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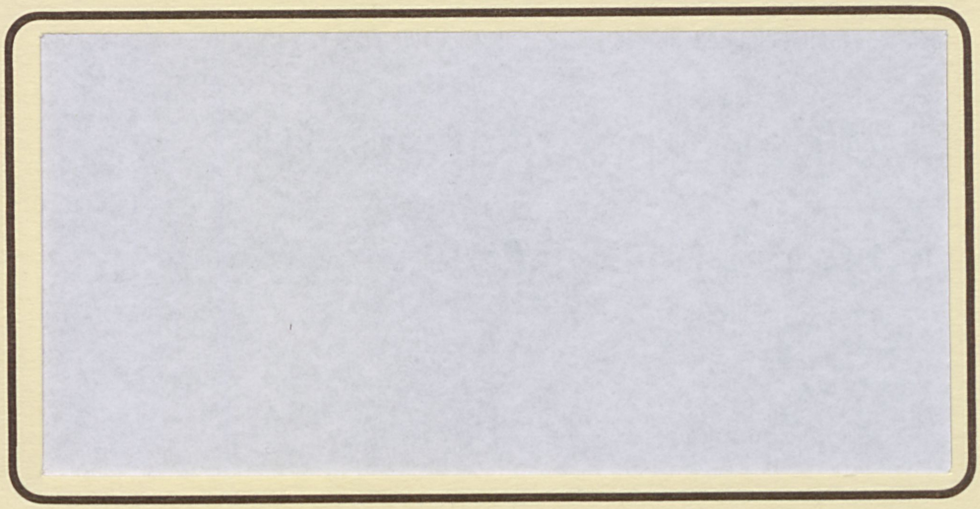

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NAFTA and GATT: Prospects for Canada's Red Meat Sectors in a New Trading Environment

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Staff Paper 94-10

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Introduction

As relatively competitive segments of Canadian agriculture for which the dominant markets are domestic consumption and exports to the US, the pork, beef, swine and cattle industries can expect to benefit from the combination of the influence of the US-Canada Free Trade Agreement (FTA) which became effective in January 1989, its extension to Mexico through the North American Free Trade Agreement (NAFTA) in January 1994, and the provisions relating to agriculture within the General Agreement of Tariffs and Trade (GATT) that will start to apply in 1995. From a North American point of view, these agreements contribute to an improved trading environment for agriculture. From the viewpoint of the rest of the world, this is true in principle for GATT, but not necessarily for NAFTA which, like any other trade bloc, has the potential to divert rather than create agricultural trade with the rest of the world. There seems to be some credence to this viewpoint for beef.

The major implications of GATT for agriculture are, in brief overview, for a direct increase in agricultural trade opportunities from the requirement to replace import quotas, levies and other trade distorting measures by bound tariffs and reduce these, allied with the requirement for specified levels of import access. The Agriculture Agreement also provides for restraint in export subsidization; the establishment of clearer and more effective world trading rules; and provision of clearer limits on the use of barriers to trade based on sanitary and phytosanitary (SPS) measures. The Canadian red meat sectors potentially should gain from each of these provisions.

Specific gains are expected from modest improvements in market access for both pork and beef; reductions in European Union (EU) export subsidization of beef and pork; and clearer and more enforceable world trade rules that may reduce the ability of large trading nations to pursue

administrative protection through the application of their national trade policy. Benefits are also expected from the clarification of SPS measures that may apply to trade in animal semen, embryos, livestock, and meats. The largest proportion of Canadian red meat and live animal exports are to the US. In 1993, the US absorbed some 70 percent by value of Canadian pork, hogs and related product exports; Japan accounted for a further 20 percent. The US imports more than 90 percent of Canadian beef and cattle exports. Canadian production of both categories of red meats is relatively small compared to US production levels. The US is, arguably, the world's most powerful trading nation. It is a nation which has actively pursued a concept of fair trade at the expense of free trade (Chase Wilde, Klein and Richter 1990). Thus, from a Canadian perspective, the moves to clarify and strengthen world trading rules may well be the most significant outcome for red meats from both FTA and GATT.

The direct effects of GATT on increased market access for red meats include Japan's tariff reductions on beef imports and the lower minimum import prices for pork to be phased in over the implementation period. Improvements in market access for newly industrialized countries are expected. An example is provided by Korea, which will increase its current beef import quota, reduce the state trading agency's consumer markup on beef, and replace these trade barriers by a bound tariff in 2001. The European Union will improve market access by the introduction of a tariff rate quota for pork (including a specific quota for high value products) to replace variable levies. The commitments by the EU to reduce export subsidization of beef and pork from the base of 1986-90 translate to appreciable reductions in the volume of subsidized beef and pork from current levels by year 2000 (Agriculture and Agri-Food Canada 1994).

