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## **Abstinence and the Single Desk: Canada – US Wheat Trade Relations in a post-CWB World**

James Rude

*Associate Professor, Department of Resource Economics and Environmental  
Sociology, University of Alberta*

The elimination of the single-desk monopsony/monopoly granted to the Canadian Wheat Board for western Canadian milling wheat acquisitions and sales will have ramifications for Canadian-U.S. trade relations. This article speculates on the volume of future north/south wheat trade flows. Given this perspective on trade prospects, an examination of the history of Canada-U.S. wheat trade disputes is considered. Historical experience is then used to gauge the potential for future trade remedy actions. The prospects for future contingent protection measures – antidumping and countervailing duties – are then considered, and possible steps for policy makers, farmers, and agribusinesses are presented.

Keywords: Canadian Wheat Board, contingent protection measures, antidumping,  
Canada-U.S. wheat trade

## Introduction

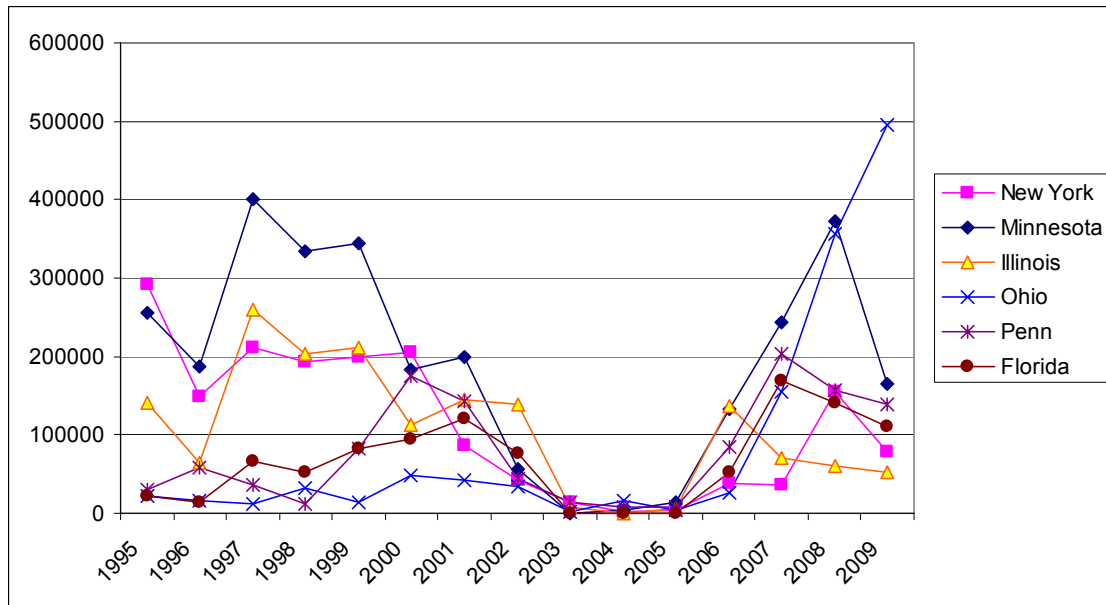
Wheat trade disputes have been a consistent theme in Canada-U.S. trade relations for the last 20 years, with the Canadian Wheat Board (CWB) as the centerpiece of the debate. In August 2012 the CWB will no longer have a monopoly in the procurement and sale of milling wheat, durum wheat, and malt barley.<sup>1</sup> What this reform will do to Canada-U.S. trade relations is uncertain. Commentators have speculated that the CWB may have restricted exports to the United States to avoid retaliation (Young, 1996). Without the discipline of the CWB restricting southbound shipments, the possibility of increased wheat exports to the United States looms, but so does the possibility of more Canada-U.S. trade disputes.

The objective of this article is to examine these possibilities. Will the elimination of the CWB's single desk increase milling wheat exports to the United States? As a result will there be more or fewer trade disputes with respect to wheat? In the process of addressing these questions an examination of past and potential exports will be considered; then a history of Canada-U.S. wheat trade disputes will be presented and this information will be used as input to predict the prospects for future trade disputes. The question is whether the CWB and its single-desk authority were the root cause of trade disputes in the past, or if the trade actions would have happened in any event because of significant volumes of imported Canadian wheat. The analysis will focus on trade in milling wheat. Durum and barley are omitted not because they are unimportant but in order to keep the article within a reasonable length.

## North American Trade Flows

Since imports are a necessary condition for a trade remedy case to be initiated, a prediction of the volume of imported Canadian milling wheat is necessary to predict the frequency of future U.S. trade actions. Between 2006 and 2010, total exports of prairie milling wheat to the United States averaged 1.5 million tonnes (Canada Grains Council, 2011). Figure 1 depicts exports – from Alberta, Saskatchewan, and Manitoba – to the states which imported the greatest volumes of milling wheat. Not surprisingly the major importing states are located along U.S. routes of CN Rail and CP Rail (see figure 2).

With rail lines for both CN and CP, Minnesota is the state which consistently has imported the most Canadian prairie milling wheat (18 percent by value).<sup>2</sup> Minnesota had the fourth largest milling production in the United States (Milling and Baking News, 2011, and see the appendix at the end of this article). Currently ConAgra and Horizon Milling LLC/Cargill each have large plants in Minnesota, while Archer Daniels Midland (ADM) has somewhat less capacity (NAMA, 2012).



