories. Competitive interests can be summarized as "when one party swims the other party sinks," while cooperative interests are characterized by goals that are linked so that everyone sinks or swims together (Deustch 1973). Table 1 gives examples of the cooperative, cooperative but separate, and competitive interests of the U.S. and Canadian beef industries.

U.S. and Canadian beef producers have a number of cooperative interests that they can jointly address. The most important may be increasing consumer demand for beef by improving its quality, healthfulness, reputation for safety, and price vis-à-vis substitutes. This is a cooperative interest not a competitive one, as, given the integrated nature of the

Table 1 Sample Interests of US and Canadian Beef Industries

Type	Criteria	Examples
Cooperative	Industries have a joint interest in outcome; joint pursuit appropriate.	Increased domestic and export beef demand.
Cooperative but separate	Both industries have an interest in the outcome, but separate pursuit of outcome appropriate.	Federal government regulations for meat inspection influence reputation for safety.
Competitive	Industries pursue competitive outcomes separately.	Beef demand linked to attributes, including location, i.e., made in Montana.

market, an increase in the demand for beef within the United States or Canada will be beneficial to producers of both countries. One caveat must be considered: this cooperative interest applies for beef that is not differentiated by quality attributes linked to location; however, at most such beef constitutes a very small portion of the market.

Producers from the two countries also have an interest in a reduction of transaction costs for movement of cattle and beef across the border. To the extent that transaction costs can be reduced, efficiency is achieved in the movement of cattle to processing plants and of boxed beef to market, lowering basis costs and optimizing efficient utilization of plant capacity. Producers in some locations may also gain from access to a packing plant across the border, whose entry into their market increases competition for slaughter cattle.

The cooperative nature of U.S. and Canadian beef interests also holds true for U.S. and Canadian export markets for beef. The U.S. and Canadian industries depend on increases in export demand for market growth, and share a cooperative interest in reducing trade restrictions through multilateral trade negotiations. It is true that U.S. beef prices would increase if imports were reduced or eliminated while exports continued unfettered. However, this is not the environment that U.S. beef producers operate in and is unlikely to occur in the future.

The U.S. and Canadian beef industries also have cooperative interests that must be independently pursued by each industry. For example, meat inspection and food safety regulations influence beef demand, a cooperative interest of the industries. However, as these policies are determined by national governments, they are influenced by the respective national industries. Finally, the U.S. and Canadian industries also have competitive interests. In this category would fall competition for markets where demand is influenced by quality attributes linked to location.

An obstacle to recognition of the interdependence of the U.S. and Canadian beef industries is the deeply rooted historical concept of a market as synonymous with the nation-state. This concept developed due to trade barriers that at one time isolated the U.S. market, as well as the markets of other nations. Some trade barriers, including taxes, tariffs, quotas, and foreign exchange controls, were imposed by the government. Natural trade barriers included the cost and adequacy of transportation and communication to assess demand in foreign markets and to make transactions. In addition, reflecting national preferences, federal government regulations and policies influenced the market environment and made it distinct from other national market environments. The nation-state is the basis of international trade law and trade agreements. For the U.S. beef industry, these factors were reinforced by a large domestic market and little historical dependence on the export market. As many of these factors have changed, resulting in a reduction of the isolation of the U.S. market, the industry needs to consider when the market is synonymous with the nation-state and when it is not.

Although substantial cooperative interests exist that span the two national industries, currently there is no industry group the size of the market, such as a North American beef industry commodity group (Young 1999). Boulding (1964) argues that nation-states find it difficult to "maintain the integrative organization that unites them externally without losing their individuality and internal morals." The same dynamic may hold true for national commodity groups. The existence of a group depends on perceptions members have of themselves as together comprising a distinct entity due to their commonalities, their awareness and active pursuit of cooperative interests, and a history of interactions between group members.

Strategies for Dispute Resolution

The most effective strategy for dispute resolution is dispute avoidance. Avoidance of disputes may be facilitated by identification of the interests of each group. The existence of cooperative interests necessitates rethinking current ways of organizing producer groups. One possibility is to form a producer group that corresponds with the cooperative interests of the U.S. and Canadian industries. National commodity groups would continue to pursue separate cooperative and competitive interests.

Dispute resolution may be facilitated by the USITC and DC requiring mediation of some disputes. This would be particularly appropriate in cases where previous investigations did not produce evidence of uncompetitive conditions or violation of trade laws. Mediation, through the use of interest-based negotiation as described earlier, might be a useful avenue for interest groups to find resolution to the continuing problems in policy harmonization. Implementation of these policy changes would require actions on the part

of government that might continue to be slow, frustrating interest groups that desire the policy changes. However, the intense interaction between groups required by the process of mediation might assist in shifting the basis of identity from nations to cooperative interests. This paradigm shift would greatly facilitate the process of policy harmonization.

Development of the appropriate procedures for mediation would pose difficult questions, for example, the question of which groups would be involved in the process. For the United States, would the appropriate party be the leadership of R-CALF, the elected leadership of the U.S. Cattlemen's and Beef Association, or some combination of the two? Other questions exist around the scope of issues to be considered and implementation of the settlement options.

