



**AgEcon** SEARCH  
RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

*The World's Largest Open Access Agricultural & Applied Economics Digital Library*

**This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.**

**Help ensure our sustainability.**

Give to AgEcon Search

AgEcon Search  
<http://ageconsearch.umn.edu>  
[aesearch@umn.edu](mailto:aesearch@umn.edu)

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*



---

# The Estey Centre Journal of International Law and Trade Policy

---

## Trade Liberalisation and the Red Meat Sector

William A. Kerr

*Van Vliet Professor, University of Saskatchewan and Member, Canadian Agri-Food Trade Research Network*

Trade liberalisation in the livestock sector is not likely to benefit to any great degree from the trade negotiations on agriculture at the WTO that commenced in the spring of 2000. This is because the major barriers to trade in livestock and red meat are not related to tariffs and other traditional border measures that restrict trade or subsidisation; rather, they are governed by the WTO's SPS Agreement and the GATT's contingency protection provisions relating to dumping and countervailing duties. Negotiations on these issues will have to await a general WTO negotiating round. As SPS and contingency protection questions have many interested sectors, progress is likely to be slow and the prospects for further formal liberalisation remote in the near future. In these circumstances, private sector initiatives to defuse trade problems before they start is a strategy that should be continued and expanded.<sup>1</sup>

Keywords: antidumping; Argentina; countervail; red meat; SPS

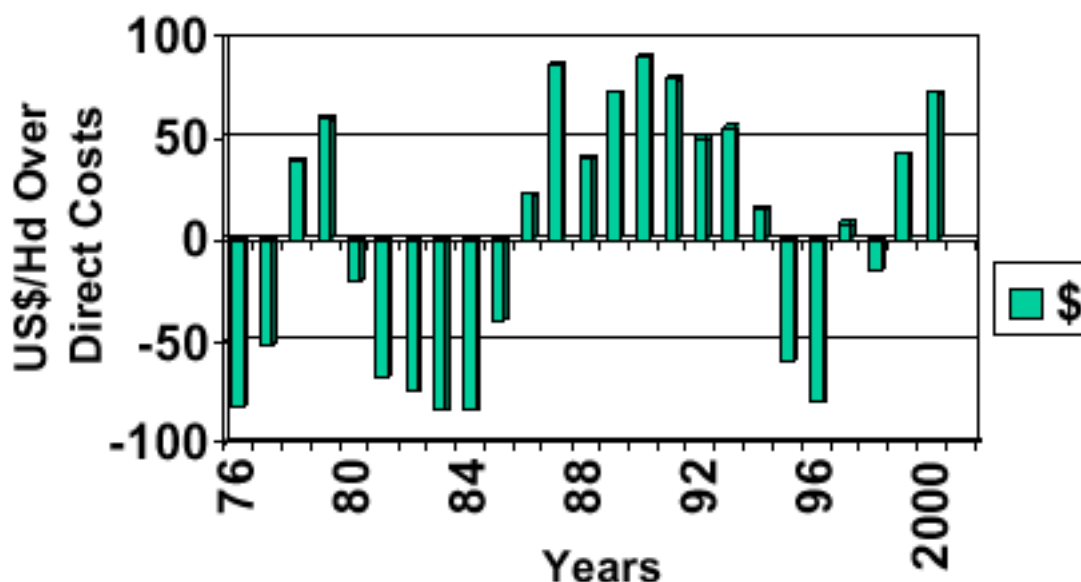
### Introduction

International trade issues pertaining to the Canadian red meat industries tend to increase in prominence and then fade from view. The beginning of the new millennium has been one of the quieter times. Trade disputes involving Canadian livestock products have not been making the headlines and neither those who represent the Canadian livestock industries in trade matters, nor government officials, are operating in crisis mode. This does not mean trade problems in the livestock sector have disappeared. In fact a surprising number

of issues are outstanding or are percolating just below the surface. These issues will have to be dealt with in the near term either through private discussions (e.g., between the Canadian Cattlemen's Association (CCA) and the National Cattlemen's Beef Association (NCBA) in the United States), in the international dispute systems available to Canada (i.e., the World Trade Organisation (WTO) and the North American Free Trade Agreement), or in new international negotiations. One of the things that the NAFTA experience has taught the Canadian private sector is the importance of building good relationships on trade issues with producer groups or other organisations in foreign countries—particularly in the United States given Canada's heavy dependence on its market. It has become abundantly clear over the last few years that neither the NAFTA nor the WTO can be relied upon to solve all the issues in livestock trade and that building private relationships is increasingly important. While the North American livestock markets are becoming increasingly integrated economically, producer organisations remain national in membership and focus. As a result, instead of a common approach to problems in the market, traditional protectionism based on producer lobbying and nationalism remains the norm (Young, 2000).

While the focus of trade problems in the red meat sectors tends to centre on the U.S. market, a large number of international issues are important for the Canadian industry. These issues relate both to better access to foreign markets for Canadian products and access to the Canadian market for offshore products. In the case of the former, the ongoing problems surrounding access to EU markets for beef produced using hormones is the most obvious issue. In the case of access to Canadian markets, the question of how foot-and-mouth-free beef products newly available from South American countries, particularly Argentina, are to be handled remains to be dealt with in an effective way. Further, new issues such as animal welfare and biotechnology are coming to the forefront. These issues require careful, well thought out trade positions prior to going forward to negotiations. Old issues remain on the trade agenda and will also have to be dealt with—particularly dumping, export subsidies, and technical barriers to trade. Thus, while all may appear on the surface to be *quiet*, there is considerable work to be done in the near term. In fact, the quiet times should not be wasted; it is often much easier to achieve trade objectives when things are quiet than when they are in crisis.