Source: Statistics Canada (2012)

**Figure 1** Prairie exports of milling wheat to major destinations.



CN North American Routes



CP North American Routes

Source: CN (2012) and CP (2012)

**Figure 2** Major U.S. rail routes for CN and CP.

Recently Ohio has become the state which imports the second largest amount of prairie milling wheat (17 percent by value), and in 2009 its volume of imports exceeded that of Minnesota. Ohio borders Lake Erie, with access to grain shipped by laker vessels from Thunder Bay. In 2010 the state offered the seventh largest share of milling production in the United States, with ConAgra and ADM providing most of the milling capacity (Milling and Baking News, 2011).

Over the last few years exports to Pennsylvania have also been gradually growing, and the state has a 10 percent (by value) share of prairie exports. In 2010 Pennsylvania's milling production was the eighth largest in the United States (Milling and Baking News, 2011), with ConAgra and Horizon Milling LLC/Cargill operating mills (NAMA, 2012). New York State has historically been a significant importer of Canadian prairie wheat, but these sales have gradually eroded over time so that the share of total prairie milling wheat imports has recently only been 5 percent (by value). In 2010 New York and New Jersey had the fifth largest U.S. milling production share (Milling and Baking News, 2011), with Horizon Milling LLC/Cargill and ADM providing milling capacity. In 2010 Illinois had the ninth largest milling capacity in the United States, with ConAgra, Cargill, and ADM providing milling capacity (Milling and Baking News, 2011; NAMA, 2012). However, Illinois' share of prairie wheat exports has been declining to a recent share of 5 percent (by value).

## **Grain Handling Structure and Trade**

Prior to reform, the operations of the CWB were based on three principles: single-desk selling, price pooling, and a government guarantee of the initial payment to producers. Under the single desk, all producers of wheat and barley for domestic human consumption or export – in Manitoba, Saskatchewan, Alberta, and the Peace River District of British Columbia – had to sell their grains through the CWB. While Section 45 of the CWB Act had a general prohibition that prevented producers from selling their wheat directly to a grain company, processing firm, or other purchaser, individual producers could buy back their grain from the CWB after paying the difference between the daily price quote and the initial payment, plus a per tonne administration fee (CWB, 2012). It was through this mechanism that individual producers could make direct sales to the United States.

Bill C-18 reorganized the CWB by repealing the Canadian Wheat Board Act and replacing it with the Marketing Freedom for Grain Farmers Act, which, in addition to allowing western farmers to market their grain, also allows for the development of a voluntary CWB. The future of the voluntary CWB is uncertain. It will have four years of support from the federal government before it is required to table a

“commercialization plan.” For a maximum of five years the government of Canada will provide borrowing and initial payment guarantees so that the voluntary CWB can offer a price pooling option (AAFC, 2012a). However, the voluntary CWB faces a number of challenges. The biggest challenge is that the CWB lacks infrastructure (elevators and port facilities) to market grain and will have to enter into handling agreements with the mainline grain companies. Moreover, the CWB will not continue to have preferential access to private grain elevators, port facilities, and the rail transportation system. In order to maintain a viable pooling system the CWB must maintain an adequate base of farmer customers. A lack of customers would also make it difficult to finance the board’s operations. Another challenge is the lack of a competitive, private sector culture and management. If the voluntary board can meet these challenges and is able to continue to operate into the future, it will most likely operate as a cooperative.

After the elimination of the CWB’s export monopoly it is unlikely that the volume of exports to these markets will decrease. There are two routes by which exports can increase. First, the major grain handling companies, the voluntary CWB, and any potential entrants can increase the current volume of exports. The second route would involve cross-border shipments by producers.

Viterra, Richardson/Pioneer, Cargill, and Louis Dreyfus have 72 percent of the primary grain handling capacity in western Canada (Fulton, 2011), and these companies are likely to continue to fill sales to existing markets. Viterra has recently been purchased by Glencore International, which is a large international commodity trader. Viterra handled approximately 45 percent of the western Canadian grains and oilseeds market. The acquisition involves a further sale of Viterra assets to Agrium (the retail farm input business) and to Richardson International. Richardson will acquire 23 percent of Viterra’s grain handling assets as well as certain processing assets in North America. After the deal, Richardson and Glencore/Viterra will each control about one-third of prairie grain (Reguly, Waldie, and Erman, 2012). Each of these firms has acted as an accredited exporter for CWB sales to the United States. What is unknown is whether these companies, and a voluntary CWB, will pursue additional sales to the United States at the expense of offshore sales. Glencore is a leading exporter of grain from the EU, Russia, Ukraine, Kazakhstan, Argentina, and Australia but has had no North American presence.

