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## **U.S. SECTION 301 INVESTIGATION OF CANADIAN WHEAT TRADING PRACTICES**

*Terry Norman*

Wilson and Dahl did an excellent job of presenting the history of the various U.S. investigations into the Canadian Wheat Board (CWB) and, in particular, the most recent Section 301 investigation of CWB trading practices. Given that this is the ninth investigation of this subject by the United States since 1990, I find it amazing that there can continue to be so much misinformation and misunderstanding about how the CWB operates and what it does.

As part of this recent investigation, the United States Trade Representative (USTR) requested the United States International Trade Commission (USITC) to carry out an investigation of the competitive conditions between U.S. and Canadian wheat. The public version of this report was released December 21, 2001.

### **FINDINGS**

The USITC report refuted the two most serious allegations made by the North Dakota Wheat Commission, namely that the CWB engaged in price discounting and over-delivery of protein. Contrary to previous investigations, some of which had only concluded that CWB prices were an unsolved mystery, this investigation actually involved talking to the importers and purchasers of Canadian and U.S. wheat to obtain comparable price information. This resulted in the finding that the prices for Canadian wheat were normally higher than prices for the most comparable quality U.S. wheat.

In addition, the USITC report concluded that the over-delivery of protein occurs for both U.S. and Canadian wheat, but that this over-delivery is so small that it is not commercially significant. In fact, protein over-

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delivery occurred to a slightly greater degree for U.S. wheat than for Canadian wheat. Wheat delivery contracts which specify a minimum protein level normally have a price penalty clause for any under-delivery of the specified protein content. As a practical matter, given the vagaries of sampling, wheat shippers normally try to provide slightly more than the agreed protein level to avoid having any specific sample trigger the penalty clause.

While these most important allegations were refuted based on the factual information obtained from the importers and purchasers, regrettably the USITC report also contained some factual errors and unsubstantiated conclusions. For example, the USITC concluded that, since imports of U.S. wheat into Canada are quite limited, there must be some barrier in place limiting such imports. This is a completely unsubstantiated conclusion which is factually wrong. There are no commercially significant impediments to imports of U.S. wheat into Canada.

Canada and the United States operate end use certificate systems for imports of wheat from the other country. The purpose of Canada's system is to ensure that imported wheat, which may be of varieties not registered for production in Canada, is not commingled with Canadian wheat in the commercial wheat handling system. This purpose is necessary to maintain the integrity of Canada's wheat quality control system which is based to a considerable extent on allowing production of only those varieties that meet minimum disease and performance requirements. These end use certificates are freely available and do not restrict imports of any variety or quality of wheat. In addition, the USITC seemed to think in error that Canada's wheat varietal registration system itself constitutes a barrier to trade. This system restricts the varieties that may be planted in western Canada, but has no influence on the importation of any variety for any purpose other than seeding. Wheat varieties not registered for seeding can still be imported freely for milling or feeding or any use other than planting. Most countries other than the United States have similar varietal registration systems.

The USITC report stated, again in error, that the Wheat Facilitation Program had been cancelled. This program, which allows sales of wheat by U.S. producers to elevators in western Canada, is still in effect.

The USITC also concluded that Canada's transportation policy favours the movement of CWB wheat and barley over other grains and oilseeds, but this is not the case. The railways must operate within a government established revenue cap, but within this cap, they are free to charge different rates for different commodities. So far, they have chosen not to do so. The revenue cap applies only to shipments to Thunder Bay or west coast ports and has no relevance for shipments to the United States. The USITC report overlooked the fact that CWB owned railway cars were paid for by prairie wheat and barley producers, not by the Canadian government, and that CWB- and government-owned railway cars are both provided at commercial lease rates for shipments to the United States.

The USITC accuses the CWB of being "an arm of the Government of Canada." While we are not quite certain what this is supposed to mean, by any reasonable interpretation of this phrase it would appear to be quite clear that the CWB is not "an arm of the Government of Canada." The CWB is financed and controlled by western Canadian wheat and barley growers. It is governed by a 15-member Board of Directors, 10 of whom are elected directly by wheat and barley growers and 5 are appointed by the Canadian Government. The USITC also indicated that the Canadian Government receives "profits" from the CWB. This is clearly not the case, since CWB revenues, less operating expenses, are distributed to western Canadian wheat and barley growers in the form of final payments for their grain.

## **U.S. GOVERNMENT RESPONSE**

On February, 15, 2002, USTR Zoellick announced the conclusion of the Section 301 investigation and a four-pronged approach to dealing with the issues raised:

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- to explore a potential WTO challenge.

While the grounds for such a challenge are far from clear, we await developments.

- to explore possible countervailing duty or anti-dumping duty investigations.

I can only assume that if reasonable grounds for such investigations existed, then the North Dakota Wheat Commission would have taken this step long ago.

- to assess the extent of real access to the Canadian market for U.S. wheat.

As I have already noted, there are no barriers to the entry of U.S. wheat to Canada. Canadian importers and milling companies have in the past and will continue in the future to import U.S. wheat when market conditions favour such shipments. Canada is always prepared to discuss ways to improve market access for wheat in both directions.

- to seek more stringent disciplines on state trading enterprises (STEs) in the WTO negotiations.

This search was already an element of the U.S. WTO negotiating position. The WTO already has disciplines and notification requirements for STEs and Canada has always been willing to discuss improvements to these disciplines in the context of concrete trade problems or issues which may arise from the activities of STEs, but we are not interested in a sterile debate on the “religious issue” of whether STEs are a “good thing” or not.

Finally, what are the prospects for the future? Will this issue ever be resolved? In my view, this issue is not likely to go away, not even if the CWB were to disappear one day. I expect that there will be continuing concern by some U.S. wheat growers so long as there are any significant imports of wheat into the United States from Canada. Canadian wheat ex-

ports to the United States currently move by the trainload directly to U.S. milling and processing facilities. In the absence of the CWB monopoly control of exports, individual growers in Canada would be more likely to deliver to U.S. elevators. The June/July 1999 issue of *Agricultural Outlook* published by the Economic Research Service of the United States Department of Agriculture contains an article discussing the economic and geographic factors influencing U.S./Canadian trade of wheat.

### **THE UNDERLYING PROBLEM**

In my view, there is a real underlying problem in grain trade between Canada and the United States, but it is not the existence or activities of the CWB. The real underlying problem is the increasing divergence in the levels of support being provided to grain growers in Canada and in the United States. The much higher and ever increasing level of support being provided to U.S. grain growers is causing significant market distortions to the long-term detriment of U.S. grain growers. These higher levels of support are capitalized into land and other assets, driving up their prices, and making U.S. grain growers less internationally competitive than they could be. The November 2001 issue of *Agricultural Outlook* contains a series of articles dealing with the impacts of U.S. government payments. I expect that this situation will continue to get worse until the United States finds some way to get off the “treadmill” of ever higher levels of support to offset higher asset values which translate into higher costs of production.

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