The reason North American trade disputes are not prominent at the moment can be easily explained. While a similar story could be told for the pork industry, the situation in the beef industry will be sufficient to illustrate the point. Figure 1, which shows the returns over direct costs for U.S. cow-calf producers, is the most illustrative. The bottom line is that U.S. cow-calf producers are making money. It is only when they are not making money that they go looking for scapegoats for their poor returns. In the United States there is a tradition of looking for foreign causes for poor economic conditions. Their "producer-friendly"



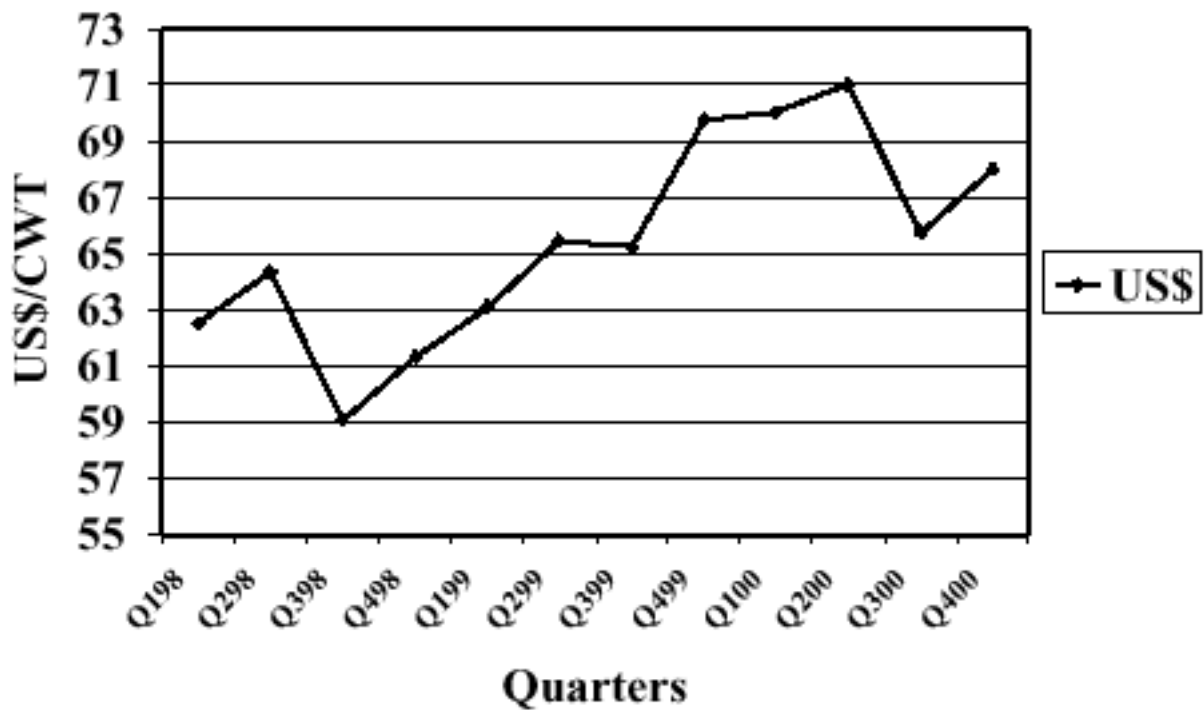
**Figure 1** Average U. S. cow-calf returns

Source: Sparks Co., *Cattle and Beef Updates*, Various Issues

antidumping and countervail procedures serve to encourage this behaviour. It seems clear that the U.S. Congress benefits from the existing system because it is able to deflect the need to respond directly to those seeking protection, by suggesting that they seek redress in contingency protection mechanisms.

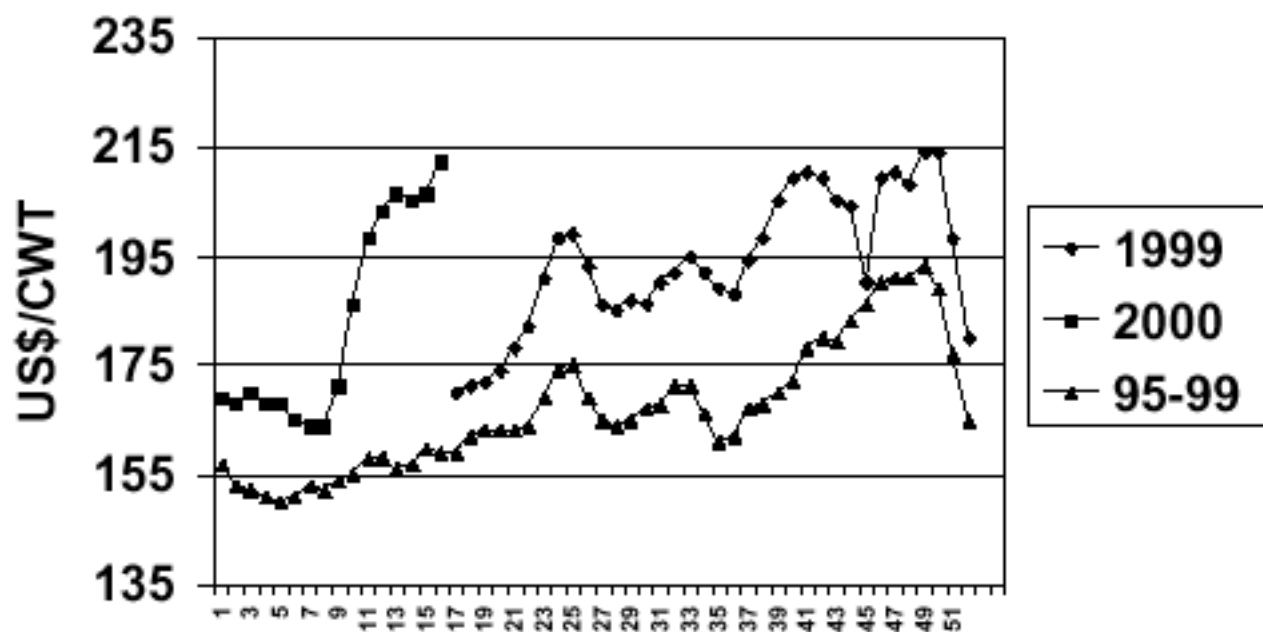
The years of poor returns starting in the mid-1990s led to a group of disgruntled cow-calf producers forming R-Calf and to that organization's subsequent initiation of contingency protection actions on dumping and subsidies. Requests for country-of-origin labelling of beef also originated in this period. Previous periods of poor returns through the 1980s led to problems with border inspections, and antidumping and countervail actions (Kerr et al., 1986). Over the last few years, however, returns have been positive for cow-calf producers. As a result, R-calf dropped its appeals, and demands for mandatory labelling of imported beef have been replaced by plans for a voluntary scheme. Of course, some things work on a due process lag—witness the recent moves by USDA to revoke approval for imported beef carcasses to receive USDA beef grades—something that was started in the period of low returns.