Cargill has integrated operations on both sides of the border. Although Horizon Milling LLC/Cargill has milling facilities in most of the major importing states, at times the capacity is less than that of some of its competitors. Further, most of Horizon Milling LLC/Cargill’s milling capacity is in California (19 percent), Texas

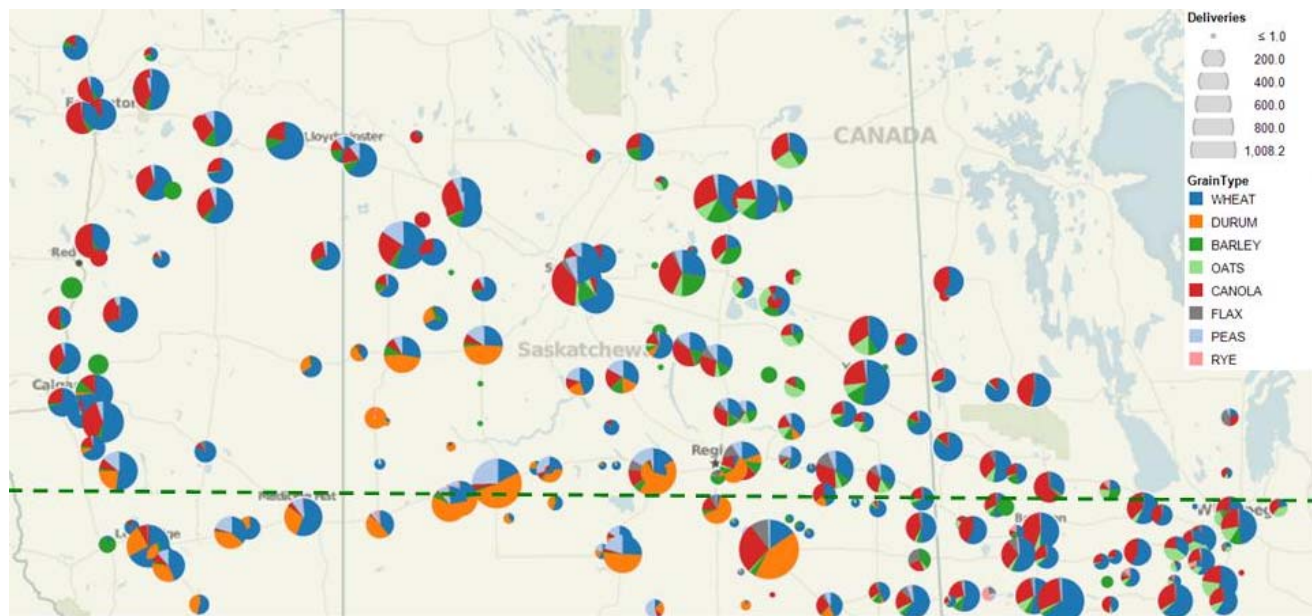
(15 percent), Kansas (15 percent), and New York State (10 percent) (Cargill, 2012a). Significant exports to Kansas are not expected, as these mills are in the heart of the hard red winter wheat growing region. Likewise, significant additional exports to Texas would not be likely. Exports to the state of New York have been trending down since 2000 and significant increases in exports do not seem likely. Increased exports to California may be a possibility given the very low volume of current exports (0.25 percent share by value) and the sporadic nature of these exports. An examination of recent Canadian Grain Commission (2011a) statistics for wheat exports by clearance sector indicates that roughly 10 percent of these exports may have gone through Pacific ports and been shipped by boat. Given Cargill's substantial west coast terminal capacity there is potential for additional shipments to its California mills.

ADM has considerable milling capacity in Canada, but it does not have primary grain handling facilities. As the largest wheat miller in the United States (in 2001 it had roughly a 25 percent share of total capacity (Prairie Grains Magazine, 2001)), ADM may see benefits by sourcing more Canadian wheat, but this depends on its requirements for mixing and blending to reach target specifications. ConAgra has neither significant Canadian milling nor grain handling facilities<sup>3</sup> and this may limit the potential for additional imports to its system. This of course does not preclude any future strategic alliance that might take place.

The second major route for additional prairie wheat exports is through transborder shipments by Canadian producers. The border states of Minnesota, North Dakota, and Montana have significant grain handling facilities to receive delivery of Canadian grain. Currently only 2 percent of prairie wheat goes to each of North Dakota and Montana. In 2010 North Dakota had 9 percent of the nation's milling capacity and was the United States's second largest wheat producing state (Milling and Baking News, 2011). Nonetheless, the potential volume of wheat that could be shipped in this method is substantial. Figure 3 illustrates western Canadian wheat deliveries by point of lading. Clearly there is a substantial potential for cross-border shipments. As a rough approximation of the maximum potential for transborder producer shipments, wheat shipments to points of delivery within 50 miles of the border are calculated based on Canadian Grain Commission data on grain deliveries at prairie points.

On average over the period 2000 to 2009, 3.9 million tonnes of wheat, or 29 percent of total deliveries, were delivered to Canadian elevators within convenient shipping range to the United States. Of course, in order for trade to take place there must be willing buyers and sellers. In terms of the willingness of buyers, several considerations have to be in place. Currently the U.S. Department of Agriculture (USDA) requires a system of end-use certificates that obliges U.S. importers to store

Canadian-produced wheat separately from other stocks to preserve its identity until it is delivered to the end user or for export (Wilson and Dahl, 1999). The USDA requirement for end-use certificates for wheat and barley is conditional on the circumstance that a foreign exporter likewise requires end-use certificates for imports of U.S.-produced commodities. Future changes in Canadian policy could result in the USDA lifting its requirement for end-use certificates. This requirement significantly adds to the transaction costs for U.S. companies procuring Canadian-origin wheat and may act as a significant deterrent from procuring Canadian wheat.