US-Canada Trade Relationships for Red Meats

The supply and disposition of cattle and calves and beef is given in Tables 1 and 2. Similar information for hogs and pork is in Tables 3 and 4. Trade is important for both these sectors. However, the nature of the US-Canadian trading relationship differs somewhat for pork as compared to beef. Canada is the world's foremost exporter of pork; exports have almost continually increased in each successive year of the past decade. Canadian exports of pork to the US have increased appreciably over time; they currently amount to about 2 and a half percent of US production. Administrative protection undertaken by the US in response to pressure from US producers against hog and pork imports from Canada has been pursued through a series of countervailing duty actions.

In contrast to trade flows for pork, Canada is a net importer of beef and a net exporter of cattle. Overall, US-Canadian beef trade has tended to be relatively balanced although Canada has been a net exporter in recent years, mainly due to the increase in US imports of slaughter animals, which likely reflects the discrepancy in meat packing costs between the two countries, and, more recently, the weaker Canadian dollar. The recent Canadian International Trade Tribunal assessment of the competitiveness of the Canadian beef sectors concluded that the cow-calf and feedlot sectors are competitive, relative to US industries. This was considered to be less true for the packing industry where labour costs are higher and plant utilization lower than in the US. The gap is narrower in Alberta than in other provinces, but beef from this province must be transported significant distances to US and Eastern Canadian markets (CITT 1994).

It is nearly 10 years since the US commenced unfair trade actions against Canadian pork and swine exports with the application of countervail duties on imports of Canadian hogs in 1985

(Mielke and van Duren 1990). Countervail duties were also levied on imports of Canadian pork from 1989 until 1991 when the US accepted a GATT panel ruling that these contravened world trade rules. Subsequent countervail actions have been directed at hogs. One major reason for the persistent US actions against hogs and pork appears to be the success of the Canadian hog industry in gaining an increasing, albeit small, market share in the US, an indication of revealed competitive advantage of this industry. The fundamental basis for that success appears to have been the technological advances embodied in genetic selection of high quality (i.e., lean) carcasses, a process of technological change that has been facilitated by a Canadian hog grading system that has transmitted consumers' and processors' preferences for lean meat, through pricing incentives, to the farm gate (Sandhu 1992).

Canada forms a relatively small proportion of the North American market for beef. The maintenance of rather higher prices than in some world markets, although at considerably lower levels than in the EU, some other European nations, and Japan (OECD 1992), has been achieved by US meat import legislation which provides for the imposition of export restraint agreements on major off-shore suppliers when imports reach specified levels, a procedure that has encouraged "voluntary" export restraint agreements with major suppliers. Canada avoided US action by application of its own meat import legislation against off-shore imports. This legislation has been viewed as somewhat less rigid than that of the US in that its application is left to government discretion. Even so, a major feature of the application of the Canadian legislation has been to avoid the imposition of US restrictions on imports from Canada that might arise either because of "passed through" off-shore imports, or because the latter may displace Canadian supplies.

Avoidance of US retaliation was fundamental to the imposition of countervailing duties

against subsidized EC manufacturing beef in 1986 (Huang, Krakar and Uhm 1993). Canadian countervailing duties on subsidized boneless manufacturing beef imports from the EEC applied from 1986 to 1991 and were subsequently extended. Avoidance of US retaliation also underlay the more recent safeguard actions taken by Canada to limit increasing levels of off-shore imports of beef in 1993 and 1994 (Huang, Huff and Uhm 1994). In June 1993 CITT determined that Canada faced the threat of serious injury due to increased boneless beef imports and recommended a tariff quota, with tariff rates of 25 percent on imports exceeding the specified volume. The importance for the Canadian beef and cattle industry of maintaining access to the US market is highlighted by the recent report on the cattle and beef industries by the CITT (1994) which urged, in addition, pursuit of Mexican and other markets, emphasized quality, and saw a need to improve cost, profitability and industry alliances.

A measure of the impact of meat import legislation and associated import restriction on beef prices has been provided by the recently revised OECD estimates of producer and consumer subsidy equivalents for beef. The producer subsidy estimate (PSE) reported for 1991, for example, was 24 percent for Canada and 7 percent for the US; the respective consumer subsidy equivalent (CSE) measures were -3 percent for Canada and -2 percent for the US (OECD 1994). Figures for other recent years are in Table 5. Figures for pork are somewhat lower. For example, the PSE calculated for 1991 for pig meat was 18 percent for Canada and 4 percent for the US. CSE figures of 0 and -1 percent were reported, respectively, for these two countries (OECD 1994).

Canadian calculations of net benefits received by the cattle industry differ from the OECD subsidy estimates. The CITT (1994) reported these to be 8.32 percent of adjusted value of

Canadian production in 1990/91; net benefits of 8.43 percent were reported for the US. Even so, under the Agricultural Agreement of GATT, the protection embodied in the meat import legislation of each country is being replaced by relatively high tariff equivalence rates beyond the tariff rate quotas of 76,409 tonnes for Canada and 656,621 tonnes for the US. It has been stated that beef imports beyond these levels will be subject to tariff rates of 31.1 percent, to be reduced by 15 percent over the 6 years from 1995 of the implementation period (Agriculture and Agri-Food Canada 1994). In fact, Canada's Uruguay Round commitments specify a bound tariff rate of 37.9 percent for beef imports beyond the access commitments, but it is expected that there will be "harmonization" with the US tariff equivalence rate of 31.1 percent. The three NAFTA countries are exempt from each others' meat import legislation and subsequent tariff rate quota provisions.