Other players in the U.S. beef trade have also experienced strong prices over the last few years. Figure 2 presents U.S. Choice Slaughter Steer prices (Texas Panhandle) since 1998—they show a steady upward trend although there was some weakening of prices in the middle of 2000. At the packer level, for example, the U.S. Heavy Choice Rib Cutout prices are well above historical averages (see figure 3). Further, Gross Packer Margins appear to have reached a new, higher plateau since mid-1999 (see figure 4). Hence, it is probably not surprising that things are relatively quiet on the U.S. beef cattle trade front.



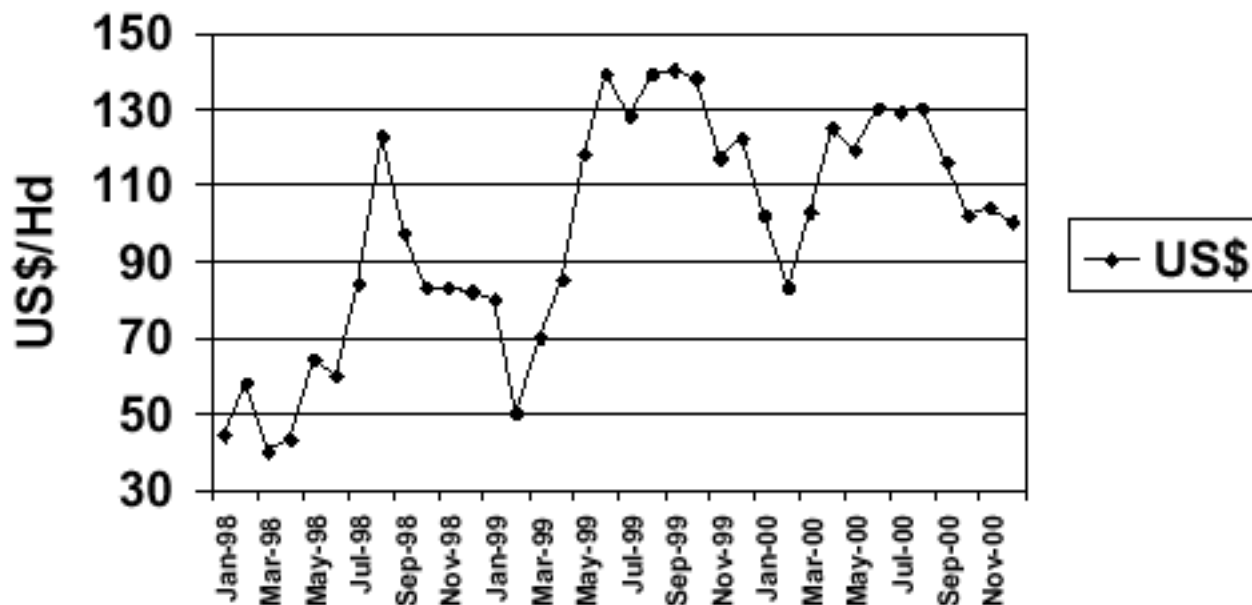
**Figure 2** U. S. Choice Slaughter Steers

Source: Sparks Co., *Cattle and Beef Updates*, Various Issues



**Figure 3** U. S. Heavy Choice Rib Cutout

Source: Sparks Co., *Cattle and Beef Updates*, Various Issues



**Figure 4** Gross Packer Margins

Source: Sparks Co., *Cattle and Beef Updates*, Various Issues

The U.S. pork market is relatively flat with the pork herd continuing to shrink, albeit slowly. The decline in herd size is being somewhat offset by strong growth in productivity so that total supplies are only slightly reduced. The U.S. pork trade has remained relatively constant although live imports of hogs from Canada in June and July 2000 were above 1999 levels.

Hence, while the current market conditions in North America are not likely to lead to a major confrontation with the U.S. industry, it is well known that these industries cycle—one only has to examine figure 1 again. This means that one can expect that prices and net returns will deteriorate again in the future, and that when that happens trade problems will increase. Hence, it is important to attempt to continue the private “bridge-building” activities with U.S. business groups and to work to improve the “rules of trade” for livestock products.

### What Can Be Done in the NAFTA?

While the NAFTA was instrumental in removing the formal barriers to trade in livestock between the United States and Canada, it has been less successful over a large range of trade issues in the intervening years. The tariffs on livestock and meat were even removed on a faster schedule than what was agreed in the NAFTA. The quantitative restrictions embedded in the meat import laws of both countries were also removed for U.S.-

Canadian trade (Kerr and Cullen, 1985). Trade in the red meat sector, however, was largely free of formal trade barriers but a large number of non-tariff trade irritants existed in the pre-Canada-U.S. Trade Agreement (CUSTA) era. A number of initiatives were included in the CUSTA which attempted to address these trade irritants.

The most important of the trade irritants were U.S. contingency protection mechanisms. In particular, prior to the signing of the CUSTA, the Canadian pork industry had been subject to countervailing duties imposed by the United States. The original Canadian position was that CUSTA partners would no longer be subject to the other country's contingency protection measures. When it became clear that this could not be attained at the negotiations, Canada attempted to have mutually acceptable definitions enshrined in the agreement, but all that could be agreed at the negotiations was a temporary arrangement and an agreement to continue negotiations. Article 1907 of the CUSTA states:

The Parties shall establish a Working Group that shall:

- (a) seek to develop more effective rules and disciplines concerning the use of government subsidies;
- (b) seek to develop a substitute system of rules for dealing with unfair pricing and government subsidisation.

