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- Public Affairs - International Trade -

Undelivered Promises and Betrayals of the Uruguay Round

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UNDELIVERED PROMISES AND BETRAYALS
OF THE URUGUAY ROUND

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OVERVIEW

This paper is about how the Uruguay Round Agreement on Agriculture (AoA) has failed and betrayed farmers around the world. It is about how the U.S. and E.U. rigged the AoA to open markets for their exports while maintaining "deep pockets" subsidies for their own farmers that have stimulated over-production and driven down prices on world markets.

There is a global farm income crisis. The principal impact of the Uruguay Round Agreement on Agriculture on farmers around the world has been falling prices and inability to recover even their cash costs of production.

Farmers, in Canada and around the world, were led to believe that bringing agriculture more fully into the GATT/WTO environment would improve their lot. The promised benefits were not delivered. Not only did their situation not improve, it has deteriorated.

Farmers have been disappointed and betrayed by the Uruguay Round because:

- market access has not been realized because market access commitments, particularly on sensitive items, have not been met by many countries;
- as markets opened and tariffs became less important, non-tariff measures, particularly sanitary and phyto-sanitary measures, took their place;
- while blatant export subsidies were subject to initial disciplines, [1] allegedly non-distorting domestic support proliferated and became very disruptive.
- food aid and export credits have been abused to move surplus production onto world markets;
- the changes in the 1996 Farm Bill which eliminated production controls (supply management) in the USA, combined with generous domestic support, increased supply and drove international prices down. The effects of the 1996 Farm Bill were exacerbated by the increased support flowing from the 2002 Farm Bill;

[1] "While rich countries have apparently agreed to get rid of the most nefarious subsidies of all – export subsidies – in reality they will be able to keep the bulk of their other forms of support that act as a hidden export subsidy or lead to the overproduction of many agricultural products of interest to developing countries." (Oxfam Briefing Paper #76, June 15, 2005, p. 2)

- preferential and regional trade agreements distorted trade patterns and created preferences which have diluted the benefits expected of the WTO;
- trade remedy law harassment has disrupted trade;
- private litigation relating to SPS rules has frustrated government attempts to implement WTO obligations;
- WTO dispute settlement addressed issues not included in the Uruguay Round Agreements and through "gap filling" created new obligations which have denied farmers in some countries legitimate export opportunities;
- some countries, like Canada, have done little to enforce their rights under the WTO – condoning inconsistent practices and clear breaches, running the risk of paying again simply to have the "scoff-laws" observe already existing obligations.

Canada has paid out nearly $2.5 billion in emergency farm aid in 2004-5 in large part to offset the low prices for feed grains, soybeans and pulses imported from the USA. Canadian farmers, African farmers, Mexican farmers, Brazilian farmers and farmers in many developing countries are competing with the U.S. Treasury and a vote-hungry Congress – in a battle they cannot win, unless and until the rules are respected and enforced.

Canadian Agriculture Minister, the Honourable Andy Mitchell, after announcing yet another CAD$1 billion emergency relief package to Canadian farmers[2] plagued with prices which do not cover even cash costs said "it is absolutely essential that we pursue transformative change in the agriculture industry".[3] We disagree. The real need is to discipline the policies and massive disruptive U.S. farm subsidies which drive prices down in world markets.

Farmers around the world are concerned about negotiating further market access liberalization because they have not enjoyed market access improvements for their own exports they expected from the Uruguay Round, and they are not confident wealthy countries will reduce their subsidies. Their home markets have become dumping grounds for excess production from wealthier countries, at prices often well below cost of production.

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2 This emergency support brought support in 2004 to CAD$5.9 billion
3 "Ottawa reveals $1 billion in aid for struggling Canadian grain, beef farmers", Macleans.ca, March 29, 2005

Oxfam in an April 2005 report explained:

> "Despite committing themselves to putting development at the centre of global trade talks, rich countries are still rigging agricultural trade rules against the poor. The USA and EU, in particular, have repackaged their agricultural subsidies so that they appear to be legitimate under WTO rules, allowing them to continue dumping products such as rice, corn, milk, sugar, and cotton at prices far below their true costs of production. At the same time, they are aggressively pushing developing countries to open their markets further by cutting their import tariffs."[4]

U.S. subsidies clearly impact farmers in other countries – and this is about more than cotton, it is also about rice,[5] corn, [6] other feed grains and dairy products. The U.S. and E.U. have cheated on a massive scale in reporting their subsidies to the WTO.[7] Their pretence that such subsidies are not trade distorting is a huge hoax. [8] The U.S. and E.U. will persist in this subterfuge as long as the rules allow it[9] and for as long as they are not challenged.

USDA subsidizes U.S. farmers because:

> "Domestic demand is no longer sufficient to absorb what American farmers can produce. Demand by well-fed Americans grows slowly with population growth. The promise of new, much faster growing markets lies overseas…As a result, the United States must consider its farm policy in an international setting, helping farmers stay competitive while pressing for unfettered access to global markets."[10]

Highly subsidized farmers have a much different view of market access negotiations than those who must rely primarily or entirely on the market for their income. American farmers are insulated from low domestic and international prices, by deficiency payments, or counter-cyclical payments, non-recourse loans – and at times they can buy back their own forfeited

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[4] Kicking down the door: OXFAM Briefing Paper; April 11, 2005

[5] U.S. Faces Fresh Challenge on Farm Subsidies, FT.com, July 27, 2005, "Uruguay argues that U.S. support for its rice farmers makes it harder for its own exports to compete".

[6] Wise, Timothy, *The Paradox of Agricultural Subsidies: Measurement Issues, Agricultural Dumping and Policy Report,* at 8, Global Development and Environment Institute, Tufts University,

> "The U.S. is the price leader for corn, with 61% of world exports, generally sold a prices below estimated production costs."

[7] *Cancun: Subsidies for Agribusiness, Le Monde dilpomatique*, By Jacques Berthelot, Global Policy Forum, September 2003

[8] *Ibid*

[9] *Ibid*

[10] USDA: Food and Agricultural Policy: Taking Stock for the New Century, http://www.usda.gov/news/pubs/farmpolicy01/fpindex.htm , p. 51

product at the depressed market price. Domestic subsidies prevent imports. Indeed, the Panel and the Appellate Body in *Upland Cotton* determined that such subsidies can and do act as import replacement subsidies – which are prohibited by Article 3.1(b) of the Subsidies and Countervailing Measures Agreement.

These subsidies do not benefit small farmers. They go primarily to larger agribusiness corporations such as Cargill and Archer Daniels Midland (ADM). These large traders, as buyers, put downward pressure on producer prices and, as sellers, put upward pressure on the prices of inputs and final products. Cargill, for example, can use its market power as a buyer of feed corn to force down prices for this important input while at the same time using its market power as a seller to force up prices on final products, such as beef.[11]

The Canadian Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) in its June, 1999 Report recommended:

- **Recommendation 12** - Canada should open the discussion in the upcoming multilateral trade negotiations on agriculture by demanding that all signatory countries begin by respecting their current obligations. [12]

- **Recommendation 13** - Canada should also make sure that the new rules on agricultural trade are transparent and apply equally to all countries according to their respective commitments. [13]

SCFAIT concluded too that:

> "…negotiations will serve little purpose if the resulting commitments are not implemented, and if conflicts arise over the rules which threaten to overwhelm the system or erode confidence in it. The Committee observes in Chapter 3 that the effectiveness and credibility of the WTO depends in large measure on all members respecting their obligations to other members, and working to solve problems cooperatively."[14]

Canada has not followed the Standing Committee's advice. Brazil has been much more prepared to challenge to protect its rights – but not for commodities of interest to Canada.

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[11] Timothy A. Wise, *op cit*

[12] Canada and the Future of the World Trade Organization: Advancing a Millennium in the Public Interest, Report of the Standing Committee on Foreign Affairs and International Trade, June 1999, Agriculture and Agri-Food Issues

[13] SCFAIT, June 1999, Agriculture and Agri-Food Issues

[14] SCFAIT, June 1999, Executive Summary

Canada's former WTO Ambassador Gerry Shannon, who had been through the Uruguay Round, told SCFAIT:

> "...It is not good enough to wait for the agenda to be shaped by others in hopes that Canada can play its traditional `broker role.' This is a sure recipe for getting rolled." [15]

There are serious risks that, unless Canada is more forceful about defending its rights, Ambassador Shannon's prediction will be realized.

Since 2003, when we prepared "*WTO Consistency of USA and New Zealand Agricultural Practices*",[16] we have been cautioning negotiators to insist on receiving what they bought and paid for in the Uruguay Round. They should not buy the same fish twice. That fish is becoming very malodorous – what is that smell? It is the smell of a bad deal.

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[15] SCFAIT, June 1999, Gerald E. Shannon, Shannon and Associates, Negotiating at the WTO: Process and Priorities for the Next Round

[16] http://www.greyclark.com/DFC_WTO_NZ_US_Consistency.pdf

Undelivered Promises and Betrayals of the Uruguay Round

> "...It is not good enough to wait for the agenda to be shaped by others in hopes that Canada can play its traditional `broker role.' This is a sure recipe for getting rolled." [17]

Former Canadian Uruguay Round Ambassador
in Geneva, the late Gerald Shannon

INTRODUCTION

At the WTO Public Symposium in Geneva in April 2005, farmers from around the world expressed strong disappointment with the Uruguay Round Agreement on Agriculture (AoA). Most felt the AoA negotiations had hurt them rather than helped them. Since 1995, farmers around the world have been subject to continuing price pressures and declining income.

Farmers consider they have been betrayed by the Uruguay Round. They have been betrayed by failure of the WTO AoA to:

- improve their access to export markets;
- raise prices and increase farm incomes;
- secure meaningful disciplines on wealthy countries' deep pockets subsidizing of their farmers.

The principal cause of price suppression on world markets is increased supply benefiting from trade distorting domestic support, permitting sales on world markets at less than cost of production.

The Heritage Foundation in a memo on the 2002 Farm Bill agreed:

> "According to the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri, increased subsidies will have the effect of keeping agricultural production artificially high, relative to market prices. That is, farmers will continue to plant more of covered commodities than they would if reacting solely to market demand. This overproduction will

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[17] Canada and the Future of the World Trade Organization: Advancing a Millennium in the Public Interest, Report of the Standing Committee on Foreign Affairs and International Trade, June 1999, Gerald E. Shannon, Shannon and Associates, Negotiating at the WTO: Process and Priorities for the Next Round

> drive prices even lower than under current policy (the Freedom to Farm Act, enacted in 1996…"[18]

As the farmers participating in the WTO Symposium knew all too well, these generous subsidies do not benefit them. Who do they benefit? A recent Oxfam paper entitled "*A Round for Free – How rich countries are getting a free ride on subsidies at the WTO*" explains:

> "Contrary to government spin, subsidies do not support the small-scale farmer in Europe or the USA who is struggling to make a living. Instead, millions of dollars are pumped into multinational wheat and sugar companies, and even into the pockets of members of the European economic aristocracy. One of the biggest recipients of Common Agricultural Policy (CAP) funds in the UK is the Duke of Marlborough, the fourth richest man in the world, who in 2003-4 was paid £1m ($1.9m, or €1.4m)." [19]

The Environmental Working Group (EWG) recently reported that of the 2,128,982 farmers counted by the 2002 Census of Agriculture, only 33% received government payments. Additionally, 10% of the recipients took 72% of total payments.20

EWG argues that impact of the activities of Cargill, ADM and their ilk is pervasive. These large traders, as buyers, put downward pressure on producer prices and, as sellers, put upward pressure on the prices of inputs and final products. Cargill, for example, can use its market power as a buyer of feed corn to force down prices for this important input while at the same time using its market power as a seller to force up prices on final products, such as beef.21

Jacques Berthelot, in an excellent analysis published in *Le Monde Diplomatique*, attributes increased price pressure around the world were very directly linked to:

> "… the ending of controls on U.S. supplies in 1996.[22]

The Agricultural Policy Centre (APAC) at the University of Tennessee (Knoxville) concluded that even if U.S. farm subsidies were eliminated, there would be only negligible increases in U.S.