Source: Canadian Grain Commission (2010)<sup>4</sup>

**Figure 3** Grain shipments by point of delivery.

Secondly, because of their ownership structure, border state elevators may not wish to procure Canadian wheat. For instance, cooperatives may wish to source wheat from their own members. The largest grain handling cooperative in the United States is CHS Inc. (2012). CHS Inc., along with ADM, Bunge, Cargill, and Louis Dreyfus, is one of the big five grain handlers in the United States. It has a partnership with Cargill in Horizon Milling LLP, as well as shared interests in export terminals (Cargill, 2012b). CHS Inc. dominates grain handling and elevation in North Dakota (North Dakota Wheat Commission, 2012). Furthermore, CHS Inc. recently opened a Winnipeg office (Nickel, 2012), so it is likely that this company would accept shipments of Canadian grain. Nonetheless, very significant volumes of Dark Northern Spring wheat are available, reducing U.S. demand and making the market highly



competitive. So there is a great deal of uncertainty regarding just how much Canadian wheat might be demanded. Certainly the visibility of a large number of Canadian trucks could well create tensions in the northern tier states.

For additional trade to take place there must also be a willing seller. In order to ship wheat into the United States, Canadian producers must see higher prices in order to make the transaction profitable. Presumably as trade increases the two markets would very quickly arbitrage away any, net of transport costs, price differences. Over time the incentive for individual producers to export will diminish, and transport differentials will determine the destination of wheat shipments.

## History of Trade Disputes

Trade remedy actions brought by the United States against imports of western Canadian wheat can be grouped into three categories: those associated with a large import surge in the mid-1990s<sup>5</sup>; those associated with WTO Article XVII (state trading enterprise) issues; and those associated with the 2001-2006 U.S. trade remedy cases. Each of these categories will be considered in turn and the question will be asked if the dispute would have occurred in the absence of single-desk selling authority of the CWB.

In 1993 there was extensive flooding of the Mississippi river system, which adversely affected the U.S. corn crop. Concurrently, poor conditions on the Canadian prairies resulted in substantial volumes of feed-quality wheat. Substantial volumes of feed wheat were imported to the United States to help offset a shortage of feed grains. Since the late 1980s substantial volumes of durum wheat had also been imported from Canada, partially to replace U.S. amber durum that was exported through the Export Enhancement Program (Alston et al., 1997). In January 1994 the U.S. administration initiated a full International Trade Commission (ITC) investigation under Section 22 of the Agricultural Adjustment Act with respect to imports of Canadian wheat (Gray and Annand, 1998). The worry was that Canadian wheat imports had a detrimental impact on USDA commodity programs (Babula, Jabara, and Reeder, 1996). The reports from the ITC were mixed, with various combinations of commissioners finding and not finding “material interference” with commodity programs, but with all six commissioners recommending higher import barriers (Carter, 1995).

Before the president took any action relative to the Section 22 case, Canada and the United States came to a negotiated solution. The agreement included temporary schedules of tariff rate quotas for durum and non-durum wheat imports; the establishment of a Joint Commission to examine Canada/U.S. wheat policy and trade

issues; and a peace clause which limited trade actions for the 1994-95 crop-year (Carter, 1995).

The obvious question is, could this series of events happen again given the elimination of the CWB's single-desk authority? The answer is no and yes. The 1994 WTO Agreement on Agriculture resulted in the elimination of Section 22. Furthermore, the Export Enhancement Program has not functioned since 1995, so this particular series of events could not happen again even though the events were independent of the existence of the CWB's export monopoly. However, the occurrence of a very large surge of wheat exports into the United States will likely result in some form of trade retaliation. The best-case scenario would be if the United States were to use a safeguard action. The worst-case scenario would be if they were to revert to some form of contingent protection (see below). A safeguard action does not presume "unfair" behaviour and has a higher injury standard (serious injury) than antidumping and countervail cases (for which the standard is material injury).

The second category of historic trade dispute involves Article XVII of the General Agreement on Tariffs and Trade. In December 2002 U.S. trade officials requested consultations with Canada via the WTO Dispute Settlement Body concerning the wheat export practices of the CWB and certain practices with respect to the importation of U.S. wheat into Canada (Schnepf, 2005). Article XVII requires that state enterprises operate in accordance with commercial considerations and act in a manner consistent with the general principles of non-discriminatory treatment for purchases and sales (GATT, 1994). The case was taken to a dispute settlement panel and in April of 1994 the panel ruled in Canada's favour, concluding that CWB behaviour was consistent with WTO provisions for state trading enterprises (Schnepf, 2005).<sup>6</sup> This decision was subsequently upheld by the WTO Appellate Body.

Would these trade actions occur again in the absence of the CWB's single-desk authority? A voluntary CWB is unlikely to be required to be notified to the WTO as a state trading enterprise, because it would not receive exclusive or special privileges<sup>7</sup> (Rude and Annand, 2003), and the private grain trade would not have been subject to the WTO panel on state trading practices.