Further, in Article 106 it was agreed that:

The provisions of this Chapter shall be in effect for five years pending the development of a substitute system of rules in both countries for antidumping and countervailing duties as applied to their bilateral trade. If no such system of rules is agreed and implemented at the end of five years the provisions of this Chapter shall be extended for a further two years. Failure to agree and implement a new regime at the end of the two year extension shall allow either Party to terminate the agreement on six months notice.

Thus, the Canadian red meat sector should have eventually received relief from its major trade irritant. Buried in the fine print of the NAFTA, however, is a clause that removes the seven-year deadline for arriving at new countervail and dumping definitions and procedures (Gerber and Kerr, 1995). As a result, Canadian producers did not receive the relief from U.S. contingency protection they expected from the agreement and the recent experience with the R-Calf suit shows that this remains a considerable problem. The NAFTA appears closed to further negotiations.

Canadian beef packers had complained of what they considered capricious, if not strategic, use of border inspections. According to Menzie and Prentice:

There are suspicions and some evidence, however, that these regulations have been used to control movements beyond the legitimate levels (1987, p. 947).

It was agreed in the CUSTA that border inspections would be removed. They have, however, remained in place and have remained an irritant (Hayes and Kerr, 1997).

Article 609 of CUSTA, which pertains to technical regulations, commits the United States and Canada to make reforms where:

... to the greatest extent possible, ... each Party shall make compatible its standards-related measures and procedures for product approval with those of the other Party.

Since the signing of the NAFTA, Canada has unilaterally reformed its grading standards to conform to U.S. standards. The USDA, however, has refused to grant equivalence for Canadian grades, and the inability to grade product destined for export using the other country's grading system remains an inhibitor of trade (Hayes et al., 1995). Recent moves by USDA to remove the ability of U.S. packers to apply U.S. grades to carcasses imported from Canada suggests that there is little commitment to the removal of technical barriers to trade in the United States. There are a number of commitments to consult with the other party prior to changes in domestic regulations that would affect bilateral trade. Often, there is a failure to consult when new sanitary and phyto-sanitary regulations are being developed (Hayes and Kerr, 1997).

A Record of Understanding Between the Governments of Canada and the United States Regarding the Area of Agricultural Trade (ROU) was signed in December of 1998. The ROU involved a number of provisions that directly affect livestock trade. The most successful of these—the Restricted Feeder Import Program (RFIP)—however, is a response to evolving WTO rules that allow subnational health regions to be defined for trading purposes (e.g., instead of an entire country having to be declared foot-and-mouth free before exporting can take place, now subregions can be declared foot-and-mouth free and product from the subareas exported). The RFIP facilitates the export of U.S. feeder cattle into Canada. The ROU invited additional U.S. states to participate. Further, Canada has initiated a review of regulations governing the import of animals, with a focus on regionalisation (i.e., allowing imports from some regions even though other regions of the United States do not satisfy Canada's health regulations for imports). The ROU also works towards addressing inconsistencies between U.S. state and federal brucellosis and tuberculosis requirements and an effort to co-operate with the Canadian Food Inspection Agency. Based on a scientific risk assessment, Canada modified its swine quarantine regulations to allow swine for slaughter to be imported from states which are pseudorabies free.

The Restricted Feeder Import Program—formerly the Northwest Feeder Project—has been a considerable success. It allows imports of feeder cattle from low risk areas for blue-tongue and anaplasmosis in the United States. There has been a rapid expansion of imports, from 51,000 head for the period from October 1998 to March 1999, to 175,000 head from October 1999 to March 2000. This type of co-operation ties the Canadian and U.S. markets closer together and gives U.S. cow-calf producers a stake in an open border, and hope-



fully will make it more difficult for groups such as R-Calf to obtain standing. Having Lynn Cornwell, the president-elect of the NCBA publicly state that

... I believe in trade. In fact the highest priced feeder cattle my family has ever sold went last Friday to Alberta feeders (NCBA, August 29, 2000)

does far more to ensure the open border than any formal agreement. Further, the major beef packers operating in western Canada are U.S.-owned and will not want their cattle supplies jeopardised by Canadian retaliation—even unofficial tightening of red tape—for future contingency protection harassment from U.S. producer groups.

There are proposals to expand the RFIP. The suggested changes include opening the market to year-round imports of feeders. There would also be the delineation of U.S. zones that are considered to have health standards equivalent to those in Canada. The proposals would also allow movement of imported cattle among operations in Canada—to facilitate backgrounding. The CCA has endorsed these changes and has been an active participant in the process. As Young suggests:

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 (2000, p. 33).

There are limits, however, to cooperation. The NCBA has consistently pushed for country-of-origin labelling for red meat. While this proposal may seem relatively innocuous, it could carry considerable cost. While labelling final cuts of meat sold in supermarkets may be possible, labelling beef consumed in restaurants or ground beef (which is often mixed) is not. Many U.S. firms may simply not wish to incur the costs associated with labelling and may refuse to deal in Canadian beef. In this period of relatively good returns in the U.S. beef industry, demands for mandatory labelling have been replaced by proposals for a voluntary labelling scheme. From the Canadian point of view this is an improvement over mandatory labelling but its trade effects may not be insignificant. In any case, one suspects that mandatory labelling will be back on the agenda when the industry re-enters a low phase of the price cycle. While private co-operation may bring considerable increased security of market access in some areas of North American red meat trade, it has clear limits (Young, 2000). Increased liberalisation through NAFTA mechanisms, however, appears unlikely (Hayes and Kerr, 1997) and problems such as country-of-origin labelling and antidumping measures will have to await resolution at the WTO. These questions are dealt with in more detail later in this paper. The NAFTA looks increasingly like a “one-time” liberalisation mechanism rather than a framework for ongoing progress toward market integration, its original intent (Clement et al., 1997). While a wider round of WTO negotiations remains stalled in the wake of the Seattle ministerial meetings in early 2000,

and must await the changeover in the U. S. Administration, it still represents a forum where progress may be made (Gaisford and Kerr, 2001).