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[18] Farm Bill will Hurt all Farmers, Not Just Small Farmers, The Heritage Foundation, WebMemo #90, March 26, 2002

[19] A Round for Free – How rich countries are getting a free ride on agricultural subsidies at the WTO, Oxfam Briefing Paper #76, June 15, 2005, p. 6

[20] "Crop Subsidies offer safety net for producers", Daily Oklahoman, August 9, 2005

[21] *The Paradox of Agricultural Subsidies: Measurement Issues, Agricultural Dumping, and Policy Reform*, Timothy A. Wise, Global Development and Environment Institute Working Paper No. 04-02, May 2004

[22] *Cancun: Subsidies for Agribusiness, Le Monde dilpomatique*, By Jacques Berthelot, Global Policy Forum, September 2003

prices for corn, wheat and soybeans. The small price increase would then decline to nothing over a few years as the price increase attracted more production and price pressure. Price increases would not cover cost of production so dumping would continue. APAC considers that to raise prices structurally for these commodities, some form of supply management is required.[23]

According to Oxfam:

> "The 1994 WTO Agreement on Agriculture (AoA) has been a bad deal from the outset. Rich countries rigged the original agreement with huge loopholes, then passed reforms which, while in some cases are a step in the right direction, will not stop dumping. Now rich countries are trying again to hijack the negotiations for a reworked AoA. If the current negotiations continue on their present course, developed countries will escape without effectively having to make any major changes in their trade-distorting subsidy regimes."[24]

Oxfam's charge is serious. It calls into question the good faith and objectives of the richest and largest agricultural exporters. It is appalling that:

> "… because of the WTO's rigged rules, Europe will not actually have to make any more cuts to its dumping-induced subsidies. In fact, both the USA and the E.U. will actually be able to *increase* their trade-distorting subsidies – utterly defying the point of the round." [25]

Ambassador Shannon was right – waiting for others to set the agenda is very dangerous. Oxfam predicts that:

> "…the USA and the European Union --- will get a free round – and a license to continue dumping. At the end of the Doha Round, neither will be obliged to cut a single dollar from the subsidies they pay their farmers. Meanwhile, developing countries will have had numerous concessions, for instance on market access, wrung from them in return for illusory progress. [26]

The Uruguay Round did not promise a lot – it was an initial effort to bring agriculture into the rules-based international trading system. But even its promised modest beginnings have not

[23] wav.agpolicy.org/blueprint.html and Institute for Agriculture and Trade Policy, "WTO Agreement on Agriculture: A Decade of Dumping", February 2005
[24] A Round for Free – How rich countries are getting a free ride on agricultural subsidies at the WTO, Oxfam Briefing Paper #76, June 15, 2005, p. 7
[25] Oxfam Briefing Paper #76, June 15, 2005, p. 2
[26] Oxfam Briefing Paper #76, June 15, 2005, p. 2

been delivered. Why? Because, as Oxfam explains, the power dynamics at the WTO have resulted in seriously imbalanced rules that strongly favour rich countries and the policy tools they rely on.

Developed countries have been allowed to maintain large subsidies and use other instruments – such as special safeguards – to protect their producers, but these instruments are neither adapted for, nor available to, most developing countries. Worse, rich countries have failed to meet their commitments to reduce subsidies, as shown by the recent WTO disputes regarding E.C. – Sugar and U.S. – Cotton subsidies.27

It is clear that the Uruguay Round AoA did not work – its shortcomings are clear. So are the very negative effects of its failures. The problems which the AoA has permitted, if not encouraged, have come home to roost, resulting in a global farm income crisis. Dissatisfaction with low prices and dumping on world markets, particularly among developing country farmers, means that these deficiencies must be fixed before the negotiations can move forward.

What is the greatest danger in the Doha Round Negotiations?

Proposed changes in the Doha Round, such as enlarging the Blue Box category for subsidies, will give rich countries even more rules cover and greater scope to hide subsidies that hurt the poor.

- The E.U. would be able to expand its room to provide WTO-defined trade-distorting support by €28.8bn per year from current levels.
- The USA would be able to increase its trade-distorting support by $7.9bn per year from current levels.[28]

[27] Kicking down the door – How upcoming WTO talks threaten farmers in poor countries, Oxfam Briefing Paper #72, April 11, 2005, p. 43
[28] Oxfam Briefing Paper #76, June 15, 2005, p. 3

What did Canadian farmers expect from the Uruguay Round?

Canada welcomed the formation of the World Trade Organization and the Uruguay Round Agreements as being highly beneficial to Canadians. Ministers claimed that the AoA would provide very substantial benefits to Canadian farmers, particularly those who were export oriented, and that Canada's supply management regime for dairy and poultry would be preserved.

Then International Trade Minister Roy MacLaren explained:

> "A major achievement of the Uruguay round is that for the first time the agricultural sector is brought under the rules based multilateral trade regime. Agricultural tariffs will be cut overall by 36 per cent with domestic support measures to be reduced by 20 per cent and export subsidies by 36 per cent in terms of budgetary expenditures over a six year period. This represents a significant gain for Canadian agricultural exporters. More generally the agricultural reforms will contribute to improving efficiency in the world economy, providing a good start for future disciplines particularly on agricultural export subsidies."[29]

This took care of Canada's export oriented agriculture, or so we thought. The Minister went on to address a highly sensitive issue:

> "The agreement will produce a more market oriented and global trading environment for our agricultural sector. The reduction in export subsidies and in the volume of subsidized exports will put our field crops, particularly grains and oilseeds from our prairie provinces, on a more equal footing with those of our principal competitors.
>
> At the same time, supply management will be able to continue operating as an effective Canadian approach to producing and marketing dairy and poultry products. The Uruguay round agreement allows for the continuation of supply management through high import tariffs that will maintain a real security for these sectors." [30]

What did Canada get?

Canada has been very assiduous about living up to its WTO obligations. It has reduced subsidies – indeed; Canada did so faster than required, in part to reduce budget deficits, and in part because Canada always respects its international obligations.

29 Hansard, Government Orders, Thursday, October 27, 1994
30 Hansard, Government Orders, Thursday, October 27, 1994

In 1999, the Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT) held extensive hearings to prepare for the next (now current) WTO round of Trade Liberalization. They heard much about the shortcomings of the Uruguay Round.

The Canadian Federation of Agriculture told the Committee:

> "Canadian farmers are therefore preparing for the upcoming Multilateral Trade Negotiations (MTN) with the feeling that their expectations have not been met and their competitors have access to subsidy levels that are not matched in Canada. The message conveyed to the Committee by the Canadian Federation of Agriculture speaks volumes: "A new agreement which just continued the existing formula reduction of protection and support, without correcting the inequities in the current agreement, will not necessarily be beneficial to Canadian farmers. In fact, such an agreement might just exacerbate current inequities"." [31]

SCFAIT heard similar concerns from the UPA of Quebec:

> "….it is essential that the farm income safety net be preserved to a sufficient degree to allow governments to deal with the market ups and downs that have always been a part of farming." [32]

The farm income crisis, which has required $2.4 billion in emergency relief payments to Canadian farmers over the last two years, was a common theme in Canadian farmers' submissions to the Standing Committee even in 1999, three years before the U.S. exacerbated international supply and pricing problems with massive injections of funding in the 2002 Farm Bill.

Oxfam Canada told the Committee:

> "Despite record and rising exports, Canadian farmers are facing the lowest income levels since the 1930s. If a Canadian farm family cannot make a living growing 1,000 acres of grains and oilseeds using the latest technology, how will Thai and Peruvian farmers survive?" [33]

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[31] Canada and the Future of the World Trade Organization: Advancing a Millennium in the Public Interest, Report of the Standing Committee on Foreign Affairs and International Trade (SCFAIT), June 1999, Agriculture and Agri-Food Issues

[32] SCFAIT, Agriculture and Agri-Food Issues

[33] SCFAIT, June 1999, Michelle Beveridge, Oxfam Canada, Saskatoon Office, Agriculture and Agri-Food Issues

NFU Youth President, Michael Melnyk reported to SCFAIT:

> "I can tell you that the farmers that I meet with in the coffee shops, in the gas stations, in the grain elevators in my community aren't very excited about hearing that the exports have increased to $20 billion when they look at net farm income that has decreased by 19% over the course of those five years."[34]

SCFAIT was also told:

- "…Canada has more than met its reduction obligations and done so faster than most of its trading partners and that it has respected both the letter and the spirit of the Agreement on Agriculture while many other countries have been fairly lax in their interpretation of the rules set out in the agreement,…" [35]

- "The dairy industry took great strides to adjust its structure and operating practices to conform with the last round of the WTO. It was not so for all participating countries. Canada has set the standards for rules-based trading. At the very least, it must demand the same from all the participating nations in the next round of talks." [36]

- "...we would like to see Canada strongly request the complete elimination of export subsidies. In Canada, especially in the dairy sector, we have no export subsidies. When we go into these markets, it is as if we were going to war with no guns. We are not on an equal footing with the European Union, for example, that is the main player. According to the data that we have, the European Union and United States alone provide for 90 to 95% of all export subsidies."[37]

  "… the vast majority of stakeholders in agriculture and agri-food support multilateral trade; Canadian farmers believe that the obligations of countries under the current Agreement on Agriculture must be met before new negotiations begin…"[38]

- "Canadian dairy, poultry, and egg farmers want fair and effective trade rules. The Canadian farmers want clear, binding rules that are the same for everyone. The next round of WTO negotiations must ensure that all countries deliver on a commitment to fair and effective trade. That means fair and effective trade rules that are binding and enforceable and not just guidelines that allow countries to interpret them to their own benefit."[39]

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[34] SCFAIT, June 1999, Michelle Melnyk, Youth President, National Farmers' Union, Agriculture and Agri-Food Issues
[35] SCFAIT, June 1999, Agriculture and Agri-Food Issues
[36] SCFAIT, June 1999, Robert Speer New Brunswick Milk Marketing Board, Agriculture and Agri-Food Issues
[37] SCFAIT, June 1999, Alain Bourbeau , Fédération des producteurs de lait du Québec, Agriculture and Agri-Food Issues
[38] SCFAIT, June 1999, Agriculture and Agri-Food Issues
[39] SCFAIT, June 1999, Eugene Legge, Newfoundland Chicken Producers Supply Management Group, Agriculture and Agri-Food Issues

And the Standing Committee concluded

- "…negotiations will serve little purpose if the resulting commitments are not implemented, and if conflicts arise over the rules which threaten to overwhelm the system or erode confidence in it. The Committee observes in Chapter 3 that the effectiveness and credibility of the WTO depends in large measure on all members respecting their obligations to other members, and working to solve problems cooperatively."[40]

SCFAIT recommended that:

- **Recommendation 12 -** Canada should open the discussion in the upcoming multilateral trade negotiations on agriculture by demanding that all signatory countries begin by respecting their current obligations. [41]

- **Recommendation 13 -** Canada should also make sure that the new rules on agricultural trade are transparent and apply equally to all countries according to their respective commitments. [42]

Why did we prepare this Report?

Since 2003, when we prepared our Report "*WTO Consistency of USA and New Zealand Agricultural Practices*",43 we have been cautioning Canadian negotiators to insist on receiving what they bought and paid for in the Uruguay Round. They should not buy the same fish twice. That fish is becoming very malodorous – what is that smell? It is the smell of a bad deal.

This paper does not pretend to present an exhaustive analysis of the shortcomings and unfulfilled promises of the Uruguay Round. It provides illustrations and examples, of which there are many, to demonstrate that promised trade liberalization in agriculture has not been achieved, has not been reciprocal and that governments must be more active in securing payment for concessions they granted in past negotiations.