Some of these questions may be informed by examples from other industries. The perishable produce industries of the United States, Canada, and Mexico are engaged in the development of a new institution, the Fruit and Vegetable Dispute Resolution Corporation (Chancey 2000). This corporation is an example of a voluntary effort, led by industry, to develop mechanisms to resolve disputes and facilitate trade. The Dispute Resolution Corporation provides mediation and arbitration services to the industry through procedures that they developed.

The resolution of trade tension in the U.S. and Canadian beef industries may be facilitated by a careful assessment of their cooperative and competitive interests and a rethinking of the role of national commodity groups. Recognition of the degree of interdependence between the U.S. and Canadian industries may motivate formulation of an industry group to pursue joint interests. These actions are likely to facilitate dispute avoidance. The formal dispute resolution mechanisms currently available to the industry may do little to actually resolve underlying issues. Both industry and government have a stake in the development of new mechanisms of dispute settlement that will facilitate trade and strengthen relations across the border.

Endnotes

1. Two way trade in agriculture, food, and kindred products.
2. This suit was dismissed by the USITC. In August 1999, the Government of Mexico imposed antidumping tariffs on imports of some beef products from specified U.S. companies.

References

Axelrod, R.M. 1984. *The Evolution of Cooperation.* New York: Basic Books.

Boulding, K.E. 1964. "Toward a Theory of Peace." *In International Conflict and Behavioral Science: The Craigville Papers,* ed. R. Fisher. New York: Basic Books.

Brester, G., J. Marsh, and V. Smith. 1999. "Potential Impacts of Tariffs on U.S. Imports of Canadian Live Cattle." Briefing No. 9, Trade Research Center, Montana State University-Bozeman (September 14).

Brester, G., and V. Smith. 1999. "Country-of-Origin Labeling in the U.S. Beef Industry: Potential Economic Benefits and Costs." Briefing No. 7, Trade Research Center, Montana State University-Bozeman.

Brester, G.W., and J.M. Marsh. 1999. "U.S. Beef and Cattle Imports and Exports: Data Issues and Impacts on Cattle Prices." Policy Issues Paper No. 9, Trade Research Center, Montana State University-Bozeman.

Chancey, G. 2000. Personal communication. Agriculture and Agrifood. Ottawa, Canada. January 11.

Coughlin, C.C. 1991. "U.S. Trade-Remedy Laws: Do They Facilitate or Hinder Free Trade?" *The Federal Reserve Bank of St. Louis Review* 73:4 (July/August).

Deutsch, M. 1973. *The Resolution of Conflict: Constructive and Destructive Processes.* New Haven and London: Yale University Press.

Friesen, R. 1998. "Cattle Industry Stands up to United States." *Manitoba Co-operator* 56:10.

Marks, H. 1999. "Food Industry Objects to Country-of-Origin Labeling." *Great Falls Tribune,* April 29, p. 55.

Marsh, J.M. 1999. "U.S. Beef Trade and Price Relationships with Japan, Canada and Mexico." Policy Issues Paper No. 12, Trade Research Center, Montana State University-Bozeman (December).

Moore, C.W. 1996. *The Mediation Process; Practical Strategies for Resolving Conflict.* San Francisco: Jossey-Bass.

Organization for Economic Cooperation and Development (OECD). 1999. "Producer and Consumer Support Estimates." OECD Database, User's Guide.

Ranchers-Cattlemen Action Legal Fund (R-CALF). 1999. "U.S. Cattlemen Tackle Unfair Trade Practices in the Importation of Live Cattle from Canada and Mexico." http://www.rcalf.com/press/facts.htm.

U.S. Department of Agriculture (USDA). 1999a. "NAFTA." International Agriculture and Trade Reports, Situation and Outlook Series, Economic Research Service, WRS-99-1 (August).

1999b. *Livestock, Dairy and Poultry Situation and Outlook.* Economic Research Service, various issues.

U.S. International Trade Commission (USITC). 1987. "The Competitive Position of Canadian Live Cattle and Beef in U.S. Markets." Investigation No. 332-241,

Publication No. 1996, p. 46.

———. 1993. "Live Cattle and Beef: U.S. and Canadian Industry Profiles: Trade and Factors of Competition." Publication No. 2591, Washington, D.C. (January).

———. 1997. "Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade." Publication No. 3048, Washington, D.C. (July).

———. 1999a. "Preliminary Negative Countervailing Duty Determination; Live Cattle from Canada." International Trade Administration, Department of Commerce, Washington, D.C. (May).

———. 1999b. "Live Cattle from Canada." Investigation No. 731-TA-812 (Final) Determination and Views of the Commission, Publication No. 3255, Washington, D.C. (November).

White, E. 1999. "Canada Fights North Dakota Import Law." *The Western Producer* 76:36 (April 15).

Young, L.M. 1999. "Moving Toward a Single Market is Hard: Trade Tensions in the American and Canadian Cattle and Beef Market." *Saskatchewan Law Review* 62:6, University of Saskatchewan, College of Law.

Young, L.M., and J.M. Marsh. 1998. "Integration and Interdependence in the U.S. and Canadian Live Cattle and Beef Sectors." *The American Review of Canadian Studies* (Autumn): 335-354.