Trade Rules and Enforcement

For a small country such as Canada, faced by a large country with a propensity to apply countervail duties in response to political pressures, a rules-based approach to trade disputes is a desirable substitute for a more power-based approach. Thus the changes in dispute settlement procedures in both FTA and GATT are a potential improvement of the trading environment with likely benefits for the Canadian red meat sectors.

The GATT subsidies code negotiated within the Tokyo Round has interpreted the previous agreements on countervailing duties (GATT Article VI); subsidies (Article XVI) and dispute settlement (Article XXXIII). These provide that before a countervailing duty may be applied a subsidy must be evident, material injury must be established, and a causal link between the two must be demonstrated. As well the GATT has provided for safeguard actions as temporary

measures in cases of fair trade where serious injury results from imports (Article XIX). In contrast, the provisions for antidumping and countervailing duties are intended to remedy unfair trade resulting from dumping or subsidization.

Such GATT provisions are translated into the national trade laws of signatories. In Canada the GATT codes against unfair trade practices are implemented in the Special Import Measures Act of 1984; in the US, these are implemented in the Trade Agreements Act, 1979. Canadian safeguard provisions are provided by the Canadian International Trade Tribunal Act. In the US, the Department of Commerce (DoC) determines that dumping or a subsidy exists; the International Trade Commission (ITC) determines injury. In Canada, Revenue Canada determines the fact of dumping or subsidy; the International Trade Tribunal determines injury and causation. National trade law may also incorporate other components of national policy and may not be consistent with the GATT provisions. Van Duren and Martin (1989) have argued that the standard of economic evidence required under Canadian law is higher than in the US and that Canadian decisions have made more economic sense. Certainly the tendency in US trade policy has been to emphasise countervailing duty actions, rather than safeguard processes (Chase Wilde, Klein and Richter 1990). National decisions that conflict with the provisions of GATT may be appealed in the forum of GATT. The effectiveness of this forum has been limited by the feature that offending nations may block the release of, or may refuse to act on, the findings of GATT panels.

The Uruguay Round agreement of GATT is expected to strengthen world trading rules and enforcement of these by the provisions for the World Trade Organization and an expedited and more effective dispute settlement process. In particular, rulings will no longer be blocked except

by group decision and enforcement is expected to be strengthened. Special rules on subsidies and support will apply within the Agriculture Agreement to primary producers although the general GATT subsidy rules apply to food processors. Thus, for primary agriculture, the class of subsidies viewed as "green" will not be subject to countervail or to reduction commitments. These include general services (research, inspection, extension and training, marketing promotion and infrastructure); public stockholding; domestic food aid; decoupled income support; "whole farm" income safety nets, triggered by 30 percent loss and guaranteeing no more than 70 percent of income loss; crop and disaster insurance, triggered by 30 percent loss, guaranteeing no more than 100 percent of replacement value; structural adjustment assistance; and environmental programs (GATT 1993). Other agricultural subsidies will continue to be exposed to potential countervail.

Experience of the FTA Review Process

There are now some four and a half years of experience of the trade dispute process of the Free Trade Agreement. The Agreement provides, under Chapter 19, that each country can request a review of the other's determination of antidumping and countervailing duties on imports. The appeals are heard by a panel of 5 experts, two each of whom are drawn from lists of 25 individuals from each country; these panellists choose the fifth member. The panels are mandated to review the final determinations of dumping, subsidization and injury by the administrative processes of the other country. The review must determine whether the previous decision was in accordance with the unfair trade remedy law of the importing country, based on the administrative record and with allowance for oral and written submissions of parties with standing on the issue.

The effectiveness of this process is necessarily limited by its narrow mandate.

As is illustrated by a chronology of FTA panel processes for hogs and pork summarized in the Appendix to this paper, the process has been used to the extent available including the provision for extraordinary challenge, intended for situations in which flaws in a panel's conduct affect its findings.[1] Nonetheless, in contrast to the earlier provisions of GATT dispute settlement processes, the review process of FTA/NAFTA involves specified time periods, an improvement that will apply in the revised GATT processes. Scrutiny of the procedures and outcomes of the FTA process suggests that the panels have yielded more timely final determinations and have forced a more careful application of national legislation. Mirus (1993) has also concluded that the standards of economic analysis have been improved by the panel review process.