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40 SCFAIT, June 1999, Executive Summary
41 SCFAIT, June 1999, Agriculture and Agri-Food Issues
42 SCFAIT, June 1999, Agriculture and Agri-Food Issues
43 http://www.greyclark.com/DFC_WTO_NZ_US_Consistency.pdf

In this connection, it is most interesting that President Bush recently told Congress:

> "Our third trade priority is to ensure that those who sign trade agreements live up to their terms.[44]

But the Government of Canada has not heeded this advice. It has not challenged other who are not living up to their obligations. Canada is negotiating to secure compliance with what it already bought and paid for. And it is risking paying twice for the same concessions they might secure if they challenged non-compliance.

Recent emergency relief bringing total payments to $6 billion in the last two years is in part a response to the imported effect of very generous U.S. subsidies.

Canadian farmers have clearly been disadvantaged by shortcomings of the WTO negotiations. Canadian farmers are not alone in their disappointment. Many countries have experienced and are experiencing similar problems. This paper has been prepared to provide an overview of the unfulfilled promises of the Uruguay Round, and their effects.

These disappointments can be addressed under the following broad headings:

- market access had not been realized because market access commitments, particularly on sensitive items, have not been met by many countries;
- as markets opened and tariffs became less important, non-tariff measures, particularly sanitary and phyto-sanitary measures, took their place;
- while blatant export subsidies were subject to initial disciplines,[45] allegedly non-distorting domestic support proliferated and became very disruptive.
- food aid and export credits have been abused to move surplus production onto world markets;
- the changes in the 1996 Farm Bill which eliminated production controls (supply management) in the USA, combined with generous domestic support, increased

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[44] Remarks by President George Bush at Swearing-in Ceremony for the United States Trade Representative (May 2005)

[45] "While rich countries have apparently agreed to get rid of the most nefarious subsidies of all – export subsidies – in reality they will be able to keep the bulk of their other forms of support that act as a hidden export subsidy or lead to the overproduction of many agricultural products of interest to developing countries." (Oxfam Briefing Paper #76, June 15, 2005, p. 2)

supply and drove international prices down. The changes in the 1996 Farm Bill were exacerbated by policy reversals and richly enhanced support of the 2002 Farm Bill;

- preferential and regional trade agreements distorted trade patterns and created preferences which have diluted the benefits expected of the WTO;
- trade remedy law harassment has disrupted trade;
- private litigation relating to SPS rules has frustrated government attempts to implement WTO obligations;
- WTO dispute settlement addressed issues not included in the Uruguay Round Agreements and through "gap filling" created new obligations which have denied farmers in some countries legitimate export opportunities;
- some countries, like Canada, have done little to enforce their rights under the WTO – condoning inconsistent practices and clear breaches, running the risk of paying again simply to have the "scoff-laws" observe already existing obligations.

This report focuses on the disruptive effects of domestic support because:

- until production stimulating subsidies are properly disciplined and eliminated there can be no balance in the international trading system for agricultural products and commodities;
- even the E.U. which is in the midst of reform of the Common Agricultural Policy, which should open its markets, recognizes that they cannot proceed without discipline of U.S. domestic support.
- we have the perhaps novel view that farm policies should be farmer friendly and should benefit farmers more than multi-national agribusiness.

The central problem, as explained by Timothy Wise of Tufts University, is that:

> "When a country decides not to support its farm sector, while the major players support theirs massively… it is the (unprotected) producers who assume the effects of the policies of other countries…" [46]

[46] *The Paradox of Agricultural Subsidies: Measurement Issues, Agricultural Dumping, and Policy Reform*, Timothy A. Wise, Global Development and Environment Institute Working Paper No. 04-02, May 2004

Some have concluded that managing supply is the answer:

> "One alternative policy blueprint suggest that government polices should return to recently-abandoned models of supply and stock management in an effort to take land out of cultivation, reduce production, and raise farm prices. …Cargill-Continental and Archer Daniels Midland, control 70 percent of U.S. corn trade. This gives them tremendous market power to keep producer prices low. In the end, they, and the firms that use corn as an ever-cheaper input in their operations (feedlots, corn sweeteners, etc.), are the largest beneficiaries of U.S. corn subsidies." [47]

While Canadian Ministers continue to assure dairy and poultry farmers that supply management as a system of agricultural organization is not negotiable, the underpinnings of the system are under constant attack. It is rather bizarre that the vast majority of farmers at the WTO symposium on the Farm Income Crisis have concluded that prices will not rise without a combination of effective management of supply and effective disciplines on(i.e., elimination of) trade distorting domestic support. Yet their governments continue to press for more open markets and do little to discipline domestic support which expands supply which is dumped on world markets at less than cost of production.48

Recently, the European Union, no doubt feeling pressures from their own farmers has (perhaps in combination with adverse referenda results in several member states) more formally linked improved market access to disciplines on and reductions in U.S. domestic support. The U.S. continues to resist this linkage.[49]

Because supply management requires watertight import controls for its proper functioning, it may be automatically assumed to be bad by those who want to export to supply controlled markets. Opposition also comes from free trade theoreticians who do not understand the limitations of Adam Smith's analysis.

Nor do those who refuse to recognize that all things are not equal and can never be equal if some of the players cheat, ignore the rules and engage in smoke and mirrors reporting support what

[47] *Barking Up the Wrong Tree: Agricultural Subsidies, Dumping and Policy Reform*, Timothy A. Wise, Comment – Bridges, No. 5, May 2004, www.ictsd.org

[48] See Peter Clark, "Beggar Thy Neighbour Subsidies: Repairing the Collateral Damage", Presentation to WTO Public Symposium, Geneva, April 21, 2005, www.greyclark.com

[49] Inside U.S. Trade, Vol. 29, No. 30, "Doha Round Farm, Industrial Talks Fail to Advance as Hong Kong Looms"

they perceive to be interference with farmers' natural inclinations to produce to excess. But the greatest ills are foisted on the farmers of the world by the WTO's inability to discipline trade distorting domestic support which threatens to become an inoperable cancer on the international trading system.

This paper is neither a defence of supply management nor does it advocate the export of Canada's unique and farsighted system. This would no doubt benefit farmers, but would run afoul of the WTO's blind attachment to trade liberalization – even when it does not make sense, and even when it does not benefit those that it should.

MARKET ACCESS

Market access has been traditionally defined as a tariff issue. It should be recognized that market access issues also include the abusive use of sanitary and phyto-sanitary measures and technical barriers to trade, but most importantly the protection provided through direct payments. Direct payments, whether amber, blue or green, restrict lower price imports from entering a given market by artificially lowering the price of domestically produced goods. To achieve equity and balance in these negotiations, the impact that direct payments have in terms of providing certain countries with flexibility on tariff reductions that other countries do not have must be taken into consideration in comparing the levels of tariffs that are maintained by different countries.

The inter-linkages that exist between the three pillars make comparisons between countries extremely challenging. Looking at tariff lines in isolation can be misleading with regards to the effective level of protection provided to a given product or sector.50

USDA reports that over 1,368 tariff rate quotas were created under the AoA.51 These cover some 5,000 tariffications.52 Some WTO members considered that these TRQs should provide guaranteed minimum access. In Canada, where the quotas are allocated in a highly transparent system this is generally true. In other countries however, administrative and allocation methods frustrate full and proper utilization of quotas.

While not all TRQs are enforced – some are simply subject to high tariffs; the USA and E.U. enforce all of their TRQs. The way that a TRQ is enforced can unduly limit trade and any negotiated access. The E.U. TRQs on pork and dairy products are blatant examples.

It has been particularly galling to Canadian pork producers that the E.U. was able to convert their variable levy on pork to TRQs that are well under 1/10 of 5% of domestic consumption. The E.U. did this by aggregating all meats and allocating very niggardly amounts to pork. The pork

[50] Inter-linkages between the Three Pillars at the WTO, Discussion Paper, Canadian dairy, poultry and eggs, May 2005

[51] USDA, ERS, Agricultural Policy Reform – The Road Ahead, p. 59/62

[52] Congressional Budget Office (CBO) Policies that Distort World Agricultural Trade: Prevalence and Magnitude, August 2005, pp 16/17

TRQs are highly disaggregated into several different pork items (e.g., hams, bone-in and boneless, etc.) while in-quota tariff rates (e.g., 20%) frustrate imports. Reducing reference prices for pork under the new regime will only exacerbate this situation by making E.U. production more price competitive. If the E.U. means to import a meaningful volume of pork in order to guarantee minimum access it must set the TRQ quotas at 5% of consumption and the in-quota tariff must be eliminated.

Canada's national dairy, poultry and egg farm organizations conducted a study on the impact of a policy of providing unimpeded minimum 5% market access, based on the average consumption level of 1995-1997, the most recent reference information available at the time. (The WTO's current TRQs use a reference or base period that is 15 years outdated: 1986-88.) Using 5% of consumption for the 1995-97 period would significantly increase minimum access for: pork, beef, poultry, butter, cheese and many more products, for example:

Product	**Current minimum access under TRQ (tonnes)**	**Additional access – minimum 5% of 1995-1997 consumption (tonnes)**	**Resulting increase in market access**
Butter	129,791	26,842	20.7%
Cheese	309,040	239,542	77.5%
Pork	449,298	514,007	114.4%
Poultry	315,168	479,224	152.1%
Eggs	262,232	131,552	50.2%
Beef	1,112,024	1,019,097	91.6%

Source: DFC website

Abuses and manipulation in TRQ administration reduce opportunities expected by farmers as a result of the Uruguay Round. These administrative barriers and impediments create imbalances in market access which focus imports on the more open and transparent markets. Too, they skew the continuing negotiations on market access.

The answer in our view is to focus on real and meaningful TRQ access. These should represent a minimum of 5% of consumption. There should be no tariffs on the in-quota volumes. And there should be no administrative "jiggery-pokery" barriers to imports to fill these quotas.

We have examined below Canada's experience with the following products:

I. Beef

II. Pork

III. Poultry

IV. Dairy Products

V. Oilseeds

VI. Grains

VII. Spirits/Other Products

I. BEEF

Based on data from country notifications to the WTO[53] on tariff rate quota (TRQ) fill utilizations, several countries were found to have under-filled their quota commitments on beef products. Twelve of the 21 countries which have TRQs for Beef products failed to meet an average fill-rate of above 70%. Among these countries are Bulgaria, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic and Slovenia that had average fill rates around the 50% range. Other European countries with underutilized TRQs for beef products are Norway, Iceland and Switzerland. The E.C. generally has fairly high fill rates in the 90% range. Non-European countries with unfilled TRQ rates include the U.S., Guatemala, Tunisia, Korea, and the Philippines. [54]

Malaysia

All meat, processed meat products, poultry, eggs, and egg products must receive halal (produced in accordance with Islamic practices) certification from Pusat Islam (the Islamic Center). There have been complaints from North American producers that the halal certification process is confusing and non-transparent. Each individual product, rather than the plant, must receive halal certification. This certificate is issued on the joint recommendation of Malaysia's Department of Veterinary Services in the Ministry of Agriculture and Pusat Islam following an on-site inspection.[55]

Morocco

The Moroccan trade regime is designed to maintain the status quo through the imposition of high, prohibitive tariffs. These tariffs have created significant barriers to trade for Canadian exporters. For example, tariffs on poultry and beef products range up to 124% and 275%, respectively, on an applied basis.[56]

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53 Countries with Beef TRQs: Bulgaria, Canada, Colombia, Croatia, Czech Republic, El Salvador, European Community (15 member states), Guatemala, Hungary, Iceland, Israel, Korea, Lithuania, Morocco, Nicaragua, Norway, Philippines, Poland, Romania, Slovak Republic, Slovenia, South Africa, Switzerland, Tunisia, and the United States.

54 Based on a straight-line average of each countries various fill-rates for each sub-product within the general 'Bovine' product category

55 USTR Trade Barriers 2005, p.401

56 USTR Trade Barriers 2005, p.423

Egypt

Canada continues efforts to secure access for exports of halal beef to the Egyptian market.

Japan

Japan has a safeguard mechanism for beef similar to that for pork which is explained in detail later in this report. This safeguard is triggered by price/volume minimalists in order to protect Japanese producers from sudden import surges. This safeguard was agreed upon by Japan's trading partners during the Uruguay Round of WTO/GATT negotiations as an alternative to a TRQ mechanism.