The third category of disputes involves trade remedy laws and in particular countervail and antidumping investigations with respect to Canadian wheat exports to the United States. The process started in 2001 with an ITC investigation into the competitive conditions of wheat trading practices between U.S. and Canadian wheat. In 2002 the ITC initiated countervailing duty and antidumping investigations for durum and hard red spring wheat (HRS). Late in 2002 preliminary injury determinations were established by the ITC. In 2003 preliminary dumping margins of

6.12 percent on HRS and 8.15 percent on durum, plus a preliminary countervailing duty of 3.94 percent were established by the U.S. Department of Commerce. Final duties were announced in August of 2003, with the countervailing duty set at 5.29 percent for both durum and HRS and the final dumping margins set at 8.26 percent for durum and 8.87 percent for HRS. The ITC released a final injury determination finding injury for HRS but not for durum wheat (Schnepf, 2005).

Late in 2003 Canada filed a request for a NAFTA Chapter 19 panel review, alleging that the final ITC injury determination on HRS wheat was not supported by substantial evidence (DFAIT, 2008). The panel remanded the ITC injury determination for further action. On review the ITC found that the U.S. wheat industry was neither materially injured nor threatened with material injury by imports of Canadian HRS wheat (DFAIT, 2008). So by February 2006, the antidumping and countervailing duty orders on hard red spring wheat were revoked.

Would these trade actions occur again in the absence of the CWB's single-desk authority? The answer is, of course, yes, and this topic is taken up next.

## **Subsidies and Countervailing Duties**

A countervailing duty (CVD) case involves a two-part test: 1) demonstration of the existence of a subsidy and 2) a material injury test to determine if imports cause/threaten to cause injury. In the 2002 case the subsidy component consisted of Government of Canada guarantees of CWB borrowing to finance its initial payments to farmers, operating expenses, and credit sales. Government provision of hopper cars was also considered a subsidy (ITA, 2003).

The CWB had two types of credit grain sales programs that were guaranteed by the Government of Canada: the Credit Grain Sales Program, which guaranteed sales to sovereign buyers, and the Agri-Food Credit Facility, which guaranteed sales to private buyers. As these programs have been discontinued, and because all grain exporters will be required to use Export Development Canada's export credit guarantees, the probability of future U.S. CVD cases based on export credit guarantees is greatly diminished.<sup>8</sup> Likewise, because a voluntary CWB will have to be self financing, without government guarantees, a CVD subsidy calculation will not contain these guarantees. Transitional funding will be available as a voluntary board is phased in over the next five years, but it is not likely that this funding will be closely scrutinized given its nature. Finally, after the transition period the government will not guarantee that final payments are greater than or equal to the initial payment, for either a voluntary board or any other merchant, so this instrument would not be considered in future investigations. Although government hopper cars were included in the last

investigation, the fleet is old and very likely fully depreciated. So the inclusion of hopper cars in future investigations is also unlikely.

What are the prospects that Canada's current suite of business risk management (BRM) programs might be subject to countervailing duty actions? Under the policy framework *Growing Forward*, the suite consists of *AgriInvest*, *AgriStability*, *AgriRecovery*, *AgriInsurance*, and various ad hoc programs (AAFC, 2012a). In 2011 national expenditures on BRM programs exceeded \$3 billion (Seguin, 2011). So, at first blush there may be potential for future countervailing duty investigations on BRM programs.

*AgriInvest* is a savings account where producers are able to deposit 1.5 percent of their eligible sales and receive matching government contributions. They are able to withdraw from these accounts when they experience net income declines. *AgriInvest* is almost identical to the previous program *Net Income Stabilization Account (NISA)* (1990-2002). *NISA* was investigated in the 1991/1994 live swine case (ITA, 2004). The U.S. Department of Commerce ruled that *NISA* was not specific to the hog sector and was therefore not countervailable. Given the very close resemblance that *AgriInvest* has to *NISA* it is unlikely that this program would be included in future investigations; the program is available across all grains and oilseeds, red meats, horticulture, etc.

*AgriStability* is a deficiency payment triggered by a margin-based measure of overall farm income when a producer's margin falls below 85 percent of his historic reference margin. The historic reference margin is an average of the previous five years' production margins<sup>9</sup> with the high and low margins excluded. Government payments are inversely proportional to the loss. This program is similar to a predecessor program, *Canadian Agricultural Income Stabilization (CAIS)*. Although *CAIS* was not yet in operation during the periods of investigation for the wheat/durum or hog CVD cases, *CAIS* was discussed in the live swine case (ITA, 2004). The Transitional Assistance program bridged the prior *Agricultural Income Disaster Assistance* program to *CAIS*, and this program was deemed to be non-specific to the hog sector. The same criteria would apply to *CAIS* and its successor program *AgriStability*.

*AgriRecovery* would likely not be considered in a CVD investigation because it is a broadly based whole-farm program and provides a low-slung safety net. Finally, for *AgriInsurance*, which is crop insurance, the federal and provincial governments paid out an average of \$68.8 million (OECD, 2010) for wheat over the period 2005 to 2010. The program is crop specific, so it would not receive the general availability exemption in CVD cases. However, crop insurance was not included in the previous

wheat and durum CVD investigations. Furthermore, since the United States applies more generous premium subsidies it is unlikely that the administration would raise this issue in a CVD investigation, allowing Canada to retaliate.