Two panels were convened to review US countervail procedures in the case of pork; one dealt primarily with the determination of subsidy, the other revolved around the issue of injury. The panel ruling on subsidy found partly in Canada's favour and partly against. The ruling on injury, in Canada's favour, was referred to and dismissed by an Extraordinary Challenge Committee. Canada also appealed the US countervail duties on pork to the GATT, focusing on the US procedure of assuming a subsidy flow through from hogs to pork. The 1990 GATT panel finding in Canada's favour was finally accepted by the US in 1991 in the aftermath of the FTA review panel rulings (GATT 1992). Subsequently, US countervail actions have continued to be directed at Canadian live swine exports.

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[1] The FTA provides that either party may request an Extraordinary Challenge Committee (ECC), to rule on the panel decision, should there be flaws in the panel conduct that affect its findings. Two extraordinary challenges have been requested by the US Trade Representative to date, one challenging a panel decision for pork, the other for swine. Each of these challenges has been rejected.

Canada has appealed, to FTA panels, the last three of the series of six annual US administrative reviews and countervail duty determinations on swine. Panel findings to date are summarized in the Appendix. The process is time consuming - the preliminary results of the seventh and eighth administration reviews (for 1991/92 and 1992/93 are expected in Fall 1994. To this point, the rulings for hogs have sparked an unsuccessful application for an extraordinary challenge, led to lower determinations of countervailing duties, and been instrumental in Canadian decisions to change stabilization and support programs for red meat primary producers.

Conclusions

Despite the modest improvements in market access and associated reduction in export subsidization that are expected to result from the Uruguay Round GATT agreement, the more major immediate impact of trade agreements for red meats may be on trade rules and their application. In this regard, one achievement of FTA for Canada beef and cattle was to confirm the exemption from US meat import legislation. The FTA and NAFTA have given Canada another forum to challenge the application of US countervail law, by providing a process for review by binational panels. This appears to have contributed to more precision in the application of US trade remedy legislation directed at the Canadian hog sector. In this context, a major outcome of NAFTA was to confirm the general focus of FTA. The more substantive impact on challenging US administrative protection through unfair trade actions directed at Canadian red meat exports, specifically pork, has been fought in the forum of GATT; this found features of US trade legislation to be inconsistent with the provisions of GATT.

Of course, achievement of clearer more enforceable world trading rules does not guarantee

achievement of efficiency and equity in world trade outcomes. The impact of a more rules-based approach on trading outcomes will be affected by the nature of the rules as well as the extent to which they can be enforced. Specifically, rules may be based on legal definitions chosen for political acceptability or tradition and these may lack economic content as appropriate measures of trade distortion. This is the case with the US trade law provision that programs (subsidies) that are specific to a particular enterprise, industry or group of these, are countervailable. The distinction between subsidies that are selectively available, that is, are specific to a group or industry, as versus those that are generally available, has little economic merit as a measure of trade distortion.

In the same vein, the definition of some "green" subsidies as such may relate more to their political acceptability than to their lack of potential trade distortion. The consequent current search to substitute "green" subsidies for other countervailable interventions may merely shift the form of subsidy with less impact than was hoped for on support levels, outputs, and consequent trade distortions. Clearly, research is needed on the potential economic and trade distortion impacts of proposed safety net and stabilization programs. There is a challenge for agricultural economists to help define safety-net programs and risk management options for agricultural producers that meet the political-economic objectives of avoiding administrative protection by powerful trading nations while contributing to broader economic goals of efficiency and equity.

References

Canada Agriculture and Agri-Food Canada, 1994, "GATT/WTO Fact Sheets". April, mimeo.

Canadian International Trade Tribunal, 1994, *An Inquiry Into the Competitiveness of the Canadian Cattle and Beef Industries.* CITT Reference No. EC-92-001. Minister of Supply and Services Canada, 1993.

Chase Wilde, L., K.K. Klein and J.J. Richter, 1990, "Bilateral Negotiations in the Context of GATT Rules" in *Canadian Agricultural Trade: disputes, actions, prospects.* (G. Lermer and K.K. Klein, eds.) Calgary: University of Calgary Press: 9-27.

GATT, 1992, *GATT Activities 1991: An Annual Review of the Work of the GATT.* GATT: Geneva, July 1992.

GATT, 1993, *Agreement on Agriculture*, MTN/FA II-AIA-3.

Huang, Hsin C., H. Bruce Huff and Ihn H. Uhm, 1994, "The Role of Economic Analysis in Determining Injury-Causality: Econometric Analysis of Recent Beef Trade Disputes in Canada", Paper presented at 28th Annual Meeting of Canadian Economic Association, University of Calgary, June 10-13, mimeo, 28 pp.

Huang, Hsin, Eileen Krakar and Ihn Ho Uhm, 1993, "Injury-Causality Test Under Canadian Trade Remedy Law," *Journal of World Trade Law* 27 (February): 117-42.