The detection of BSE in Japan in September 2001 caused domestic and imported beef sales to decline considerably. Currently domestic production is now above pre-BSE levels however, import volumes are still below pre-BSE levels. The import ban on beef from the USA and Canada has reduced beef import levels in Japan to extremely low levels. Once this ban is lifted, it is possible that the volume of imports could again trigger implementation of the safeguard.57

While beef imports increased in 2003 this represented a return to the former level of imports. It was not a surge, but on August 1, the increased imports triggered the application of the safeguard on chilled beef, which lasted until March 31, 2004. The results have been higher prices for importers and a slower recovery of Japan's beef market, neither factor is advantageous for Japanese producers or consumers.

Thailand

Duties on imported consumer-ready food products typically range between 30% and 50% – the highest in the ASEAN region – with some as high as 90% (e.g., coffee). Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese and pulses (e.g., dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. In addition, the Thai government requires import license fees for meat

[57] *Opening Doors to the World*, Canada's International Market Access Priorities – 2005, Department of Foreign Affairs and International Trade, p. 102

products of approximately $114 per ton on beef and pork, $227 per ton for poultry, and $114 per ton on offal that do not appear to reflect the costs of import administration.[58]

Russia

Russia has not yet acceded to the WTO. In 2003, Russia introduced trade restrictive TRQs for pork, poultry and beef imports. Canada its trying to have its former market access restored. Securing such improvements will be key factors for Canada to complete bilateral negotiations on Russia's WTO accession.

The WTO working party, which includes Canada, is currently discussing Russia's economic and trade regime, as well as its internal policies affecting trade. Canada's objectives in the accession discussions were to improve:

- the transparency and predictability of sanitary and phyto-sanitary measures applied by Russia to imports of food; and
- the level of trade-distorting agricultural subsidies that Russia will be able to apply in the future[59]

[58] USTR Trade Barriers 2005, p.486
[59] *Opening Doors to the World*, p. 91

II. PORK

Some 21 countries have TRQs on pork and pork products. The fill rates for a number of these countries have been underwhelming.

Based on historical and current data60 from country notifications to the WTO61 on tariff rate quota (TRQ) fill utilizations and from the background paper by the WTO Secretariat, Tariff Quota Administration Methods and Tariff Quota Fill62, it was found that many countries have under-filled their quota commitments for pork products.

Of the 21 countries which have TRQs on pork products, only 7 of these countries managed to achieve an average fill rate above 70%.63

SCFAIT noted:

> "While there may in fact be a consensus among agricultural groups on real access equivalent to 5% of consumption and reduction to 0% of the tariffs applicable to access commitments (intra-quotas), the fact remains that many groups and individuals told the Committee, they considered that approach to be inadequate. Foremost among those holding that view was the group made up of the Canadian Meat Council, the Canadian Pork Council and Canada Pork International, which called for an increase in the access commitment, that is, the adoption of a percentage higher than 5% of domestic consumption, and the reduction of all other import tariffs." [64]

El Salvador

El Salvador permits pork imports only when there is local shortage. The tariff on permitted imports is 40% which seems quite high in the circumstances.

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[60] Data used from country notifications to the WTO were taken from 1995-2004 notifications. Not all countries have notified within that time period

[61] Countries with Pork TRQs: Barbados, Bulgaria, Chinese Taipei, Colombia, Costa Rica, Croatia, Czech Republic, European Community (15 members states), Guatemala, Hungary, Iceland, Korea, Lithuania, Malaysia, Norway, Panama, Philippines, Poland, Romania, Slovak Republic, Slovenia, South Africa, Switzerland, and Venezuela

[62] Tariff Quota Administration Methods and Tariff Quota Fill, Background Paper by the Secretariat (TN/AG/S/6), March 22, 2002

[63] Based on a straight-line average of each countries various fill-rates for each sub-product within the general 'Swine' product category

[64] Canada and the Future of the World Trade Organization: Advancing a Millennium in the Public Interest, Report of the Standing Committee on Foreign Affairs and International Trade, June 1999, Agriculture and Agri-Food Issues

E.U.

Canadian pork producers export to 130 countries. The Canadian industry produces very high quality product. Canada has been frustrated in their efforts to develop market opportunities in the E.U. The first problem, now overcome, was equivalency of veterinary inspection procedures. Now the problem is TRQ administration which unfairly impedes Canadian access to the E.U. market.

The E.U. TRQs on pork (pigmeat) operates through licenses issued to E.U. importers. While the system is generally described as operating on a first-come, first-served basis, this description does not recognize several important administrative barriers in the system. Full and proper utilization of the TRQ is prevented by the following features of the regime:

- import licenses are only issued to historical importers;
- no individual importer may import more than 10% of the available import quantity in a given quarter; and
- importers must pay € 20 per 100 kilograms as security before the import license is issued.

The E.U. TRQs for pork were seriously underutilized, during the 2002/2003 marketing year when only 14.55% of the in-quota volume was filled.

The former 15 member European Union (E.U.) consistently reported low TRQ fill rates for pork products. There are seldom any in-quota imports of carcasses and half carcasses of pork as well as preserved meat of domestic swine. Fresh cuts of swine and sausages have fill rates of just over 10%. Other products such as pork loins and tenderloins barely reach an average fill rate of 50%.

It has been particularly galling to Canadian pork producers that the E.U. was able to convert their variable levy on pork to TRQs that are well under 1/10 of 5% of domestic consumption. The E.U. did this by aggregating all meats and allocating very niggardly amounts to pork. The pork TRQs are highly disaggregated into several different pork items (e.g., hams, bone-in and boneless, etc.) while in-quota tariff rates (e.g., 20%) frustrate imports. Reducing reference prices for pork under the new regime will only exacerbate this situation by making E.U. production more price competitive. If the E.U. means to import a meaningful volume of pork in order to guarantee minimum access it must set the TRQ quotas at 5% of consumption and the in-quota tariff must be eliminated.

It is quite perplexing that Canada's TRQ on E.U. pork – imposed as retaliation for European refusal to respect the WTO dispute settlement ruling on beef hormones, is administered in such a way that the U.S. arm of the Danish pork industry can monopolize the TRQ access and secure scarcity prima (rents) from marketing the product.

Other European countries including members of the E.U.-25, have low fill rates on pork products, such as the Czech Republic reporting an average of 13%, Romania reporting an average of 6%, Iceland averaging 1%, Slovenia with an average of 60%, Bulgaria with an average of 1% on hams, Hungary with 19% on prepared or preserved ham and Poland with an average fill of 65% on chilled or frozen pork.

Japan

Japan negotiated an alternative to the TRQ system for pork with the USA during the Uruguay Round.

Japan's safeguard mechanism was designed to allow gradual liberalization of the Japanese pork market, while protecting domestic producers from a sudden flood of low-priced imports. Though extraordinarily complex, USDA considers it is much less restrictive than what Japan could formally have implemented under the Uruguay Round. The safeguard is enforced through a "gate price", which is the minimum average price that a shipment must meet in order to enter the country. The gate price is reduced each year, allowing more low-priced product in.65 However, if imports increase too rapidly, the safeguard is triggered, which moves the gate price back to a higher level. There are three separate implementations of the safeguard:

[65] Recently there have been reports of fraud and manipulation with respect to this system

1) Normal Safeguard (SG). The SG goes into effect when the cumulative volume of imports in any one quarter exceeds the average of the preceding 3 years by 19% or more. Once SG is triggered, the gate price will remain at the higher level until the end of the Japanese Fiscal Year (JFY).
2) Annual Safeguard. If the annual total of imports exceeds the previous year by 19%, then the higher gate price will go into/remain in effect for the first quarter of the next JFY.
3) Special Safeguard (SS). When triggered, SS raises the tariff on pork by 33%. The current ad valorem rate is 4.3%, while the increased rate under SS would be 5.7%. The trigger mechanism for the SS is based on imports as a percentage of consumption. The SS is triggered when imports account for more than 30.1% of consumption, and exceed 105% of average imports for the preceding three years.[66]

The Special Safeguard is available to all WTO member countries for certain market sensitive products under Article 5 of the WTO Agreement on Agriculture. Within this provision, Japan sets a special safeguard on pork imports when import volume in a Japanese fiscal year exceeds 105% of the previous three years' import average. Once triggered, the special safeguard will raise the ad valorem duty from 4.3% to 5.7%, and will be in effect until the end of the fiscal year. The special safeguard and safeguard can be in effect simultaneously.[67]

The gate (minimum import) price is intended to ensure that imports enter at the gate price plus the tariff rate. The gate price is currently set at 547 yen/kg as noted. The safeguard system increases the gate price if imports are 19% or more above the average level of imports during the previous three years. If triggered, the gate price increases to 653 yen/kg and remains in effect for the remainder of the fiscal year.

The Japanese "snapback" safeguard measure on pork, which raises the minimum import price by approximately 25%, is a major concern for Canada. This safeguard was triggered on August 1, 2004, for the fourth consecutive year and lasted until the end of the fiscal year, March 31, 2005.

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66 USDA FASOnline
67 USDA, FAS, International Agricultural Trade Report

The snapback safeguard has been a significant issue for the Canadian pork sector since it was first triggered in 1995 since it creates considerable market fluctuations for Canadian suppliers and Japanese importers. Canada is seeking to resolve concerns of both exporters and importers by eliminating the negative market impacts of the snapback safeguard. Addressing these issues is a priority in the WTO agriculture negotiations. [68]

Norway

Norway maintains strict protections for agriculture that shelters the sector from global competition. As justification for these protective policies, Norway emphasizes the importance of "non-trade concerns" – food security, environmental protection, rural employment and the maintenance of human settlement in sparsely populated areas.69

Only 30-40% of Norway's TRQs are usually filled. There is no system to reallocate unused import quotas, hindering foreign exporters seeking access to the Norwegian market for these products. In 2002, actual within-quota imports averaged only 33% of the quotas sold in the auction, despite the fact that within-quota duties were only one-third of the ordinary tariff. The figure for 2003 is higher – 57% – but was skewed by an unusually high requirement for ***pork*** imports.[70]

Domestic agricultural shortages and price surges have been countered by temporary tariff reductions. Lack of predictability of tariff adjustments and insufficient advance notifications – generally only 2-5 days before implementation – favor nearby European suppliers over North American competition. For a number of processed food products, tariffs are applied based on their recipes, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and their products are, as a result, subjected to maximum tariffs. 71

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68 *Opening Doors to the World*, p. 101

69 In the pre-Tokyo Round Multi-fibre Textile Agreement, Norway and the other Nordic countries introduced the concept of minimum viable production to justify lower growth rates in their textile/apparel quotas.

70 *Ibid*

71 *Ibid*

Non-European countries with low historical fill rate averages for pork products, include Malaysia (0%), the Philippines averaging 22%, and Venezuela averaging 58%.

Philippines

The Philippines appears to be trying to trade off U.S. pressures for increased rice access against reductions in its pork tariffs.[72] Where there are high tariffs – in conjunction with a low tariff or duty free minimum access requirement, there is at least an effort to guarantee some degree of market access. Simply maintaining high tariffs – denies market access – and frustrates the objectives and interest of the Uruguay Round AoA.

Thailand

The Thai government requires an import license fee of $114 per ton on ***pork***. The fee does not appear to reflect the cost of import administration.

Venezuela

For some products eligible for TRQs, the Venezuelan government has not taken the necessary steps to publish regulations establishing the TRQ mechanism. For some products, such as ***pork***, the government has refused to activate the quota at all.[73]

[72] *Opening Doors to the World*, p. 125
[73] USTR Trade Barriers 2005, p.648.

III. POULTRY

Poultry and Eggs

Many TRQs on poultry and egg products, have consistently been underfilled. Of the 25 countries which have TRQs for poultry and egg products, 14 of those countries failed to meet an average fill-rate of above 70%.