### **The Agriculture Negotiations in Geneva**

The Uruguay Round made the first tentative steps toward integrating trade in agricultural products into general GATT disciplines. The negotiations were extremely acrimonious and the round nearly faltered over agricultural issues. To secure a closure to the Uruguay Round, the members agreed in the Uruguay Round Agreement on Agriculture (AoA) that negotiations would continue after a respite (Gervais et al., 1999). While a wider round was not agreed in Seattle, as mandated, talks on agriculture started in Geneva in the spring of 2000. The topics open for negotiation, however, are limited to those of the AoA. Unfortunately many of the issues important for red meat lie outside its purview (Kerr, 2000a). Still, some issues that are important for red meat trade are on the table.

In the AoA it was agreed that export subsidies would be reduced but not eliminated. While ongoing reform of the European Union's Common Agricultural Policy (CAP) has reduced the degree of export support required for the beef industry, considerable latitude for the use of export subsidies remains. While the United States and the Cairns Group have proposed that export subsidies be completely removed, it seems unlikely that the EU will agree. A likely compromise is that there will be further reductions in export subsidies. Obtaining commitments on the basis of individual commodities rather than allowing for averaging subsidy reductions across a range of commodities would reduce the EU's ability to disrupt international beef markets during a domestic market downturn.

Market access issues are also likely to be important during the negotiations. In particular, liberalisation of tariff quotas and their administration could become major points of contention during negotiations. While Canada should continue to push for increased access to the EU market through reform of the import regime for beef, realistically, any significant movement of beef into the EU will have to await the resolution of the dispute surrounding beef produced using growth hormones, as the import ban on this product represents the major impediment to market access. The question of tariff quotas is, however, likely to come up in another context. Allowing disease-free subnational zones in the WTO has made it possible for some South American countries, particularly Argentina, to begin to ship foot-and-mouth-free chilled beef to markets that traditionally have been closed to their products. The total quotas were set prior to the entry of the South American countries into the fresh beef trade. While these countries are still experiencing some teething troubles with their regional foot-and-mouth-free programs—witness Argentina's voluntary withdrawal from the North American fresh beef market in August 2000—it is expected that they will have considerable export capacity in place in the near future. Hence, they will be

very interested in having the quota portion of the existing tariff quotas expanded to reflect the new international reality. Failing that, given their likely cost advantage they may also wish to have the over-quota tariff reduced. The smaller the market access they are able to obtain elsewhere through expansions in tariff quotas, the more cost competitive they will become in the over-quota market. Negotiations on liberalisation of tariff quotas, namely reductions in within-quota tariffs, over-quota tariffs, and the quota quantity, thus need to be done carefully because they will be subject to the dynamics of the international beef market (Gaisford and Kerr, 2001). If South American countries do not receive any concessions on market access, they are likely to feel that the subregionalisation disease-free initiative was a sham whereby they have expended considerable effort only to have their expected increase in market access nullified by the tariff quota regime. This could lead to an interesting case at the WTO relating to nullification or impairment of expected benefits.

Even if no concessions are granted on liberalisation of tariff quotas, South American countries may wish to pursue the question of their administration. Not only was the total quota set prior to the entry of South American countries into the foot-and-mouth-free fresh beef trade, but the quota was also allocated among countries. In North America the lion's share of the quota went to the traditional suppliers of imported beef—Australia and New Zealand. The United States has given Argentina a small quota—20,000 metric tons—while in Canada, South American countries can compete for the portion of the quota not allocated to Australian and New Zealand suppliers. If the total quota cannot be expanded, then the South American countries will press for a reapportioning of the quota. Australia and New Zealand can be expected to lobby hard to retain their share of imports. Bureaucratic allocations of import quotas will always lead to acrimony. The South American countries might attempt to argue that the current tariff quota administration violates the basic WTO principle of non-discrimination.

While the WTO does not make rules regarding quota allocation, the United States has shown some interest in having the topic put on the table in the negotiations. The reason for this is the low fill rates (the portion of the quota actually used for imports) in some countries. The U. S. hypothesises that tariff quota administration may, in part, explain why the increase in its exports expected from the Uruguay Round has not been realised. Moving to market-based allocation mechanisms, such as auctions, for tariff quotas would be within the traditions of the WTO. Market-based mechanisms would allow the most efficient (low cost) countries to acquire quota. The WTO's preference for tariffs over quantitative restrictions as border instruments arose, in part, because tariffs ensure that the low cost country will become the import supplier. This is particularly important when major changes are taking place, like the entry of South American countries into the international chilled beef market. Moving to market-based tariff quota allocation systems through the WTO may also

improve Canada's ability to secure access to the expanding Asia-Pacific high quality beef market where, one suspects, the United States is able to secure a larger proportion of some countries' beef or pork markets due to their economic power rather than their inherent competitiveness. In any case, the arrival of South American chilled beef on the international market requires careful study and evaluation for its effects on both the Canadian domestic market and Canada's offshore markets. While most of the South American output remains grass fed, there is also investment in feedlots. The South American countries are already planning aggressive marketing campaigns in the Asia-Pacific markets.

Canada has proposed zero-for-zero reductions in tariffs for trade in pork products. The level of protection for pork in the EU is, compared to many agricultural products, relatively low. It seems unlikely, however, that Japan would be interested in totally opening its market and, hence, it may not be possible to achieve an agreement. Further, while China is not yet a member of the WTO, if the agricultural negotiations are sufficiently protracted it may well have acceded prior to a new agreement being reached. China has shown little indication that it wishes to liberalise its pork market, although in its accession agreement it has promised to put its pork import regime on a "scientific basis" and to reduce its tariffs from 20 to 12 percent (Kerr, 2000b). These concessions were wrested from a China that is desperate to join the WTO. Once it has become a member, further liberalisation in agriculture, particularly for meat products, is likely to become very difficult to achieve.