Mielke, K., and E. van Duren, 1990, "Economic Issues in the US Countervail Case Against Canadian Hogs and Pork in *Canadian Agricultural Trade: disputes, actions, prospects.* (G. Lermer and K.K. Klein, eds.) Calgary: University of Calgary Press: 45-72.

Mirus, Rolf, 1993, "Binational Panels in the Settlement of Trade Disputes: A Canadian Perspective of the Review of Dumping and Subsidy Determination under the Canada - US Free Trade Agreement." Faculty of Business, University of Alberta. Unpublished paper, mimeo, 24 pp.

Organization for Economic Co-operation and Development, 1992, *Agricultural Policies, Markets and Trade: Monitoring and Outlook, 1992.* Paris: OECD.

Organization for Economic Co-operation and Development, 1994, *Agricultural Policies, Markets and Trade: Monitoring and Outlook 1994.* Paris: OECD.

Sandhu, Jo Ann Cmoluch, 1992, "Hog Grading, Genetic Progress, and US-Canadian Trade in Pork," Unpublished M.Sc. thesis, Department of Rural Economy, University of Alberta, Edmonton, Canada, 139 pp.

van Duren, Erna and Larry Martin, 1989, "The Role of Economic Analysis in Countervailing Duty Disputes: Cases Involving Agriculture," *Canadian Public Policy*, XV:2:162-74.

Appendix: Chronology of Findings to Date of FTA Panel Processes for Hogs and Pork:

List 1, FTA Review Processes Regarding The Live Swine Dispute

With respect to live swine from Canada, two disputes have now been completed, while a third is under way. Since the US imposition of duties on swine predates FTA (1985), Canada has only been able to take the findings from each annual review period to a Chapter 19 review panel after 1989. Findings for 1988-89 and subsequently have been referred to review panels.

I. Panel Review of the Fourth Administrative Review Period: 1988-1989

June 1991
- A Binational Panel Review is requested by Canada (i.e.; a Chapter 19 review of the Department of Commerce (DoC) countervailing duties) for its fourth administrative review period (April 1989-March 1990).
- In the review, DoC had found the subsidies to be de facto specific to pork producers and determined duties which were more than tenfold greater than the last period.
- Canada argues that the national tripartite program (Tripartite) is not specific in law or in application.

May 1992
- The panel remands (i.e., refers back or dismisses) most of DoC's determination on live swine for 1988-1989.
- The panel states that DoC did not produce enough evidence to support a subsidy finding against Tripartite and provincial programs in Quebec, Saskatchewan, Alberta, and Ontario.
- The panel affirms DoC's determination that B.C.'s feed Grain Market Development and Farm Income Insurance Plan (FIIP) provided subsidies.

July 1992
- DoC issues a redetermination on remand.

Aug. 1992
- A motion challenging DoC's redetermination is filed by Canada.

Oct. 1992
- Panel remands the determination as DoC failed to follow previous instructions. Panel rejects the continued insistence that Tripartite and FISI are de facto specific as well as DoC's determination that it can not create a subclass of weanlings with a separate, i.e., higher, duty margin to account for subsidies specific to this class of swine, as suggested by the panel.
- The panel finds that Tripartite did not confer countervailable benefits to producers and ordered DoC to recalculate the duty rate.
- The panel fails to give DoC another opportunity to examine the programs and instructs the department to determine that the two do not provide specific subsidies and to create the weanling subclass.

Nov. 1991
- DoC files its redetermination on remand.

- Tripartite and FISI benefits are removed from DoC's calculation of a subsidy rate for the period.
- Commerce establishes a subclass of weanlings with duty margin of $0.0005/lb.

Jan. 1992 - A panel order requires DoC to liquidate the old countervailing duty entries.

Jan. 1992 - The US Trade Representative (USTR), acting upon pressure from the National Pork Producers Council (NPPC), files for an ECC to review the panel's decisions on the fourth administrative review period.
- The US alleges that the panel seriously departed from the fundamental rule of procedure, manifestly exceeded its power, authority, or jurisdiction, and that doing so materially affected its decision and threatened the integrity of the review system.
- DoC argues that:
  (a) "the panel failed to rule on whether DoC's interpretation of the statute for determining de facto specificity was reasonable" and "improperly substituted its legal judgement for that of DoC"
  (b) "the panel's ruling on "finality" under FTA precluded further analysis by DoC of the critical issue of determining a reasonable de facto specificity standard without regard to US law"
  (c) "the panel impermissibly substituted its interpretation of US law for that of DoC and improperly determined that DoC was "required " to calculate a separate, product specific CVD rate for weanlings"
  (d) "the panel's rulings reflect a fundamental misunderstanding and misapplication of FTA." (*Free Trade Observer*, Issue No. 41: Feb. 1993; pg. 685-6)

Feb. 1992 - The ECC is established.

Apr. 1992 - The ECC addresses the panel's alleged error with regard to the standard of review and de facto specificity, and determines that the panel correctly cited the standard of review. Thus the ECC rejects the US challenge and upholds the decisions of the panel.