The EC has an average fill rate of 40% on chicken, and only a 2% fill on poultry eggs for consumption. Other European countries with low average fill rates on poultry and/or egg products include Hungary with 12% on poultry meat and 17% on eggs, Bulgaria with 1% for fowls and a 23% average fill on frozen chicken, Norway with an average fill rate of 15% for meat and edible offal of turkey, guinea fowls, ducks and geese, and an average of 7% for eggs, Poland has an average fill of 66% on poultry meat and 23% on eggs and the Slovak Republic – a 42% average fill on poultry meat.

Other non-European countries with low TRQ fill rates of poultry and egg products include Barbados with an average fill rate of 21% on eggs. Korea reports no imports under this TRQ, Chinese Taipei has 37% fill for poultry offal, Costa Rica an average 15% fill for poultry meat. Ecuador and Panama report no imports of poultry meat, Venezuela 7%, and Morocco is better but still falls short at 50%.

Costa Rica

Costa Rica has an average TRQ fill-rate of 15% between 1995 and their last notification posting of 1999. There were no imports in 1999.

The auction system used to allocate TRQ entitlements in Costa Rica raises complexities and uncertainties. The cost of purchasing the permit adds to the in-quota tariff. Canada concluded a FTA with Costa Rica in 2001. Poultry is not included among the liberalized products.

Nicaragua

The Nicaraguan regime severely limits imports of poultry. There is no low-rate TRQ access.[74]

Nigeria – Poultry

Nigeria bans imports of poultry products. [75]

Malaysia

All meat, processed meat products, poultry, eggs, and egg products must receive halal (produced in accordance with Islamic practices) certification from Pusat Islam (the Islamic Center). There have been complaints from North American producers that the halal certification process is confusing and non-transparent. Each individual product, rather than the plant, must receive halal certification. This certificate is issued on the joint recommendation of Malaysia's Department of Veterinary Services in the Ministry of Agriculture and Pusat Islam following an on-site inspection.[76]

Morocco

The Moroccan regime severely limits imports of poultry. The fill rate is less than 50%.

Indonesia

Indonesia's government imposes de facto quantitative restrictions on imports of meat and poultry products by requiring an Importer Letter of Recommendation ("Surat Rekomendasi Importir"). In approving requests for such letters the government can arbitrarily alter the quantity allowed to enter, raising concerns that these Letters of Recommendation are being used to limit imports.

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74 USTR Trade Barriers 2005, p. 435
75 USTR Trade Barriers 2005, p. 442
76 USTR Trade Barriers 2005, p.401

IV. DAIRY PRODUCTS

About 6% of world milk production is actually traded internationally (in total, estimated by the FAO in 1996) and the international market is dominated by only a few operators. The E.U. exports between 10% and 15% of its production. While the E.U.'s share of the market has fallen to 45% compared with over 50% in the early 1990s, it is still the major exporter. The two most important exporters apart from the E.U., New Zealand and Australia, while being relatively small producers are much more export-oriented than the E.U. and are expanding their export capacities and activities.[77]

Many analysts consider that world markets for dairy products are likely to expand – positive growth rates are forecast for the U.S. and Japan, while production in the E.U., Canada and in some of the former centrally planned countries is projected to decrease. A marked increase in production is also expected in Latin America, South America and Asia.[78]

A limited number of countries control such a large portion of export markets that they are the industry "price leaders". The U.S. is the price leader for corn, with 61% of world exports, generally sold at prices below estimated production costs (FAO 2003).[79] New Zealand dominates dairy markets. While NZ produces only 2% of the world's milk, it exports 90% of its milk products, accounting for over 20% after world market. The E.U. sets the world price – and NZ "takes" these prices except in markets where N.Z. has received preferential access to TRQ's in higher priced markets. New Zealand can use the premia generated on these high price sales to meet E.U. competition in other markets.[80]

Butter

The major exporters of butter are New Zealand, the E.U. and, to a lesser extent, Australia.[81]

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[77] AGRA informa, Report No. 134, p. 34
[78] *Ibid*, Report No. 134, p. 34
[79] *The Paradox of Agricultural Subsidies: Measurement Issues, Agricultural Dumping, and Policy Reform,* Timothy A. Wise, Global Development and Environment Institute Working Paper No. 04-02, May 2004
[80] We have previously argued that N.Z. confers on Fonterra subsidies which, in accordance with *Canada-Dairy*, are export subsidies pursuant to Article 9.1(c) of the AoA.
[81] AGRA informa, Report No. 134, p. 61

Cheese

The E.U., New Zealand and Australia are major exporters of cheese. The USA is a major market, importing around 200,000 tonnes per annum. Much of this trade occurs under preferential trade agreements between the USA and various countries including the E.U., New Zealand and Australia.[82]

The E.U. does not provide export refunds on sales to the USA.[83] This is discrimination which is arguably inconsistent with the E.U. Most Favoured Nation (MFN) obligations.

There is little doubt that the international market is very competitive. The world's most efficient dairy producers are not only reducing the price of their products but also producing more of them and delivering them more efficiently to the market. 84

Agra Europe reports:

> "Because other dairy exporting countries are occupying a larger share of an enlarging market, the European Union's share of the world market is diminishing. Although the total E.U. deliveries to the world market are currently greater than they were ten years ago, the E.U.'s share of the market has diminished from close to 50% to less than 40% in the same period. As export subsidies are reduced it is likely that the Union's delivery of basic first stage processed dairy products will fall. Its exports of high value products, where the need for subsidies is minimal, are however, likely to increase."[85]

The E.U.'s new domestic support policy is likely to be left unscathed by any new (WTO) agreement. The benefits to dairy farmers particularly the so-called "de-coupled" payments could be more beneficial than current programs. While there will be no production requirements under the new system, we would expect that farmers will continue to produce those products for which they have capital investment and production facilities. This will be particularly true for dairy, beef and pork farmers.

Reducing the E.U. farm gate price for milk by more than 15% will have an impact. Profits from dairy farming will become seriously more difficult to achieve as E.U. prices fall towards the

[82] AGRA informa, Report No. 134, p. 61
[83] USDA, FAS, May 23, 2005
[84] AGRA informa, Report No. 134
[85] AGRA informa, Report No. 134, p. iv

international level. Dairy processors and traders, while benefiting from a lower raw material price, will find the E.U. authorities less willing to subsidize exports and domestic processing operations as the budgetary limitations created by the new policies begin to bite. If the Doha Round does have a reasonable result, it will impose further limitations on export subsidization and should lead to greater competition in the E.U. domestic markets from imports.[86]

Skimmed Milk Powder (SMP)

SMP trade is less dominated by the world's three major exporters – the E.U., New Zealand and Australia – than the other dairy commodities. Other active suppliers include the USA, Poland, the Czech Republic and Argentina.[87]

Whole Milk Powder (WMP)

WMP trade is dominated by the E.U. and New Zealand with Australia increasing its share in recent years, with the Middle East, Africa, Central and South America being the major export markets.[88]

Casein

Casein exports are dominated by New Zealand and E.U. Ireland, Japan and the USA remain key end user markets for this product.[89]

Whey Powder

The USA and E.U. are major exporters of whey powders, with Australian supply also growing rapidly in recent years. Major markets are China, Japan and other Asian countries, along with Central and South America.[90]

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[86] AGRA informa, Report No. 134
[87] AGRA informa, Report No. 134, p. 61
[88] AGRA informa, Report No. 134, p. 62
[89] AGRA informa, Report No. 134, p. 62
[90] AGRA informa, Report No. 134, p. 62

Some 35 countries maintain TRQs on dairy products.[91] Most of these TRQs were not filled. In fact, 22 of these countries did not achieve a fill rates above 70%.[92] Some of the lowest fill rates were Barbados (achieving an average fill rate of 59% for Milk and Cream); Bulgaria (30% for Yoghurt Products); Chinese Taipei (34% for Liquid Milk); Costa Rica, who failed to achieve a fill rate above 55% in any of its dairy product categories; Czech Republic (14% for Milk and Cream products); and the EC-15 who failed to achieve a 100% fill-rate in any one of its broad list of dairy products for which a TRQ rate applies.

Scarcity premia generated by low in-quota TRQ tariffs, should create incentives for importers and traders to ensure high fill levels. The underfills described above – and in what follows are due to:

- burdensome or obstructionist administrative requirements;
- domestic subsidies which permit price undercutting softening demand for imports;
- state trading and allocation of quotas to State Trading Enterprises (STEs)

TRQ expansion in the Doha Round will not be as meaningful as it might be, unless the other factors are also addressed.[93] We consider that the system must be changed. The 5% standard must be universal. There should be no in-quota tariffs. Administration should be neutral to encourage rather than frustrate imports.

Costa Rica

Costa Rica has very low TRQ fill rates for imports of dairy products. This appears to be a function of the auction mechanism for allocation employed by the Costa Rican authorities. The system raises complexities and creates uncertainties. The cost of purchasing the permit adds to the in-quota tariff.

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[91] Countries with Dairy TRQs: Australia, Barbados, Bulgaria, Canada, Chinese Taipei, Colombia, Costa Rica, Czech Republic, Dominican Republic, Ecuador, El Salvador, European Community (15 member states), Guatemala, Hungary, Iceland, Indonesia, Israel, Japan, Korea, Malaysia, Mexico, Morocco, Nicaragua, Norway, Panama, Poland, Romania, Slovak Republic, Slovenia, South Africa, Switzerland, Thailand, Tunisia, United States, and Venezuela.

[92] Based on a straight-line average of each countries various fill-rates for each sub-product within the general 'Dairy' product category

[93] Impacts of Liberalizing World Trade in Dairy Products, Abare, project 1829, 2001, at p. 21

Costa Rica's fill rate for concentrated milk averaged 12% from 1995 to 2002. The fill rate for cheese and cheese curd in Costa Rica is 52% as of their last filing notification in 1999.

Canada concluded an FTA with Costa Rica in 2001. Dairy products were not included.

Mexico

On April 4, 2005, Mexico announced a new 1.600 MT TRQ for Egmont cheese. The quotas are allocated by an auction system.[94]

Nicaragua

In May 2003, Nicaragua raised tariffs on cheese and certain other dairy products to a common external tariff rate of 40%, from a prior rate of 15%, an increase that was consistent with Nicaragua's WTO rights. This underlines the problems of having bound rates substantially above applied rates.[95] Developing countries are resisting cuts from applied rates in the Doha Round.

Korea

There is a TRQ for whole milk powder with a very low in-quota tariff utilization. The utilization rate in 2000, Korea's last tariff quota notification to the WTO, was 12.7%.

Japan

Japanese TRQ access for butter is a small quota – 1,900 tonnes a year. Fill rates over the 1995-99 period ranged from 19%-27%. Imports can only be used by producers of recombined milk in Okinawa, exhibitors at international exhibitions, and food supplies to international airlines.[96] If allocation TRQs are directed to particular end uses, means should be found to ensure full utilization. While Canada restricts butter imports to the Canadian Dairy Commission (CDC) for sale for use in processing, this TRQ is fully used.

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94 USSDA FAS, Mexico Announces Worldwide Tariff-Rate Quota for Egmont Cheese, May 9, 2005
95 USTR Trade Barriers 2005, p. 442
96 Abare, Project 1829, p. 60

Peru

Certain sensitive agricultural products – e.g., powdered milk, corn, rice and sugar – are subject to a Peru-specific "price band," or variable levy, which fluctuates to ensure that the import prices of such products equal a predetermined minimum import price. This levy is the difference between the minimum import price and an international reference price plus an adjustment for insurance, freight and other factors. [97]

U.S.A.

The U.S. non-fat dried milk quota was only 21.9% filled in 2002/3. Dried whey/buttermilk quota was 22.6% filled. This may be a frustration of the insulation of U.S. producers from market forces due to their domestic support programs.

The U.S. TRQ for ice cream was 71.2% filled but a country-specific TRQs for ice cream from Jamaica was not used at all. Indeed one must go back very far in history to find any exports of ice cream from Jamaica to the USA.