The last major item that may be on the table at the current talks in Geneva relates to the issue of animal welfare. At the second special session of the Committee on Agriculture in June 2000 the EU submitted a proposal on Animal Welfare and Trade in Agriculture. Initial reactions to the EU's ideas at the WTO's ministerial meetings in Seattle were not wholly favourable and the issue is likely to be the subject of intense bargaining. In the EU there has been fierce lobbying by animal welfare groups for information regarding production methods and for improved animal welfare in agricultural production. As a result, the EU has adopted a parcel of legislation regarding the welfare of animals. Council Directive 98/58/EC is the main law protecting animals kept for farming purposes; it lays down standards for the conditions in which farm animals are kept and bred in member states. Additional legislation exists regarding the protection of laying hens and veal calves. The Treaty of Amsterdam also contains a protocol on the Protection and Welfare of Animals. As a result, the EU has more stringent animal welfare regulations, and therefore higher costs of production, than many of its trading partners. In its proposal to the Committee on Agriculture, the EU states its concern that its animal welfare standards are in danger of being undermined. The EU claims that without the provision of an appropriate WTO framework, there is no way of ensuring that agricultural products produced to high EU standards are not replaced by cheaper imports produced to lower standards (WTO).

The EU puts forward several ideas as to how the issue of animal welfare could be addressed within the WTO. Their first suggestion is the creation of multilateral agreements on the protection of animal welfare. It is unclear whether these agreements are intended to be part of the WTO framework or outside of it. They do, however, state the need to clarify the relationship between WTO rules and trade measures created by multilateral animal welfare agreements. The second idea is for compulsory or voluntary labelling of products produced in accordance with animal welfare standards. This would enable consumers to make an informed choice, whether products are domestically produced or imported. Finally, the EU proposes the provision of some kind of compensation to enable producers to meet the additional costs of producing food to high animal welfare standards. This is aimed at reducing disparities in competitiveness between countries with different standards. The EU states that these proposals are not mutually exclusive and that some combination of the three would be possible. They conclude their statement by reiterating their aim to “address adequately the issue of animal welfare within the WTO, without conflicting with the long-term objective of trade liberalisation in agricultural and food products” (WTO, 2000, p. 3).

All of these proposals are likely to lead to reduced trade in livestock products. The establishment of a separate international agreement on animal welfare opens the door for rule making in trade to be moved into organisations whose motivations are not consistent with trade liberalisation. An example of the types of results that arise when trade policy making takes place outside of the WTO can be found in the recently negotiated BioSafety Protocol. While the specific details are beyond the scope of this paper, it is sufficient to say that the protocol contains clauses that are antipathetic to WTO principles, including allowing for trade barriers to be put in place if domestic producers are adversely affected by competition (Phillips and Kerr, 2000). The EU is correct in its observation that the relationship between a separate animal welfare protocol and the WTO needs to be clarified before this can be a serious option. The WTO Committee on Trade and the Environment has been attempting to sort out these jurisdictional questions with regard to multilateral environmental agreements such as the BioSafety Protocol for years without success.

The proposal for labelling will lead to reduced trade and economic welfare as well as an increase in exporting costs for those engaged in international commerce (see Gaisford and Lau, 2000, for a discussion of labelling in the context of trade in genetically modified organisms). The proposal to allow for compensation—read subsidies—can be interpreted as an attempt to bring production subsidies in through the back door. It seems clear that the additional costs associated with higher animal welfare standards are no different than the higher costs imposed by any form of domestically imposed standards (i.e., labour standards, environmental standards, etc.). The WTO has always treated these as part of the gen-

eral competitive environment and not allowed them to be a reason for imposing trade barriers or trade-distorting subsidies. This proposal should be vigorously opposed. The consumer's right to know which is embodied in the labelling issue is probably better dealt with in the Agreement on Technical Barriers to Trade rather than in a new AoA. This question is dealt with in the following section.

## Issues for a New Broad Round of WTO Negotiations

The major issues that pertain to the liberalisation of trade in livestock lie outside the AoA and its renewed negotiations. Unfortunately, these areas are those that would be encompassed in a new, broad round of WTO talks. The members could not agree on a Millennium Round at the Seattle ministerial meetings, and hence it remains in abeyance. Even if a round can be agreed to after the changeover in the U.S. Administration, the issues that concern trade in red meat and livestock—and these products are not the focus of disagreements among the parties—are likely to be some of the most acrimonious to be dealt with at the negotiations. Three areas are particularly important: (1) dumping, (2) sanitary measures, and (3) technical barriers to trade.

As suggested in the discussion of the NAFTA, it would be of considerable benefit to the Canadian livestock industry if it could be better protected from the capricious use of antidumping duties by the United States. In particular, the “selling below cost” definition needs to be removed as a sole criterion for the imposition of antidumping duties. While the intent of this definition relates to predatory pricing, the definition cannot be used in isolation. Hog and beef producers operate in a relatively competitive market—meaning they cannot sell below cost to capture a market because there is no high-priced domestic market that can be used to cross-subsidise sales below cost in the foreign market. Livestock markets cycle, which means that producers lose money in certain periods. Given the integrated North American livestock markets, producers on both sides of the border are likely to be losing money—selling below cost—at the same time. Being charged with dumping when U.S. firms are following the same business practice has been particularly galling for Canadian producers.

At a minimum, the livestock industry in Canada would like to have the dumping definition changed so that selling below cost and international price discrimination must be taking place simultaneously before a firm can be accused of dumping. While even these dual criteria are not sufficient to define predatory pricing, their use would prevent cases like the one brought by R-Calf from being brought forward.

The other problem with dumping cases is that they impose considerable costs on those who seek to protect themselves by engaging in a defence of their position. As a result, antidumping actions can be used as a means to harass foreign firms. As the R-Calf case

showed yet again, it is not necessary to win the case to impose considerable costs on exporters. While proof of injury is required before permanent antidumping duties can be imposed, temporary antidumping duties are often sufficient for the purposes of harassment. An *ex ante de minimis* requirement might be proposed as an additional criterion. This provision would require that the *de minimis* threshold be exceeded before temporary duties could be imposed. Pushing for a high *de minimis* level in the WTO dumping disciplines may be the easiest way to reduce the harassment costs of U.S. antidumping actions.