II. <u>Panel Review of the Fifth Administrative Review Period: 1989-1990</u>

Sep. 1990 - The DoC announces that it will initiate an administrative review of countervailable duties on live swine from Canada for April 1, 1989-March 31, 1990.

Oct. 1991 - DoC increases the countervailable duty margins on live swine from Canada after completing their fifth administrative review. The largest contributor is

Tripartite; it is claimed by the US that although this is a domestic subsidy program, it is de facto specific and therefore countervailable.

Nov. 1991 - Canada requests a Chapter 19 review for the fifth administrative review period.

Aug. 1992 - The panel remands DoC's determination and states that the following are not countervailable:
  i) The National Tripartite Stabilization Program for Hogs (Tripartite)
  ii) Quebec Farm Income Stabilization Program (FISI)
  iii) Alberta Crow Benefit Offset Program (ACBOP)
  iv) B.C. Farm Income Insurance Plan (FIIP).
- The panel affirms that the Feed Freight Assistance Program is countervailable.
- The panel concludes that most of the subsidies were legal and that Canadian exports are too small to harm the US hog industry.

Oct. 1992 - DoC files a determination on remand in which it recalculates the margins for ACBOP but confirms its finding for Tripartite, FISI, and FIIP.

Dec. 1992 - The review of the determination on remand is suspended with the withdrawal of a panellist.

Mar. 1993 - The review panel for the 1989-1990 review period resumes.

June 1993 - The panel affirms the redetermination on remand by finding the following countervailable:
  i) Tripartite: since there were few users of the subsidy and hog producers were the dominant users.
  ii) FIIP: since this was not challenged by any complainants
  iii) ACBOP: substantial evidence supported DoC's redetermination.
- The panel remands DoC's redetermination on FISI and instructs the removal of FISI benefits from its duty calculations for the review period.

Sep. 1993 - In accordance with the final review, Commerce amends the duty rate for 1989-1990 to C$0.0045/lb. for slaughter sows and boars and C$0.00927/lb. for other live swine.

List 2, FTA Review Processes for Fresh, Chilled, and Frozen Pork

I. U.S.A. 89-1904-06

Jan. 1989 - US pork producers seek countervailing duties against fresh and frozen pork imported from Canada (pursuant to Section 771(b) of Tariff Act of 1930) on the basis of transfer of subsidies provided swine producers to pork producers.

July 1989 - DoC releases its final affirmative countervailing duty determination and 18 Canadian federal and provincial programs are found countervailable on the grounds that subsidies provided to swine producers benefit pork producers and that these benefits are targeted to a specific enterprise, industry or group.

Oct. 1989 - Canada appeals the determination by DoC.
- The challenge relates to whether US trade law contradicts GATT rules by assuming that processors automatically benefit from possible subsidies to primary producers is also the subject of a GATT dispute.

Apr. 1990 - Panellist withdraws due to a conflict of interest.

Sep. 1990 - Panel agrees with DoC that the demand for live swine is substantially dependent on the demand for fresh, chilled, and frozen pork and that the processing of live swine into pork adds only limited value to the live swine. Therefore, the panel concludes that subsidies on hogs are passed on to pork producers.
- On the other hand, the panel concludes that it is unreasonable and not in accordance with the law for the entire subsidy on hogs to be passed on to pork products since other commercial products resulting from hogs also benefit. Therefore, the panel instructs DoC to allocate subsidies by weight over all of the commercial products stemming from hogs.
- Panel also remands five of the seven Canadian programs found to be countervailable:
  i) Tripartite: DoC found this to be de facto specific because only nine products received benefits during the first four years. Panel specifies a failure by DoC to explain why 9 is surprisingly small, and their common features; the program is requested, not bestowed. The countervailability finding is remanded.
  ii) Feed Freight Assistance Program: The panel finds evidence that hogs account for approximately 50% of total feed consumption in both Western and Eastern Canada, thus finds the program to be de facto specific and affirms the DoC finding.
  iii) Western Diversification Programs: DoC initially concluded that this was limited to the Western Canada and was therefore countervailable, but then requested a remand upon their own review of the record.

iv) Canada-Quebec Subsidiary Agreement on Agri-food Development: DoC had found that Canada limited subprogram 2.A to a specific industry, but upon its own reinvestigation of the record, requested a remand.

v) Alberta Crow Benefit Offset Program (ACBOP): DoC used information from a document "Agriculture in Alberta," which stated that hogs consumed 10-15% of barley, and that barley was the primary feed grain for hogs to conclude that 15% of total benefits paid to feed grain users should be allocated to hog producers. Panel remands this as unsubstantiated.

vi) Alberta Dept. of Economic Development and Trade Act: DoC found de facto specificity as Alberta was unable to provide records proving that benefits had been extended to a variety of enterprises or industries. The panel does not conclude that DoC exceeded its discretion on the basis of the "best information available" and affirms the finding of countervailability.

vii) Quebec Farm Income Stabilization Program (FISI): Panel finds the de facto specific determination by DoC not in accordance with the law, as DoC failed to apply the proper test for specificity. The panel remands the DoC finding.