97 USTR Trade Barriers 2005, p.480

V. OILSEEDS[98] [99] [100]

The countries which have failed to meet a 70% average TRQ fill rate for Canola are; Colombia (11%); Czech Republic (4%); Morocco (67%); Norway (61%); Poland (0%); Slovak Republic (1%); South Africa (9%). Only Venezuela achieved an average greater than 70%.[101]

Of the eight countries which have TRQs on soybeans, Guatemala was the only country which failed to achieve an average fill rate of above 70%.102

Venezuela's experience in filling their TRQ for soybeans has fluctuated in the past few years, some years filling the quota completely and in others dropping to as low as 20% fill-rates. Iceland is in the same position.

Morocco has had periods, such as between 1997 and 1999, when the TRQ on soybeans has been fully utilized, however during other periods, there have been no imports.

China

China's implementation of its TRQ systems has been problematic since accession to the WTO. Regulations for the administration of the TRQ systems were issued late, did not provide the required transparency and imposed burdensome licensing procedures. TRQ allocations in 2002 were also plagued by delays. As part of its WTO accession commitments, China was to establish large and increasing TRQs for imports of ***wheat***, ***corn***, rice, cotton, wool, sugar, vegetable oils, and fertilizer, with most in-quota duties ranging from 1% to 9%. Recognizing that there were initial problems with the system, it has improved. However, the most serious problems – lack

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[98] Countries that have TRQs for **Canola (Rapeseed**): Colombia, Czech Republic, Iceland, Morocco, Norway, Poland, Slovak Republic, South Africa and Venezuela.

[99] Countries that have TRQs for **Soybeans**: Colombia, Guatemala, Iceland, Korea, Morocco, South Africa Thailand and Venezuela.

[100] Countries that have TRQs for **Corn** are: Bulgaria, China, Colombia, Dominican Republic, Costa Rica, Ecuador, EC-15, Guatemala, Hungary, Iceland, Korea, Morocco, Norway, Panama, Philippines, Poland, Slovenia, South Africa, Thailand, and Venezuela.

[101] Based on a straight-line average of each countries various fill-rates for each sub-product within the general 'Canola (Rapeseed)' product category

[102] Based on a straight-line average of each countries fill-rate for soybeans.

of transparency, sub-divisions of the TRQ, small allocation sizes and burdensome licensing procedures have continued.[103]

The Globe and Mail reported in 2002 that China's regulation of genetically modified canola threatened some $2 billion in Canadian exports.

China

China's fill rates for soybean oil were 34.6% in 2002 and 66.9% in 2003. Canola was 8.9% in 2002 and 14.9% in 2003.[104]

India

India's tariff structure disadvantages Canadian exports of canola which attract an 85% tariff against other edible oils, i.e., 45% for olive oil.

Egypt

Canada has been experiencing difficulties in commercializing bulk shipments of canola oil to Egypt.

Korea

Canada's access to Korea for canola has been limited by more favourable rates for soybean oil. In addition, tariff escalation[105] has benefited soybean oil. Korea applies a tariff of 10% on crude canola oil and 30% on refined. Canola oil is the only imported edible oil that is subject to this treatment. In comparison, Korea applies a 5.75% tariff on both crude and refined soybean oil.[106]

Korea's Agricultural Fishery Marketing Corporation administers a tendering system that prevents Korean importers from accessing Canadian high-quality, premium-priced food-grade soybeans. Korea has a TRQ for food-grade soybeans, which is administered through international open tender, mainly on the basis of price. This is an inflexible system with no

[103] USTR Trade Barriers 2005, p.72
[104] Abare, Developments in Chinese Agriculture, July 2005
[105] Low tariffs on raw materials and higher tariffs on processed goods
[106] *Opening Doors to the World*, p. 115

provision for price premiums for quality, tendering on small lots or long-term contracting. Korea produces less than 40% of its soybean requirements and cannot currently fully supply its soy-processing sector with the required high-quality product. [107]

Japan

Japan's tariffs on imported cooking oils are applied on a specific rate basis (i.e., a specified number of yen per kilogram). As a result of the Uruguay Round, specific duties for these products have decreased. The ad valorem equivalents (AVEs) of specific rates on canola generally approach or exceed 20%. These high tariffs provide Japan's domestic oil-crushing industry a significant advantage over the Canadian oil-crushing industry when competing for a limited supply of oilseeds.[108]

Canada continues to press Japan for tariff reduction on canola to make it more competitive with other vegetable oils.

Kenya

The Kenyan government rigorously controls imports of seed corn by subjecting hybrid varieties to a certification process that effectively restricts trade. Until a seed variety is fully registered (a process that can take 3-4 years), the Ministry of Agriculture restricts cereal seed imports by setting quantitative ceilings. However, once a variety is certified, the quantitative restrictions are lifted. The government sometimes manipulates the application of the VAT to support policy priorities, both to protect "strategic" sectors, such as transportation and agriculture, and to address short-term needs. In 2004, Kenya eliminated the VAT and duty on a limited quantity of imported maize to address severe food shortages.[109]

[107] *Opening Doors to the World*, p. 115
[108] *Opening Doors to the World*, p. 102
[109] USTR Foreign Trade Barriers 2005, p. 349

Thailand

Canadian exporters of food quality soybeans cannot access the TRQ in Thailand because the Thai authorities allocate the entire TRQ to livestock producers who import animal feed qualities.[110] While the TRQ has been filled, the directed allocation precludes Canadian exports of quality foodgrade soybeans to Thailand.

[110] APEC, Thailand I.A.P.

VI. GRAINS

Wheat[111]

TRQs for ten of the 23 countries maintaining TRQs for wheat were filled at less than 70%. TRQs in the following countries fall into this category: Bulgaria (4%), China (29%), Czech Republic (22%), Ecuador (54%), EC-15 (55%), Guatemala (67%), Hungary (6%), Latvia (0%), Malaysia (19%), Poland (16%), Slovenia (65%) and Venezuela (14%). TRQs maintained by Switzerland, Tunisia and Norway are better utilized.

China

China's TRQ fill rates for grains[112] were the following:

	2002	2003
Wheat	7.5%	4.5%
Corn	0.0%	0.0%
Rice	5.9%	5.5%

E.U.

The EC-15 TRQ for Quality Wheat between1995 and 1999 was consistently filled, however the situation has deteriorated since then. In 2000 only a 19% fill rate was achieved and in 2001 there were no imports. [113]

India

Imports of some agricultural products are channeled through a designated product-specific state trading enterprise. For example, the Food Corporation of India is the agency responsible for imports of most cereals. This can create uncertainties and underutilization.

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111 The countries that have TRQs on **Wheat** are: Barbados, Brazil, Bulgaria, Canada, China, Colombia, Croatia, Czech Republic, Ecuador, EC-15, Guatemala, Hungary, Iceland, Israel, Japan, Korea, Latvia, Malaysia, Mexico, Morocco, Norway, Poland, Slovenia, South Africa, Switzerland, Tunisia, Venezuela.
112 Source: Abare
113 Based on a straight-line average of each countries various fill-rates for each sub-product within the general 'Wheat' product category

Brazil

In 1996, Brazil notified WTO members that it had, pursuant to Article XXVIII of GATT (1994), withdrawn from its WTO schedule a market access concession under which 750,000 tonnes of wheat entered Brazil duty-free, and that it would begin applying a duty, currently set at 10%, to all wheat imports. As the largest non-preferential exporter of wheat to Brazil at that time, Canada notified WTO members of its claim of "principal supplying interest" in order to safeguard its right to compensation from Brazil for the non-implementation of this concession and the new tariff. Brazil's view is that there was no compensation owing because Canada's market share remained unaffected.[114]

Greece

Another example of the difficulties Canadian wheat exports are facing in world markets is found in Greece. Wheat is Canada's major export to Greece. In August, 2004, the Greek government implemented Decision 552/2004 that increased inspection and testing procedures and regulations for cereal imports from non-E.U. member countries, including Canada. These measures increase costs and are time-consuming which in turn threaten Canadian wheat exports to Greece.

These measures are inconsistent with Greece's WTO obligations, and are contrary to a December 2002 agreement between Canada and the EC that established inspection practices for shipments of Canadian wheat. Canada has informed senior officials in both Greece and the EC of this view. While no evidence has been provided to show any safety concerns as for the reason of these procedures, Greek officials have stated that these measures are designed to hinder wheat imports in order to protect local producers.[115]

Japan

Japan requires that wheat be imported through the Ministry of Agriculture, Forestry and Fisheries' (MAFFs) Food Department, which then releases wheat to Japanese flour millers at

[114] *Opening Doors to the World*, p. 65
[115] *Opening Doors to the World*, p. 88

prices that are substantially above import prices. The resulting high wheat prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan.[116]

Wheat Board

USA

The activities of the Wheat Board have been under attack from the U.S. for many years.

Article XVII of GATT (1994) permits parties to operate single duty export selling agencies. The terms of Article XVII require such state trading enterprises to:

> "… act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this agreement for government measures affecting imports or exports by private traders" and
>
> "… make such purchases or sales solely in accordance with commercial considerations including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales."

The '2004 July Framework' agreed at the WTO in 2004 calls for eliminating export subsidies provided to or by STEs, government financing of them, and government underwriting of losses. In addition, the 'future use of monopoly powers' will be subject to negotiation.117

In ten dispute settlement challenges against Canada, the USA has never successfully proven that government subsidies allowed the Canadian Wheat Board to export below cost.118

Cargill, ADM and Louis Dreyfus each move upwards of $20 billion worth of grain per year, while the Canadian Wheat Board barely surpasses $2 billion.[119] The Wheat Board's sins are that it is financed by government and that it dares to be different. But the harassment continues unabated.

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116 USTR Trade Barriers 2005, p.297
117 A Round for Free – How rich countries are getting a free ride on agricultural subsidies at the WTO, Oxfam Briefing Paper #76, June 15, 2005, p.
118 Oxfam Briefing Paper #76, June 15, 2005
119 Oxfam Briefing Paper #76, June 15, 2005

While, according to Oxfam, the targets of the proposed disciplines are the Canadian Wheat Board, the Australian Wheat Board and Fonterra (the New Zealand dairy marketer), the E.U. which is driving this issue, must be very concerned about the implications of Fonterra's activities on reform of its dairy policy.

Corn

Out of the 17 countries which have TRQs for corn, only six countries managed to achieve an average fill-rate above 70%.[120] The countries with TRQ fill rates for Corn that were below 70% were: Bulgaria (1%), China (0%), Ecuador (40%), Hungary (5%), Panama (50%), and Slovenia (68%).

Japan

In order to support demand for domestically produced potatoes and sugar, the Japanese government requires domestic corn starch manufacturers to blend potato starch with corn starch in manufacturing corn sweeteners. The tonnage of cornstarch production must be matched by purchases of domestic potato and sweet potato starch in the ratio of one part of potato starch for 12 parts of cornstarch. This would appear to be a mixing regulation which would arguably be inconsistent with Article III of GATT (1994). If corn sweetener producers use potato starch at a lower ratio than 1:12, they cannot import corn at the zero tariff rate accorded to the pooled quota. Instead they must pay a tariff on corn equal to 12,000 yen per metric ton or 50% of the value of a shipment, whichever is higher. The blending requirement discourages consumption of imported corn by raising the cost of corn sweeteners.[121]

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[120] Based on a straight-line average of each countries fill-rate for corn.
[121] USTR Trade Barriers 2005, p.289

Corn 2005

In an open and integrated market such as NAFTA has created, U.S. prices for many agricultural commodities are imported into Canada. This has caused concern to Canadian grain growers who do not enjoy the same types of safety net subsidies as their U.S. counterparts. The recent appreciation of the Canadian dollar against its U.S. counterpart has arguably been a greater factor in influencing Canadian farm incomes, but this is not within the scope of this Report.

At their 2005 Annual Meeting, the Ontario Corn Producers Association (OCPA) adopted the following resolution:

- that the Ontario Corn Producers' Association considers the possibility of a countervail and/or anti-dumping action;
- that OCPA insists on compensation for trade injury immediately;
- that the corn, soybean and wheat producers lobby the federal government along with the governments from other countries to take trade action against the U.S. to have the U.S. live up to their trade agreements.