So the major elements of the current suite of business risk management instruments would likely stand up to scrutiny in a CVD investigation. However, that does not mean that future petitions will not be initiated and that this trade remedy will not be used as an instrument to gain a short-term strategic advantage or dissuade potential entrants into the export trade. Nor does it imply that any new programs coming out of *Growing Forward 2*, which is currently under negotiation, may not be potential candidates for a countervail cases.<sup>10</sup>

### Antidumping Duties

An antidumping(AD) case also involves a two-part test: 1) demonstration of the existence of a dumping margin and 2) a material injury test to determine if imports cause/threaten to cause injury. At its simplest level, “dumping” is price discrimination between domestic and export markets. Under the WTO Anti-Dumping Agreement, national trade remedy agencies must establish a positive dumping margin that is the difference between the “normal value” and the export value of the product in question. Depending on the circumstances, a “normal value” can take several forms: it can be the price of the same or a similar product in the exporter’s home market; it can be the price of a similar good in a third-country market; or it can be a constructed value that accounts for the cost of producing the good plus overhead expenses and a profit margin (Rude and Gervais, 2009).

The problem is that administrative processes create biases in dumping margins. Dumping margins can be inflated due to various reasons (e.g., price adjustments to ensure comparisons at the same level, arbitrary averaging techniques, arm’s length tests, ignoring below-cost sales in the exporting country, treating negative dumping margins as zero values when determining an overall average margin, etc.).

The exclusion of sales at less than average cost is perhaps the most critical issue in the computation of dumping margins. Below-cost domestic sales that are not in “the ordinary course of trade” can be disregarded in the calculation of normal values. This has two effects. First, because lower home market prices are excluded from the weighted average used to derive the normal value, the final calculated price is inflated. A similar cost exclusion method is not made for the export prices, and as result the dumping margin is biased upward. Ironically this practice is the opposite of the common notion that with dumping, the exporter sits in a protected high-priced market (sanctuary market) and dumps its surplus onto world markets to avoid a loss at home.

The second effect is that exclusion results in less home market sales and potentially a situation where, because of insufficient home market sales, normal values are determined by prices in third-country markets or through a constructed value calculation.

Other biases are introduced through asymmetric adjustments between the export price and the exporter's home market price. The purpose of these adjustments is to create "apples to apples" comparisons between markets, but the arbitrary nature of the comparisons means that different expenses are added in each market (Lindsey and Ikenson, 2002). Many of the expenses have to be imputed. So a situation arises where a relatively homogenous product, such as hard red spring wheat, is sold in both markets, but the dumping margin comparisons are never made on the basis of actual sales prices.

Under U.S. trade law, when the importing company is affiliated with the exporter, which may happen in an open wheat market, the export price has to be constructed (Lindsey and Ikenson, 2002). Here the idea is to construct export prices where the actual export price is reduced not only by U.S. indirect selling expenses, but also by the estimated profit on U.S. operations. The establishment of an estimated profit creates many of the same problems that are involved with constructed-value calculations.

Constructed value is a cost-based approximation for the home market selling price, which is determined by calculating the average cost of production and then adding margins for profit and selling and administrative expenses. The common perception is that it is not possible for a defendant to win a constructed-value case. The most controversial aspect of constructed value is arguably the establishment of the profit margin. The U.S. Department of Commerce only uses above-cost sales to determine the profit margins and selling expenses, which significantly inflates the dumping margin. The resulting constructed normal values are arbitrary and the calculation is thus open to discretionary manipulation (Rude and Gervais, 2009). Establishing costs of production for agricultural production is problematic because of issues such as imputed values for family labour and the cost of land. By accounting for these imputed costs as direct expenses (which are typically thought of as part of the producer's residual claim to production), the investigating authority should reduce profits accordingly, but no such adjustment is made (Rude and Gervais, 2009).

Biases also exist for injury determination. The WTO Agreement on Anti-Dumping requires evidence based on an examination of the volume of dumped imports, their effect on domestic prices of a like product, and the consequent impact of these imports on domestic producers. In order to get an affirmative dumping determination the U.S.

International Trade Commission must find material injury such that the imported product causes, or threatens to cause, injury to the domestic industry in the United States. The determination of what constitutes “material” injury allows a great deal of discretion for the investigating authority. The cyclical nature of much of agricultural production makes it more likely to find material injury when the market is in the bottom part of the cycle. The injury side of the WTO Agreement on Anti-dumping is far less developed than the margin determination side (Krishna, 1997). However, while there is discretionary bias for injury determination it is probably less than the intuitional biases created by administered determination of dumping margins. The number of cases that are overturned in final injury determination far exceeds the number of cases dismissed because the dumping margin is less than the *de minimis* standard (i.e., 2 percent of the export price) (Blonigen, 2006).

The experience of the 2003 antidumping case for Canadian hard red spring wheat and durum wheat (ITA, 2003) raised many of the issues considered above. First, the International Trade Administration (ITA) of the Department of Commerce excluded Canadian sales because they were below the cost of production. However, there were sufficient home market sales so that the ITA did not resort to third-country comparisons or a constructed-value test. Nonetheless the cost exclusion process biased the weighted average prices sufficiently to create a positive non-*de minimis* dumping margin. This occurred despite the fact that Canadian domestic wheat prices are based on daily prices reported by the Minneapolis Grain Exchange. This is a fact that the ITA accepted in the context of whether CWB prices were “non-competitive and inappropriate” for use in their dumping analyses (ITA, 2003). One can only speculate how large the resulting dumping margins would have been if a constructed-value method had been used for measuring the normal value.