Jan. 1991 - Upon remand, DoC recalculates the conversion factor used to allocate subsidies to pork which altered the subsidy rate from $0.08/kg to $0.065/kg. DoC also upholds its original determination that ACBOP, FISI, and Tripartite were countervailable.

Feb. 1991 - The panel again remands DoC's determination that ACBOP and FISI were countervailable, but affirms DoC's finding of specificity of Tripartite:

i) ACBOP: The issue was the extent of the benefit of this subsidy. In accordance with the panel's first remand, DoC had changed its calculation of the portion of barley consumed by hogs, but simply averaged the two bounds to a level of 12.5%. The panel finds that DoC failed to base their calculation on information submitted as evidence on record, as estimates of 5.48% and 11.4% were submitted by the Alberta government, and remanded the DoC finding.

ii) FISI: The issue was whether FISI was countervailable. DoC had concluded that since only calves, feeder cattle, potatoes, piglets, feeder hogs, corn, oats, wheat, barley, heavy meal, and sheep were recipients, while eggs, dairy products, and poultry were not, FISI was de facto specific. The panel finds insufficient evidence that the number of recipients was too small and remands the DoC finding of countervailability, with instructions to conform to the panel's decision.

iii) Tripartite: The issue was whether this was de facto limited to hog producers and although the panel is not satisfied with the DoC redetermination, it finds it not unreasonable to conclude that a program benefitting only 9 of one hundred industries in 4 years (with a large majority of all benefits to 2

industries, hogs and cattle), tended to aid a specific group. The finding of countervailability was affirmed.

Apr. 1991 - In conformity with the panel's second remand, which called for a reallocation of the amount of subsidies paid to hog producers under ACBOP and the reversal of DoC's original determination with respect to FISI: DoC conformed to the 11.4% determination of the portion of barley as feed; noted the panel's finding; and eliminated FISI benefits from the subsidy calculation.

May 1991 - Panel denies a Canadian motion to review DoC's second determination on remand.

II. U.S.A. 89-1904-11

In the final determination of the ITC, an absence of present injury but a threat of future injury to US industry was found. Canada appealed this finding, disputing the threat of material injury.

Aug. 1990 - The panel upholds the Canadian appeal and remands the ITC injury determination due to the use of "questionable statistics". In particular, ITC's findings on: "the nature of Canadian subsidies, the likelihood of increased pork exports, the likelihood of an increase in market penetration ratios, price suppression, distribution channels, the imminence of the threat of material injury due to the counter-cyclical nature of the hog cycle, and the vulnerability of US domestic industry" are considered affected by the highly suspect finding of a rapid increase in Canadian production of pork (due to a change in the method of counting and reporting pork production between 1987 and 1988). (Free Trade Observer, Vol. No. 11: Aug. 1990; pg. 130).

Jan. 1991 - In its determination on remand, ITC affirms its original determination on new grounds, based now on a general conclusion that the nature of Canadian subsidies and product shifting from swine to pork increased hog production and exports to the US.
- The panel reviewing DoC's redetermination on remand finds that: the ITC, by reopening the record and developing new data, did not follow its own procedures; and there was a lack of substantial evidence to support the determination of imminent injury.
- The panel remanded with instructions not to reopen further the record, and to review only the decision with reference to the record existing at the time of DoC's final determination and confined to the issue raised in the panel's first remand.

Mar. 1991 - ITC reverses its findings that imports of Canadian pork threaten to injure the US industry.
- The NPPC petitioned USTR to request an ECC to review the panel decision which caused the reversal of injury determinations on the grounds that the panel improperly limited the evidence that ITC could use in making its determination on remand, thus violating FTA and US law. USTR argues that the panel improperly departed from US law by creating and applying a rule of "finality" to the DoC determination, conducting a de novo review, and that these threatened the integrity of the binational panel review system.

June 1991 - The ECC dismisses the US complaint as it fails to meet the standards of an ECC under FTA.

Subsequently, the GATT panel established at the December 1989 Session of Contracting Parties of GATT ruled that the countervailing duties applied by the US had not been levied consistently with Article VI:3 of GATT. Acceptance of the GATT panel report was delayed until the completion of the FTA panel proceedings outlined above.

Sources: Dearden, Richard G., and David Palmeter, *The Free Trade Observer*, Commerce Clearing House Canadian Limited: Don Mills, Ontario, various issues.

GATT, *GATT Activities 1989*, GATT: Geneva, June 1990.

GATT, *GATT Activities 1990*, GATT: Geneva, July 1991.