The United States can be expected to fiercely contest any changes to antidumping codes. This is because the Congress finds antidumping actions a convenient method of diverting protectionist pressure. As a result, they will resist any movement to have dumping handled through international competitions policy or to replace it with safeguard provisions. Thus, asking for the changes suggested above may be the only method to move forward. One way to increase pressure on the United States to agree to antidumping reforms would be for other countries to make greater use of antidumping actions against the United States. In the North American livestock industries, if Canadian exporters are selling below cost in the United States there is a good chance that U.S. exporters are selling below cost in Canada. Thus, a dumping case could be made against the United States. The Canadian industry has not wished to pursue this avenue because it fears the loss of the relationship it has built up with its U.S. counterparts. It might be time to rethink this strategy. Admittedly, a change in strategy carries considerable risks. In any case, getting the United States to agree to alter its dumping regime will be extremely difficult at the WTO.

The European Union's ban on the import of beef produced using growth hormones remains the most serious constraint on livestock trade. During the Uruguay Round, a new Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS) was negotiated. Its central theme was to ensure that trade barriers put in place on human, animal, and plant health grounds had a scientific basis. One of the new agreement's first tests was the long-standing beef hormone dispute between the European Union on one side and Canada and the United States on the other. The EU bans the use of beef hormones domestically and also prohibits the import of beef products produced using these growth promoters. With the SPS in place as well as the new arbitration-based dispute settlement system, Canada and the United States mounted a challenge to the EU ban. The details of the case have been well documented elsewhere (see Roberts, 1998). The EU lost the case. It attempted to win its case largely on the basis of technicalities because it was clear that its ban did not have a solid scientific basis.

The EU, however, decided not to comply with the WTO dispute panel ruling and, instead, chose to accept retaliation as its right (Kerr and Perdakis, 1995). Retaliation is a second-best policy because it does not assist the cattle industry in Canada and the United

States, who are denied market access and, further, it distorts trade in those goods where retaliation is taking place. While legally it is possible to accept retaliation and breach WTO commitments, these occurrences are rare and usually indicate that the political consensus that underlies the WTO has broken down. When this happens it usually signals that renegotiation at the WTO is necessary. The EU has made it clear that it wishes to renegotiate the SPS to include consumers' concerns.

Renegotiation of the SPS should be resisted by Canada. The hormone case proves that the SPS is working as intended—to prevent the capricious use of bogus health regulations to protect producers. Having the SPS is important for the future functioning of trade in red meat products (Kerr and Hobbs, 2000).

It also needs to be recognised that the problem the EU faced was not producers asking for protection, but consumers. The WTO and its progenitor, The General Agreement on Tariffs and Trade (GATT) were established with only one source of protectionism in mind—producers. The EU, however, was faced with strong pressure from consumers to ban the use of growth hormones (Roberts, 1998). This does not mean that once EU beef producers were denied the use of a productivity-enhancing technology available to their North American competitors they did not seek protection; nor did it mean that the reduced productivity of the ban did not assist with the management of the EU beef regime—it did. The primary motive behind the ban, however, was consumer pressure. The EU was forced to attempt to defend its import regime on SPS grounds because it had no other mechanism available. Increasingly, however, consumers and other groups are asking for protection from imports. The most obvious instance is consumer and environmental groups' demands for protection from genetically modified foods and organisms, but in affluent societies consumers have also been taking increasing interest in a broad spectrum of issues that have trade ramifications—animal welfare, leghold traps, child labour standards, tuna fishing methods, and whaling, to name several. The WTO has no mechanism to deal with these requests for protection and, to a considerable degree, the confrontations with civil society groups at the Seattle ministerial meetings were centred on these issues.

Instead of focusing on renegotiating existing WTO agreements, which are motivated by restraining governments' abilities to extend protection to producers, a better strategy may be to deal with consumers' (and other groups') demands for protection head on. In a new agreement there could be a chance to alter the existing rules, or at least their emphasis. In the existing WTO structure both compensation and accepting retaliation are options for countries that decide to ignore their WTO commitments. As compensation entails a gross cost while retaliation is a net cost, countries seldom choose to offer compensation and instead opt for the cheaper acceptance of retaliation. A central point of any new agreement on the imposition of trade barriers for reasons of consumers' preferences could be



compensation. If countries felt compelled by domestic consumer pressure to impose trade barriers, then compensation would be the only method of recompense. Further, it should be monetary compensation rather than the offering of alternative trade concessions. In that way, the injured industry in the exporting country would be directly compensated for the loss in markets suffered. This is superior to retaliation, which does nothing for the injured industry and distorts trade in other sectors. It also raises the political cost of raising trade barriers and will thus help curtail their use. Clearly, moving to a compensation system would be a radical departure from current WTO practice and would not be without implementation difficulties (Perdikis and Kerr, 1999). Unfortunately, livestock concerns relating to issues such as growth hormones are bundled with extremely complex and emotive issues like biotechnology, child labour, and environmental standards and, hence, achieving a settlement in the near term seems remote.

The WTO Agreement on Technical Barriers to Trade needs to be strengthened if the red meat industry is to be better protected from regulations such as country-of-origin labelling requirements. Currently, technical barriers must have a legitimate purpose. Further, the TBT states that the “costs of implementing the standard must be proportional to the purpose of the standard”. The intent of this statement is that the benefits received by consumers from the standard should not exceed the costs to exporters of implementing the standard. The existing wording, however, is considered too imprecise to allow a judgement against country-of-origin labelling. The wording needs to be made much more explicit if Canadian red meat producers are to receive increased protection from the capricious use of labelling. Something like “the costs of implementing the standard must not exceed the benefits received by consumers” would be an improvement. Of course, such wording would lead to a great deal of work for economists in preparing and refuting cost-benefit studies but these are technical matters upon which WTO panels could judge. Again, however, achieving this degree of definitional preciseness would be extremely difficult at the negotiations.

## Conclusions

**F**urther trade liberalisation in livestock and red meat appears to be at a difficult stage. Many of the central issues lie outside the traditional areas of liberalisation and instead involve deepening of economic integration in areas of domestic regulations and standards. The NAFTA, which was originally touted as an instrument for deepening economic integration through harmonisation and removal of non-tariff barriers, appears to be stalled. While there have been some initiatives to liberalise trade in livestock between Canada and the United States since the signing of the NAFTA, such as the Restricted Feeder Import Program, they have been achieved largely outside the NAFTA mechanisms. Private initia-

tives such as building a working relationship between the CCA and the NCBA appear to be an important part of keeping North American borders open.

