

Independent Umpires Needed for FTA Disputes

In a decision that will have sceptics of the Australia – USA Free Trade Agreement shaking their heads, the following story raises questions about the fairness of dispute resolution within trade agreements and if it is appropriate to have a 'home ground' umpire. The dispute in question is over the importation of durum and hard red spring wheat from Canada into the US and was reported in Agribusiness Vol 113 – 6 May 2003 (see last item).

The point at issue appears to be the claim by US wheat growers that Canadian imports are doing them 'harm' (i.e. taking market share). The Canadians claim that they are simply more efficient farmers and are making the most of their natural competitive advantage. Their lower cost of production, greater efficiency or perhaps even the value of the Canadian dollar, allow them to produce durum and hard red spring wheat at a lower cost to their US counterparts.

To make the ruling of countervailing duties against Canadian imports even less palatable, are the reports that millers, for many applications, actually prefer the imported grain and consistently pay a premium for it. This may well be one of the few instances where an allegedly dumped product actually commands a consistently higher price in open trade.

Normally, products that are dumped compete head to head or undercut prices of domestically produced equivalents. Generally the claim by the injured parties is that the dumped product is undercutting domestic prices and forcing them downward. Accusing a premium priced product of being dumped is a novelty.

In this case, the decision by the U.S. International Trade Commission to impose dumping margins on Canadian imports is more to do with protectionism rather than free and fair trade and is a decision akin to the recent imposition of additional tariffs on beef imports by the Japanese government.

Clearly both decisions were driven by domestic political concerns and are intended to protect less efficient domestic industries from competition.

The decision by the US is particularly galling to those who support open and fair trade and is yet another example of the hypocritical trade policies of the current US administration; who on the one hand speak of opening markets and removing tariffs and barriers, yet on the other hand continue their policies that protect inefficient domestic industries (and importantly the tenure of congressmen and senators from farm states).

The decision by the USITC is even more perplexing when one looks at the total value of the markets concerned. The figure quoted below refers to imports totalling US\$290 million July 01 to June 02. So an additional tariff of close to 9% on that figure is not a lot of money – particularly when compared to total NAFTA trade of over \$600 billion PA.

Important Questions for Australia.

This decision should be a warning to Australia that the US will place its domestic political considerations above all else when it comes to trade. The only sensible conclusion that can be drawn from the case under discussion is that domestic political concerns drove the decision to impose countervailing duties. This impression is reinforced when the tiny size of the trade in imported wheat from Canada is considered.

If the US is willing to treat one of its closest and most important trade partners in this fashion, what are the prospects for similar disputes between Australia and the US once the proposed FTA is ratified?

There is a growing feeling within the US farm sector that the country has liberalised its trade too much. It is true that US food imports have increased over the last decade or so. This, in the minds of farmer representatives, has placed increasing pressure on the heavily protected and subsidised US farm sector.

But what farm lobbyists in the US fail to acknowledge is that US exports have also been increasing. In fact, the total value of the farm sector has increased.

The disquiet felt by farmers in the US will manifest itself in increased political pressure on elected representatives to 'protect' US farmers from 'unfair' imports. The farm and agribusiness lobby in the US extremely well funded, professional and focused.

We have to take note of the proportionally high number of farmers that vote (one of the highest of any sector in the US) and that vote mobility (switching between the major parties) of farmers is very high – US farmers will chase the best deal from either Democrats or Republicans. In short, the farm vote in the US can deliver valuable House and Senate seats come election time (a situation farmer representatives in Australia can only dream about).

The only way Australia can expect to get a fair deal under any agreement with the US is to have an independent umpire ruling on any disputes, and that umpire has to be the WTO.

WASHINGTON FILE - 02 September 2003

Commerce Finds Canadian Wheat Imports Subsidized, Dumped in U.S. Dumping margins range to 8.87 percent.

Washington—Imports of certain durum wheat and hard red spring wheat from Canada were subsidized and dumped on the U.S. market, the Commerce Department has ruled.

In an August 29 final affirmative determination the department said that dumping margins were 8.26 percent for durum wheat imports and 8.87 percent for red spring wheat imports and net subsidy rates were 5.29 percent for both kinds of wheat.

Imposition of antidumping duties requires final affirmative determinations both from the Commerce Department that dumping occurred and from the U.S. International Trade Commission (USITC) that the imports injured or threatened U.S. industry. Similarly, imposition of countervailing duties requires final rulings both from Commerce that subsidies were paid and from the USITC on injury.

The USITC final determinations are expected by October 14.

In the meantime U.S. customs officials will collect a cash deposit or bond on any subject imports equal to the estimated dumping margins and net subsidy rates. The money would be returned in the event of a negative determination.

Dumping is the import of goods at a price below the home-market or a third-country price or below the cost of production. A dumping margin represents by how much the fair-value price exceeds the dumped price.

A subsidy is a grant conferred on a producer by a government. Between July 2001 and June 2002 combined U.S. imports of hard red spring and durum wheat varieties from Canada amounted to \$290.1 million.

Western Canadian farmers don't need to dump their high quality grain

Winnipeg, Manitoba - May 2, 2003

[The Canadian Wheat Board](#) (CWB) today denounced preliminary tariffs imposed by the U.S. Department of Commerce (DOC) in its ruling on American charges of dumping. These tariffs of 6.12 per cent on spring wheat and 8.15 per cent on durum are in addition to the 3.94 per cent duties imposed by the Americans in March over subsidy allegations.

"Western Canadian farmers do not dump their grain into the U.S. market or anywhere else," said CWB Chair and farmer-elected director Ken Ritter. "We don't need to. We produce some of the world's highest quality grain, for which our American customers have testified they are willing to pay a premium." Ritter pointed to two previous investigations by the U.S. International Trade Commission (ITC), which found that Canadian wheat and durum sells in the U.S. market at higher prices than the equivalent American product. Over a total of 96 months, the ITC found Canadian prices were higher in all but two months.

Ritter noted that at an ITC hearing in October 2002, speakers representing 90 per cent of the U.S. milling industry and 90 per cent of the retail pasta market refuted charges that prices for Canadian wheat are lower than U.S. grain. In one instance, a buyer testified: "If they're dumping, I'm the worst pasta durum buyer in the country, because we've never seen values below Minneapolis values on a head-to-head comparison, never."

"It would make sense to look at this if the challenge was directed at industrial manufactured goods – like steel - where the costs of production are fixed," Ritter said. "However, it defies common sense to apply these same rules to farming, which is governed by many uncontrollable factors, most notably the weather, with unpredictable final price fluctuations."

Furthermore, Ritter noted the DOC established the COP by using information from 27 randomly selected farmers to represent costs for 50,000 western Canadian spring wheat farmers. "Determining the cost of production based on information from 27 farmers is far from statistically valid," Ritter said. "However, we are very grateful to these farmers for cooperating with the DOC and helping us defend our access to the American market."

<http://www.seedquest.com/News/releases/2003/may/5759.htm>