Canadian corn growers have now signaled their intention to have Canada challenge these subsidies at the WTO. In addition, on June 30, 2005, they filed a complaint with the Canadian Border Services Agency requesting an investigation of dumping and subsidization of grain corn from the USA.[122]

Dealing with low prices for feed grains through the imposition of AD/CVD duties is complicated by the increased Canadian reliance on feeding livestock since imported U.S. subsidies reduced the profitability of grain farming. As became clear with the 2000/2001 corn CVD in western Canada, the economics of the livestock feeding industry are heavily dependent on common pricing of grains in North America.

[122] www.ontariocorn.org

Corn users have expressed concern about the impact of additional duty burdens on top of rising energy costs, and the stronger Canadian dollar. There have been complaints that the corn growers in seeking higher prices are “gut-shooting” their customers.

That the Canadian corn growers are for the third time since 1986 seeking protection against U.S. corn subsidies is an indication of their extreme frustration – about imbalances in farm safety nets in North America. The central issue is that U.S. farmers get better income support than those in Ontario – and Quebec support for its corn farmers is at least as generous as U.S. support.

Imposing anti-dumping and countervailing duties on grain corn will not have a great impact on the USA because exports to Canada are relatively small (less than 1% of U.S. production). Nor will they provide significant relief for Canadian farmers. Experience has shown that substitution by feed wheat and barley will limit the internal price effects of any duties imposed on corn imports.

The U.S. has been challenged successfully on its subsidies to cotton. Uruguay will be following the same approach on rice, and Brazil is ready to initiate, absent movement in the Doha negotiations on soybeans. Canada, following on feed grains, could add to pressures for reform.

Korea

In 2004, Korea provided differential tariff treatment for dried peas for human consumption and feed peas through the creation of a TRQ on feed peas in which the quantity and rate for the TRQ is announced annually. The applied rate for feed peas was 2% for an amended volume of 450,000 tonnes in 2004. Imports above this volume face a 27% tariff which is the same as the tariff on dried peas for human consumption. The tariffs for most of the competing feed products are as follows: barley, 20% or 30%; wheat (for milling and feed), 1.8%; and lupin seed, 0%. The TRQ allows the import of feed peas, up to the quota level, at a reduced rate, which is an improvement over previous years, but which does not provide complete parity with other feed ingredients. Parity will be sought as an outcome of the WTO agriculture negotiations because a

TRQ is a temporary solution in the absence of permanent tariff parity, as the TRQ is renewed on a yearly basis and can be cancelled or reduced unilaterally by Korea.[123]

Mexico

On January 2, 2002, the Mexican government introduced a 20% tax on beverages containing sweeteners other than cane sugar. This halted Canadian exports to Mexico of high-fructose corn syrup (HFCS), as beverage manufacturers in Mexico switched to using cane sugar as their principal sweetener. Canadian exports of HFCS to Mexico had increased steadily in the years preceding the new tax and were expected to rise even higher. The tax has adversely affected Canadian corn producers and processors, and it is arguably inconsistent with Mexico's international trade obligations.

In December 2004, Mexico's Chamber of Deputies (with subsequent Senate approval) voted to maintain the 20% tax, despite lobbying by the Economy Ministry and President Fox to have it rescinded.[124]

Canada has made several representations to the Mexican government outlining its concerns regarding the tax, and has joined the U.S. WTO challenge of the tax.[125]

USA

Corn is not a significant export crop for Canadian farmers. Indeed, Canada must import from the USA in order to satisfy demand. However, imports from the USA have historically influenced Canadian prices. In 2000, the Manitoba Corn Growers Association launched an AD/CVD action against imports into Western Canada of grain corn from the USA.[126]

The Final Determinations of dumping and subsidies were:

Anti-dumping	27% or US$0.67/bu
Countervailing Duty	US$0.63/bu

[123] *Opening Doors to the World*, p. 115
[124] *Opening Doors to the World*, p. 60
[125] *Ibid*
[126] CITT, NQ-2000-005

The principal subsidies deemed to be countervailable were:

- Loan Deficiency Payments and Marketing Assistance Loans
- Marketing Assistance Loss Payments[127]
- Federal Crop Insurance Program

Canada applies the WTO injury rules on dumping into regional markets much more rigorously than the USA.[128] The Canadian International Trade Tribunal found that while injury had occurred to local production, because swine producers who also grew corn claimed they were not injured, the Tribunal could not find the required degree of injury.

This decision by the CITT raised important policy issues:

- First, the use of regional anti-dumping and countervailing duty cases is too difficult where the product at issue is also grown on farm by livestock feeding operations.
- Second, even if there were national support for initiating a case, thus establishing a much lower injury threshold, the dependence of Canadian livestock industries on inexpensive feed for their export competitiveness poses serious policy issues for government.[129]

Rice

While Canada is not an exporting player in the rice market,[130] we have addressed several measures relating to this heavily subsidized U.S. export.

El Salvador

Rice is subject to import quota system in El Salvador in addition to a 40% duty. Rice millers are required to buy rice locally. When there is insufficient local supply, the Ministry of Agriculture

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127 Production Flexibility Contracts

128 Canada must find injury to a much higher proportion of domestic production in the regional market (>85%) than in a national case (25-30%).

129 This policy problem has been complicated by the introduction of renewable fuel (ethanol) mandates which require some level of imports and competitive feedstock costs with foreign competitors.

130 other than for wild rice

allows imports under the quota, and if after the import quota has been exhausted, there is still a need for imported rice, rough or milled rice can be imported without limit, subject to a 40% duty.[131]

Korea

Korea treats rice as a sensitive product. On December 30, 2004, USTR secured special access for 50,000MT of U.S. rice a year from January 2005, Korea agreed to:

- double the volume of its rice imports;
- guarantee 50,000 MT to U.S. exporters each years;
- to make U.S. rice available directly to Korean consumers.[132]

This was an extension of the 10 year initial term of "special access" to U.S. rice exporters who are heavily subsidized. Korea's acceptance of U.S. demands to permit imports at below cost of production really is a need for clear interlinkages between market access and domestic support.

Nicaragua

In Nicaragua, processed rice faces tariffs as high as 61%, down from a maximum of 103.5% in 2002.[133] The USA considers these tariffs to be an impediment to its highly subsidized exports.

Oxfam has done extensive analysis of the impact of U.S. rice subsidies on growers in Latin America. USA CAFTA free trade will increase pressures on Latin American rice growers.

Indonesia

Since 2002 the Indonesian government has been intensifying its protection of domestic agricultural interests from international competition. Since late 1999, rice imports have been subject to a specific tariff of 430 rupiah per kilogram (5.1 cents per kilogram or approximately 30% on an *ad valorem* basis). The government imposed a rice import ban in February 2004 just prior to the rice harvest season (February - May). The ban is supposed to be in effect one month

131 USTR Trade Barriers 2005, p.182

132 "United States and Korea Reach Agreement on Rice Imports", USTR Press Release, December 30, 2004, www.ustr.gov

133 USTR Trade Barriers 2005, p.435

before and two months after the planting season. The Ministry of Agriculture, however, requested that the ban be extended through the end of 2004.[134]

Uruguay

Uruguay has announced its intention to challenge U.S. rice subsidies based on the principles and precedents in Brazil's challenge in *U.S. – Cotton*.[135] The U.S. has complained to Uruguay that it had announced its intentions to seek a Panel without proper advance consultation.[136] These consultations are now taking place, but few consider they will resolve the problem.

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134 USTR Foreign Trade Barriers 2005, p. 275

135 U.S. Faces Fresh Challenge on Farm Subsidies, FT.com, July 27, 2005, "Uruguay argues that U.S. support for its rice farmers makes it harder for its own exports to compete".

136 "U.S., Uruguay to Negotiate on Rice Subsidies Despite Threat of WTO Case", Inside U.S. Trade, August 5, 2005

Food Aid

There have been clear examples of abuse of food aid by the USA in recent years. An egregious example was its massive food aid shipments to Russia in the 1990s which corresponded with low commodity prices and bumper harvests in the USA. [137]

Guyanese rice exports to Jamaica were displaced by U.S. food aid which suddenly doubled following a bumper crop in the USA.[138]

Canadian pork producers have been adversely impacted by U.S. sales of pork to Russia in the guise of food aid.

137 Food Aid or hidden dumping?, Oxfam, Briefing Paper, Paper 71, p. 5
138 Food Aid or hidden dumping?, Oxfam, Briefing Paper, Paper 71

VII. SPIRITS

The Canadian wine industry is seeking unfettered access to the European Union for Canadian wines made entirely from grapes grown in Canada. This is the treatment all E.U. wines receive in Canada without a wine agreement. The reverse is not true for Canadian wines going to the E.U.[139]

India

India consumes about 75 million cases of spirits annually, and imported products account for only 1% of this total. Domestic producers are powerful and have successfully lobbied the government to restrict imports to a minimum. After the elimination of quantity restrictions, the Indian government imposed an additional duty on imported spirits in the range of 20% to 150%, depending on landed cost. Individual Indian states also impose their own duties. As a result, the total effective rate of duty on imported spirits can range between 400% and 700%. Canada is strongly seeking reductions in these tariffs. [140]

Chinese Taipei

Canada is urging Chinese Taipei to establish a standard for ice wine.

Korea

The Korea Tax Administration administers Liquor Labelling Regulations. As of October, 1, 2002, liquor products must have labels that distinguish liquor for on-premise consumption, for have consumption, for sale in discount stores and for sale in duty free shops. The on premise use category does not require a separate label but the other three categories do. There is an apparent breach of national treatment in the classification of usage must be indicated on the main label on supplementary label for imported liquor and only on the main label for domestic products.[141]

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139 Canada and the Future of the World Trade Organization: Advancing a Millennium in the Public Interest, Report of the Standing Committee on Foreign Affairs and International Trade, June 1999, Roger Randolph, Canadian Wine Institute, Ongoing Market Access Issues

140 *Opening Doors to the World*, p. 133

141 USDA, FAS, Korea Country Report, August 5, 2004, p. 25

Nigeria

Nigeria bans imports of beer.[142] The principal reason appears to be protection of local industry.

Panama

USTR notes that Panama has a 20% tariff on sparkling wine and other fermented beverages, and a 40% tariff on still wines. In addition, Panama charges a 10% tax on wine products.[143] USTR considers that these taxes impede trade. It is not unusual for countries (including Canada) to tax alcoholic beverages more heavily than other products for revenue purposes even when there is no or little local production. The important issue is that such taxation is consistent with the National Treatment requirements of Article III of GATT (1994).

Romania

High MFN rates on distilled spirits (60% *ad valorem*, except for bourbon whisky, taxed at 35%), wine (60%), provide limited access to the Romanian market for these products.

In 2004, the Romanian government approved export subsidies for 8,080 HL of wine for any destination except the European Union, valued at roughly $111,500.[144] When import duties, excise taxes, and other surcharges are calculated, imported wines face a total tax of nearly 400%.[145]

Ukraine

In the Ukraine the import tariff on alcohol is equivalent to an *ad valorem* tariff of 50% to 100%.[146]

[142] USTR, Trade Barriers 2005
[143] USTR Trade Barriers 2005, p.471
[144] USTR Trade Barriers 2005, p.512
[145] USTR Trade Barriers 2005, p.603
[146] USTR Trade Barriers 2005, p.627

USA

In 1992, Canada prevailed in a GATT dispute which determined there were numerous trade obligations breaches in 41 U.S. states and Puerto Rico and tax discrimination at the Federal level with respect to beer, wine and cider which was inconsistent with the U.S. National Treatment obligations under Article III of GATT (1994). The U.S. has done nothing to bring these state measures into conformity with its international obligations. Nor has the federal excise tax discrimination in favour of small U.S. producers been removed.

OTHER PRODUCTS

Honey

There are four countries that maintain TRQs on honey: Hungary, Poland, Korea, and Norway. Of those countries, Hungary does not import honey since it has an average TRQ fill rate of 0% for honey. Poland (78%), Korea (95%), and Norway (100%) however, have high fill rates on honey and therefore generally fulfill their TRQ obligations for this product.