The cost-of-production estimates were obtained from a stratified sample of 27 producers. One of these producers would not provide responses to the department’s questionnaire (ITA, 2003). As a result the ITA used “facts otherwise available” to complete their weighted average cost estimate. In this instance missing information was made up from the rest of the sample, but the implications of the “facts otherwise available” method can be much more far reaching. The WTO Anti-Dumping Agreement allows the investigating agency to use “facts otherwise available” where any interested party refuses to provide, or does not provide, the necessary information within the required time period, and allows the investigating authority to get its information where ever it can, including from the petitioner’s evidence. This could become an issue in a dumping case for individual producers who truck their grain to U.S. elevators. Given the very short timelines and excessive information required,

grain producers could be caught in a situation where the evidence for the dumping case is provided by the petitioner. This situation could equally happen to grain traders who are new to the export game. Even if this provision is not used, the evidence tends to be acquired from larger exporters, and the remaining exporters named in the suit must accept an average dumping margin that is not based on their own situations.

In terms of other adjustments, the ITA will calculate normal value based on sales at the same level of trade (same marketing stages) as the export price. This results in adjustment to both prices, accounting for sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. The biggest differences between home market prices and export prices are with respect to freight services and warehousing/inventory maintenance. Some of these expenses are precisely quantifiable (freight services) while others (sales process and marketing support and inventory maintenance) can be estimated only roughly and involve allocation of costs over various activities. The ITA seeks information on all sorts of expenses, direct and indirect, realized and imputed. Many of the expenses are deducted from gross selling prices, while others are used to offset or limit deductions made from gross prices in a particular market (Lindsey and Ikenson, 2003). Under the previous case CWB involvement meant that the board had almost complete information at every marketing stage. The introduction of new traders makes this process more complicated and possibly introduces more uncertainty into the process.

The arm's length test for cross-border affiliation was not a problem with the CWB since it was the only player and since it had no affiliates in the United States. However, this test may become an issue for private trading companies such as Cargill and Louis Dreyfus, which have operations on both sides of the border, and may even be a problem for ConAgra and ADM. The cross-border affiliations add complexity to the margin determination process.

Regardless of which instrument, AD or CVD, is initiated there is a relatively low cost to initiating a petition. The information requirements to file are low. Within 160 days after the initial petition, it is possible that a preliminary duty could be in place. This process would require affirmative preliminary determinations by the ITA and then the ITC. As result Canadian wheat would be required to clear U.S. customs under a "suspension of liquidation" that would require the importer to post a bond equal to the value of the preliminary duty. There are benefits for U.S. wheat growers to initiate a case even if they expect to eventually lose the case. Given the time an investigation takes, temporary protection might be in place for much of a crop year. The next crop year starts a new strategic ballgame, and the U.S. competitors have already achieved their objectives.



In terms of possible future trade actions, the remedy with the greatest likelihood of happening is an antidumping case. One significant difference between a countervail case and an antidumping case is that the former is brought against the home country's national government while the latter is brought against private firms. This creates a number of uncertainties about future trade actions brought against Canadian wheat.

The first uncertainty pertains to the costs of defending against a U.S.-initiated trade action. In the hog case the costs were shared among the producer marketing boards, with the Canadian Pork Council spending over \$2 million, Ontario Pork spending over \$4 million, and Manitoba Pork spending over \$6 million (The Pig Site, 2005). There were half a dozen large producers who were selected to provide evidence for the analysis of the dumping margins. All of the respondents were from Manitoba and Ontario. Manitoba Pork covered the costs of its producers, and because Ontario Pork was a single-desk seller at that time, it was a separate respondent for the live slaughter hog exports from that province.<sup>11</sup>

The wheat cases (defending the AD/CVD cases and the related NAFTA and WTO appeals) cost approximately \$13 million,<sup>12</sup> which is in the same range of expenditures as the \$12 million spent on the hog case. The question arises of who would pay for the legal defence of a future wheat action. The producer organizations for grains and oilseeds are less centralized than for hogs and do not provide complete producer coverage. Presumably the grain trading companies would pay their own legal bills, but where would the final incidence of that cost lie? Individual farmers who exported to the United States would likely face an industry average antidumping duty, but they would have the option to sell to other markets. So they would likely not participate in the legal action unless required to. This raises a further question: without the incentive to mount a proper legal defence, would the antidumping duties be higher?

Historically, slightly more than half of all antidumping petitions brought in the United States did not result in the imposition of antidumping duties, and about 80 percent of those escaped an antidumping order because the ITC did not find material injury in its final determination (Clayton, 2010). Certainly providing legal representation and pursuing a case significantly reduces the probability of a final antidumping duty. Furthermore, legal representation probably reduces the size of the final dumping margin.

There are other uncertainties about future trade actions, and they raise further questions. Will individual shipments by individual traders be of a sufficient volume that the below-cost exclusion rule does not eliminate substantially all home market sales from the normal value calculation? If not, will a constructed-value test apply, and what are the chances of winning that case? Will individual cross-border shipments

by grain producers get caught up in an antidumping trade action, or will these individual producers sneak below the radar and not be included in a future case? Will individual producer sales be sufficient to initiate a future case? If these producers are included in a successful trade action, how will their duties be assessed: as an average for all the industry or on some other basis? How will cross-border affiliations be addressed in future trade actions, and will these relationships affect the probability of future successful petitions for antidumping actions? These are open-ended questions that can only be resolved with the passage of time.