Given that the NAFTA does not appear to be a vehicle for further trade liberalisation, focus must move to the WTO. While talks are currently taking place on the issues contained in the AoA, they are not central to red meat trade liberalisation. If it is achieved at all, further liberalisation will have to await a broad negotiating round. The issues that must be tackled there are, however, extremely complex.

## Endnotes

1. An earlier version of this paper was presented at the Canadian Agri-Food Trade Research Network Workshop on Agricultural Trade Liberalization: Can We Make Progress? Quebec City, Quebec, October 2000.

## References

- Clement, N.C., del Castillo Vera, G., Gerber, J., Kerr, W. A., MacFayden, A. J., Shedd, S. Zepeda, E. and Alarcon, D. (1997) *North American Economic Integration*, Edward Elgar, Cheltenham.
- Gaisford, J. D. and Kerr, W. A. (2001) *Economic Analysis for Trade Negotiations*, Edward Elgar, Cheltenham.
- Gaisford, J. D and Lau, C. H. C. (2000) The Case For and Against Import Embargoes on Products of Biotechnology, *The Estey Centre Journal of International Law and Trade Policy*, 1 (1): 83-98, <http://www.esteyjournal.com>.
- Gerber, J. and Kerr, W. A. (1995) Trade as an Agency of Social Policy: NAFTA's Schizophrenic Role in Agriculture, in Randall. S. J. and Konrad, H. (eds.) *NAFTA in Transition*, University of Calgary Press. Calgary: 93-111.
- Gervais, J-P, Huff, K., Kerr, W. A., Meilke, K., Phillips, P., Rude, J. and St. Louis, R. (1999) A Guide to the Seattle Round of Multilateral Trade Negotiations on Agriculture, Canadian Agri-food Trade Research Network, web publication at: (<http://www.eru.ulaval.ca/catrn/primer.htm>).
- Hayes, D. J., Hayenga, M. I. And Melton, B.E. (1995) The Impact of Grade Equivalency of Beef and Cattle Trade Between the United States and Canada, *U.S. Meat Export Analysis and Trade News*, 13 (12).
- Hayes, D. J. and Kerr, W. A. (1997) Progress Toward a Single Market: The New Institutional Economics of the NAFTA Livestock Sectors, in Loyns, R. M. A., Knutson, R. D., Meilke, K. and Sumner, D. A. (eds), *Harmonization/Convergence/Compatibility in Agriculture and Agri-Food Policy: Canada, United States, Mexico*, University of Manitoba, Texas A and M University, University of Guelph, University of California-Davis, Winnipeg: 163-180.
- Kerr, W. A. (2000a) The Next Step Will be Harder: Issues for the New Round of Agricultural Negotiations at the World Trade Organisation, *Journal of World Trade*, 34 (1): 123-140.
- Kerr, W. A. (2000b) Enter the Dragon: China's Accession to the WTO, CATRN Paper 2000-04, Canadian Agrifood Trade Research Network, <http://www.eru.ulaval.ca/catrn/China.pdf>.
- Kerr, W. A. and Cullen, S. E. (1985) Canada-US Free Trade – Implications for the Western Canadian Livestock Industry, *Western Economic Review*, 4 (3): 24-36.
- Kerr, W. A., Cullen, S. E. and Sommerville, M. F. (1986) *Trade Barriers and the Western Canadian Livestock Industry*, Working Paper 11/86, Marketing and Economics Branch, Agriculture Canada.
- Kerr, W. A. and Hobbs, J. E. (2000) The WTO and the Dispute Over Beef Produced Using Growth Hormones, CATRN Paper 2000-07, Canadian Agrifood Trade Research Network, <http://www.eru.ulaval.ca/catrn/beef.pdf>.
- Kerr, W. A. and Perdakis, N. (1995) *The Economics of International Business*, Chapman and Hall, London.

- Menzie, E.I. and Prentice, B.E. (1987) Formal and Informal Barriers to Trade in Agricultural Products, Canada-United States, *American Journal of Agricultural Economics*, 69 (5): 946-951.
- National Cattlemen's Beef Association (NCBA) (2000) NCBA President-Elect Responds to R-Calf, August 29, 2000, [http://www.beef.org/newsroom/ncba/ncba00\\_0829a.htm](http://www.beef.org/newsroom/ncba/ncba00_0829a.htm).
- Perdikis, N. and Kerr, W. A. (1999) Can Consumer-Based Demands for Protection be Incorporated in the WTO? – The Case Of Genetically Modified Foods, *Canadian Journal of Agricultural Economics*, 47 (4): 457-465.
- Phillips, P.W.B. and Kerr, W. A. (2000) The BioSafety Protocol and International Trade in Genetically Modified Organisms, CATRN Paper 2000-03, Canadian Agrifood Trade Research Network, <http://www.eru.ulaval.ca/catr/protocol.pdf>.
- Roberts, D. (1998) Preliminary Assessment of the Effects of the WTO Agreement on Sanitary and Phytosanitary Trade Regulations, *Journal of International Economic Law*: 377-405.
- World Trade Organisation (WTO) (2000) *European Communities Proposal: Animal Welfare and Trade in Agriculture* document G/AG/NG/W/19, 28 June at ([http://www.wto.org/english/trtope/agric\\_e/negot\\_e.htm](http://www.wto.org/english/trtope/agric_e/negot_e.htm)).
- Young, L. M. (2000) U.S.-Canadian Agricultural Trade Conflicts: Time for a New Paradigm, *The Estey Centre Journal of International Law and Trade Policy*, 1 (1) 22-35, <http://www.esteyjournal.com>.

*The views expressed in this article are those of the author(s) and not those of the Estey Centre Journal of International Law and Trade Policy nor the Estey Centre for Law and Economics in International Trade. © The Estey Centre for Law and Economics in International Trade.*