Table 1. Canada's Supply and Disposition of Beef
(000 kg - carcass weight)

Year	Production	Imports	Beginning Stock	Total Supply	Exports	Ending Stock	Domestic Disappearance
1980	938,780	78,292	26,952	1,044,024	65,003	27,383	951,638
1981-86	979,367	99,497	17,896	1,096,760	94,620	15,531	986,609
1987	912,966	134,271	13,192	1,060,429	88,873	11,632	959,924
1988	906,869	155,561	11,632	1,074,062	82,492	12,310	979,260
1989	908,400	158,789	12,310	1,079,499	104,027	12,199	963,273
1990	857,931	184,855	12,199	1,054,985	104,900	9,649	940,436
1991	823,681	217,393	9,649	1,050,723	105,262	11,338	934,123
1992	865,417	217,850	11,338	1,094,605	156,323	10,795	927,487
1993	NA	NA	10,795	NA	NA	16,385	NA

Note: Domestic disappearance equals total supply minus exports and ending stock.
Source: Statistics Canada, *Livestock Statistics*, Catalogue 23-603E.

Table 2. Canada's Supply and Disposition of Cattle and Calves
(000 head)

Year	On Farm Jan. 1	Imports	Calf Crop	Total Number	Slaughter		Death Loss	Exports	Disappear-ance
					Cattle	Calves			
1980	12,126	27	5,101	17,254	3,526	531	672	359	5,088
1981-86	11,684	76	4,918	16,678	3,645	609	611	379	5,244
1987	10,667	75	4,533	15,275	3,195	510	547	267	4,519
1988	10,756	37	4,837	15,630	3,086	491	560	508	4,648
1989	10,984	41	4,871	15,896	3,121	503	553	499	4,687
1990	11,220	14	4,858	16,092	2,892	462	566	884	4,804
1991	11,289	44	5,061	16,374	2,729	428	595	929	4,681
1992	11,713	37	5,179	16,929	2,872	421	597	1,307	5,197
1993	11,786	55	5,236	17,077	NA	NA	614	1,323	NA

Note: Disappearance is the sum of slaughter of cattle and calves, death loss and exports.
Source: Statistics Canada, *Livestock Statistics*, Catalogue 23-603E.

Table 3. Canada's Supply and Disposition of Pork
(000 kg - carcass weight)

Year	Production	Imports	Beginning Stock	Total Supply	Exports	Ending Stock	Domestic Disappearance
1980	1,033,616	22,081	11,883	1,067,580	149,277	14,438	903,865
1981-86	1,046,135	21,068	11,081	1,078,284	220,005	10,021	868,300
1987	1,121,802	22,181	8,075	1,152,058	301,086	8,538	842,434
1988	1,181,623	14,835	8,538	1,204,996	318,787	10,967	875,242
1989	1,177,154	12,643	10,967	1,200,764	284,813	10,443	905,508
1990	1,123,849	14,253	10,443	1,148,545	297,075	9,612	841,858
1991	1,118,484	15,335	9,612	1,143,431	266,446	12,314	864,671
1992	1,208,971	16,595	12,314	1,237,880	294,393	11,120	932,367
1993	NA	NA	11,120	NA	NA	10,342	NA

Note: Domestic disappearance equals total supply minus exports and ending stock.
Source: Statistics Canada, *Livestock Statistics*, Catalogue 23-603E.

Table 4. Canada's Supply and Disposition of Hogs
(000 head)

Year	On Farm Jan. 1	Imports	Pig Crop	Total Number	Slaughter	Death Loss	Exports	Disappearance
1980	10,091	0.8	14,770	24,861	13,844	590	238	14,672
1981-86	10,156	0.2	15,150	25,306	13,932	599	652	15,183
1987	9,998	0.0	16,606	26,604	14,735	641	428	15,804
1988	10,801	3.1	17,103	27,907	15,439	649	868	16,956
1989	10,951	0.7	16,527	27,479	15,439	640	1,007	17,086
1990	10,392	0.6	15,972	26,365	14,683	618	892	16,193
1991	10,172	1.2	16,350	26,523	14,330	629	1,066	16,025
1992	10,498	1.2	16,864	27,363	15,474	628	672	16,774
1993	10,589	1.3	17,223	27,813	15,408	633	839	16,880

Note: Domestic disappearance is the sum of slaughter, death loss and exports.
Source: Statistics Canada, *Livestock Statistics*, Catalogue 23-603E.

Table 5. OECD Estimates of Producer and Consumer Subsidy Equivalents for Red Meats

Year	1979-86	1990	1991	1992e	1993p
Country:			*Beef and Veal*		
Canada					
PSE%	11	22	24	21	21
CSE%	-1	-3	-3	-4	-5
United States					
PSE%	8	7	7	5	9
CSE%	-1	-3	-23		-24
			Pigmeat		
Canada					
PSE%	13	15	17		18
CSE%	0	0	0		0
United States					
PSE%	6	5	6		7
CSE%	0	1	1		1

e: estimated
p: provisional
Source: OECD 1993, *Agricultural Policies, Markets and Trade: Monitoring and Outlook, 1993*, Paris: OECD.