## Conclusions

History teaches valuable lessons. In the case of past Canada-U.S. wheat disputes there are several lessons. First, a surge in Canadian wheat exports, caused by any reason, probably will trigger a response from U.S. interest groups (e.g., North Dakota Wheat Commission) and a possible trade action. There are 4-5 million tonnes of HRS wheat within driving distance of the border. Whether this grain gets shipped south depends on several factors, mostly the relative profitability of shipping to the United States versus other destinations.

Second, in terms of contingent protection measures it is likely easier to find justification for an antidumping case than a countervailing duty case. Likewise it is likely easier to establish a significant positive dumping margin than it is to establish material injury. Individual producers can more easily get caught in other traps: facing an average duty for the entire industry even though their own deliveries may have sold at a price that would not have been counted; or facing a “facts otherwise available” decision that is particularly adverse; or simply dealing with the problem of filling out long, demanding questionnaires.

Third, having business affiliations on both sides of the border is a two-edged sword. Having a large presence in the United States reduces the possibility of being subject to a successful trade challenge. However, these relationships increase the complexity of the dumping margin calculation and increase the possibility of a significant positive dumping margin.

Fourth, if Canadian authorities have enough resources and persistence they can eventually win an appeal of their case through the various dispute settlement procedures. It would appear that the CWB had these resources. Will the individual grain companies and more importantly individual producers have the patience and persistence? The live swine case involved several companies (Hytek, Excel Swine Services, Elite Swine Inc.) and the Ontario Pork Production Marketing Board, who were equally successful in having an adverse decision overruled. So having a single

entity, such as the CWB, is not a necessary condition to win these types of trade remedy cases. Nonetheless, the companies involved were larger than some of the individual grain farmers who might get caught up in a possible trade dispute.

What steps should policy makers, farmers, and firms take to reduce the impact of trade disputes? Industry associations and governments should carefully monitor the volume of trade and form some idea of a possible threshold when trade actions may be initiated. When exports approach the threshold, they should begin to consult with similar industry groups or at least groups with similar interests on the other side of the border. There are a number of resources within the federal and provincial governments to help resolve trade disputes once they have been initiated. As well, there are a number of different approaches to trade advocacy for international trade challenges. Producers have to take responsibility for their own marketing decisions and the consequences of these decisions; they also have to monitor international events.

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## Appendix

### 2010 Flour Production by State (1,000 cwt)

Illinois, Indiana, and Wisconsin	32,201
California	30,186
Kansas	30,094
New York and New Jersey	30,094
Minnesota	29,067
Missouri	26,439
Ohio	25,556
Pennsylvania	23,925
North Dakota	21,501
Texas	19,130
Nebraska and Iowa	17,929
Montana and Idaho	12,776
United States	416,200

Source: *Milling and Baking News* (2011)

## Endnotes

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1. After an initial short-term operation at the end of World War I, in 1935 the Canadian Wheat Board became a permanent body. It was not until 1943 that the CWB obtained monopoly powers with respect to the procurement and sale of wheat. In 1999 the CWB changed its corporate structure from a federal crown corporation to a government-backed producer marketing board.
2. This and subsequent trade shares were obtained from Statistics Canada's Trade Analyser, which provides export values and quantities from each province to each state for wheat NES. The shares were calculated as the average 2006-2009 value of the state's imports of prairie wheat relative to total average U.S. imports of prairie wheat.
3. ConAgra has Canadian investments in barley malting through Canada Malt.
4. A large debt of gratitude is owed to Gary Warkentine of Exceed Analysis (Lockport, MB) for providing assistance in collating the delivery data by GIS area and for providing this graphic representation.
5. Earlier disputes included the following: 1989, North Dakota durum wheat producers argued that Article 701.2 of the Canada-U.S. Trade Agreement (CUSTA) was violated with export subsidies associated with Canadian freight subsidies; 1989, the International Trade Commission (ITC) investigated the "conditions of competition" between the U.S. and Canadian durum Industries; and in 1992 a binational panel under Chapter 18 of CUSTA examined whether the CWB was selling below its acquisition cost.
6. With respect to U.S. grains imported to Canada, the panel ruled that foreign grain could be received by Canadian grain elevators and that the revenue cap for CN and CP must apply to foreign grain as well as to Western Canadian grain.
7. How the special privileges would be treated over the transition period is not clear; however, the understanding is that these guarantees are only temporary, and this should lower the potential for a WTO panel, especially given the time period necessary to process a panel case.
8. EDC practices conform to the OECD's Export Credit Arrangement, so these services are unlikely to be subject to future countervail actions.
9. Production margins calculate *allowable* revenues minus *allowable* expenses, with adjustments for changes in receivables, payables, and inventory.
10. *Growing Forward 2* is the third in a series of "Farm Bill" type legislation in Canada. It will involve comprehensive legislation setting the parameters for agricultural policy over the next five years. The components consist of business risk management programs (discussed in the text of the article) and a catch-all component which addresses the objectives of "Competitiveness and Market Growth" and "Adaptability and Sustainability" through innovation, institutional and physical infrastructure programs. The BRM programs will be the programs most relevant for future countervail cases.
11. Personal communication with officials from the Canadian Pork Council.
12. Personal communication with officials from the CWB.