Korea

Canadian honey producers have been limited in their ability to export honey to Korea because of the way the TRQ operates. The current tariff rate quota for honey is 420 tonnes in Korea where the tariff on in-quota imports is 20%, while the tariff over the TRQ is 243%. Under the competitive bidding process for import rights, the price of the honey becomes the determining factor, and it makes it very difficult for higher-quality or higher-priced products to compete within the TRQ.[147]

Fish

Canadian fisheries have experienced reduced activity due to over fishing. International reports attribute these problems to fishing subsidies.

- Seventy-five percent of the world's commercial important fish stocks are described by the Food and Agriculture Organization as either fully fished, overexploited, depleted or slowly recovering.[148]
- Fishing subsidies can often encourage this over-exploitation, and can also undermine food security, destroy jobs in the fisheries sector, increase poverty and distort markets.[149]

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[147] *Opening Doors to the World*, p. 116
[148] *UNEP Endeavors to Reform Fishing Subsidies System, China View,* Global Policy Forum, April 27, 2004
[149] *Ibid*

BILATERAL AND REGIONAL TRADE

The Proliferation of Preferential Trade Agreements

The proliferation of preferential trade agreements has diluted the benefits of WTO market access commitments. For example, New Zealand has gained substantial benefits in Thailand as the result of a Free Trade Agreement. Tariffs on New Zealand infant milk formula, casein and lactose will be eliminated on implementation. Tariffs on yogourt, buttermilk, milk protein concentrate and butteroil will be removed by 2009.[150]

Proliferation of bilateral Free Trade Agreements (FTAs), particularly with Japan, threatens to erode Canada's global competitiveness in Agri-food. Japan is currently considering a Free Trade Agreement with Korea and other Asian suppliers that, if concluded, could further restrict Canadian access to the Japanese market. This is discussed in more detail later in the report.

The Japan-Mexico FTA threatens the Canadian Agri-food industry, particularly the Canadian Pork Industry. Japan has now concluded a Free Trade Agreement with Mexico that will likely result in Mexican shipments increasing from the current 30,000 tons per year to 80,000 tons per year. Imports from Mexico will not be impeded less the safeguard mechanism if priced below the gate price. These shipments will be made at the expense of Canadian producers.

Mexico has gained a reduction of 50% in duty and an exemption from Japanese safeguard for up to 30,000 metric tons. This reduction effectively represents a subsidy for Mexican producers and is worth more than $1.00 per kg. (approximately $30,000,000) an amount more than sufficient to convince Japanese buyers to source their supplies from Mexico instead of Canada. The Mexican FTA has created the blueprint for Korea, which is currently negotiating its FTA with Japan. Korea will be asking for the same duty reduction and an exemption from Japanese safeguard of 90,000 metric tons. If Korea is successful, Canada's pork industry will be further disadvantaged.[151]

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150 USDA, FAS, N.Z. Semi-annual Report, May 16, 2005
151 A Key Canadian Trade Priority - Goal – FTA with Japan

According to the Mexican FTA with Japan, the in-quota rate of customs duties will be reduced 50% from 4.3% to 2.2%. This reduction will give Mexican pork a Yen 11/kg advantage during non-safeguard period and a Yen 16.5/kg during safeguard period.

Aggregate quota quantities for Mexican pork, as per the agreement are:

- Year 1 38,000 MT
- Year 2 53,000 MT
- Year 3 65,000 MT
- Year 4 74,000 MT
- Year 5 80,000 MT

Additionally, the tariff emergency measures on pork (safeguard) shall not be applied to the volume under the tariff rate quota meaning that during non-safeguard period the impact will be neutral and during safeguard period Mexico will continue to operate under the lower gate price of Yen 524/kg while all others operate at the higher gate price of Yen 650/kg. Given a shipment of same products at the same value (i.e., a combination load of pork valued at Yen 524/kg) from both Canada and Mexico, the effective duty rates would be:

- Canada Yen 153.9 /kg
- Mexico Yen 11.5
- Advantage to Mexico: Yen 142.4 /kg[152]

Japan is also negotiating an FTA with Thailand (ASEAN) which will further impair potential Canadian access to the Japanese market.

The USA has negotiated special access for “hotel” or Hilton beef in Europe, which benefits its producers.

The E.U. expansion from 15 to 25 members has impaired Canadian access for pork products in the new member states which will now fall under the E.U. Common TRQ.

[152] *Ibid*

SANITARY AND PHYTO-SANITARY MEASURES

As tariffs have gone down, other measures to control trade have been introduced, most notably sanitary and phyto-sanitary barriers.

Argentina – Pork

Argentine regulations impede Canadian access for pork.[153]

Australia – Pork

Australia bans the importation of unprocessed pork products from Canada and other countries due to alleged concerns relating to porcine respiratory and reproductive syndrome. Australia requires that imported pork be cooked either in the exporting country or in a transitional facility in Australia. These trade-restrictive measures increase the cost of Canadian pork and exclude Canadian exporters from direct access to Australia's retail market.

Canadian pork was licensed for importation into Australia. Australia Pork Limited challenged the issuance of a single import permit and was successful. This has called into question the Australian government's risk assessment which permitted imports from countries affected by PWMS (post weaning multi-systemic wasting syndrome).

Australia – Salmon

Australia banned salmon imports from Canada and the USA. This issue has been resolved, but only after extensive dispute settlement.

USA – Potatoes

The USA kept potatoes from Prince Edward Island (PEI) out of their market for 9 months in 2000-2001 based on an isolated case of synchytrium endobioticum, also known as "potato wart", in a 20 acre plot on one farm in PEI. This was at a time when U.S. potato stocks were at very high levels, and U.S. producers, championed by Maine Senator Snow, no doubt benefited from the border closing duties.

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153 *Opening Doors to the World*, p. 67

USA – Beef

The U.S. border was fully or partially closed to Canadian beef or cattle exports from May 2003 to July 2005 over an isolated case of BSE in Canada, and subsequently over 30 countries worldwide closed their doors to Canadian beef exports. The unwarranted U.S. action in an integrated North American market sent the wrong signal to the world.

Reuters reports that the state of Montana will inspect Canadian cattle notwithstanding that this is unnecessary and the state does not have the authority to do so.[154] And on September 9, 2005, R-CALF filed yet another law suit aimed at closing the border to Canadian cattle.

E.U. – Beef

The E.U. TRQs are further restricted by bans on the importation of meat derived from cattle treated with growth promoting hormones. The E.U. ban on the importation of meat derived from cattle treated with growth-promoting hormones since it was imposed in 1989. WTO panels ruled in favor of the United States and Canada. This finding was confirmed by the WTO Appellate Body in 1998. The E.U. did not comply with the rulings, and on July 26, 1999, Canada and the United States received authority from the WTO Dispute Settlement Body to retaliate against the E.U. On November 8, 2004, the E.U. requested consultations with both Canada and the United States under the procedures of the WTO Dispute Settlement Understanding, alleging that our retaliation is no longer justified. Consultations with both parties were held on December 16 in Geneva. The E.U. concluded that the consultations did not resolve the dispute, and at the E.U.'s request, a panel was established on February 17, 2005. It is expected that we will in see a Panel Report later this year. Canada is confident in its positions in this case and is well prepared to successfully defend them before a WTO dispute settlement panel.[155]

E.U. – Potatoes

E.U. phyto-sanitary requirements limit access for seed potatoes to disease-free zones in Prince Edward Island and New Brunswick. Canada has conveyed its strong interest to expand the

[154] "Montana to test incoming Canadian cattle", Reuters Online, July 22, 2005
[155] *Opening Doors to the World*., p. 86.

derogation to all potato-growing regions of Canada.[156] Canadian exports of seed potatoes to the new member states were very substantial. Expansion of the E.U. to 25 member states makes this more urgent.

E.U. – Saskatoon Berries

The formation of the E.U has also caused problems in terms of market access for Canadian products which can be demonstrated in the case of Canadian Saskatoon berries. The berries were sold by a retail chain in the United Kingdom up until this past winter. Shortly after introducing the berries to the market, the importer and the retailer were advised by the U.K. Food Standards Agency (FSA) that they could not be sold in the United Kingdom until they had been approved as being safe for consumption under the E.U. Novel Foods Regulations (Regulation 258/97). Canada has argued that the E.U. Regulation does not apply because it indicates that a history of safe human consumption in Canada would exempt a food from the requirements of the Regulation. Following this incident, the Government of Finland argued that the berries should not be considered a novel food under the E.U. regulation, given that there was "significant" consumption of the product in Finland prior to the passage of the Novel Foods Regulation in 1997. On December 10, 2004, a committee of E.U. member states declared that the berries are not novel, which means that the E.U. market is at long last, currently open to Canadian Saskatoon berries and Canadian exports of the berry can be resumed. [157]

E.U.

Denmark – Eggs: Following a Danish veterinary control regulation from March 2004, Denmark has imposed certification requirements for egg product imports. The Danish view is that the harmonized certificate provided for in Commission Decision 97/38/EC is insufficient for importing egg products to Denmark.

Finland and Sweden – Meat: The European Commission has granted both Finland and Sweden extensions of the derogations approved in their E.U. accession agreements, which allow both countries to continue to enforce stricter salmonella control and stricter border control for live

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156 *Opening Doors to the World*, p. 88.
157 *Opening Doors to the World*, p. 84.

animals (quarantine) than that of other E.U. Member States. These countries also impose strict requirements regarding the importation of fresh (including frozen) meat, ground meat, and meat preparations.

France – Poultry: Poultry originating from countries that allow the use of compounds incorporating arsenic in poultry feed cannot enter France for human use. This decree creates a de facto ban on exports to France of poultry meat for human consumption from countries which do not apply these standards. In addition, national standards impose restrictions on the import of enriched flour, bovine genetics, and exotic meats.[158]

Argentina – Beef

Canada's primary market access priorities for Argentina is to continue representations aimed at removing Argentina's Bovine Spongiform Encephalopathy (BSE) measures on imports from Canada, especially on dairy products and health devices and products of bovine origin and encouraging Argentina to amend its BSE policies with those of the World Organization for Animal Health (OIE) recommendations.[159]

China – Meat

Lack of timelines of China's notification of food safety measures is a continuing concern. Measures are often adopted without input and comment from other WTO members. Canadian exporters have reported the measures are overly burdensome, appeared to lack a scientific foundation, or raised significant national treatment concerns.[160]

In August 2004, China notified the WTO that it would implement Decree 49, the Regulation of Inspection and Quarantine on Import Meat and Its Product, on November 1, 2004. Article VI (1) of the Regulation requires that the inner package be labeled with the product name and plant registration number. Following representations by Canada and other exporting countries, Chinese

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[158] USTR Trade Barriers 2005, p.188
[159] *Opening Doors to the World*, p. 67
[160] USTR Trade Barriers 2005, p.72

authorities agreed that goods shipped to China on or after December 1, 2004, must have the product names printed in English and Chinese on inside bags.[161]

India – Pork

One of Canada's market access priorities for 2005 is to continue to seek approval of Canada's export certificate for pork with India. India does not accept Canada's pork export certificate, because certification does not cover some diseases that India requires to be reported. Canada considers India's requirements as more trade-restrictive than necessary.[162]

India – Beef, Livestock

Imports of beef and beef products are prohibited. Livestock requires an import permit.

India – Pulses

Under its Plant Quarantine Order of 2003, India requires the fumigation of pulses with methyl bromide at 28 degrees Celsius before import into India is permitted. Methyl bromide is an ozone-depleting substance which is to be phased out in the near future. Climatic conditions in Canada do not allow for the fumigation at the required temperature during winter months.[163]

Japan – Organic Products

In October 2004, Japan stopped accepting Canadian organic products that are accredited under the USDA National Organic Program. Since then, Canada has been working on revising its own national organic standard with the objective of entering into discussions with Japan on the acceptance of Canadian organic products. As a product of this, Japan is now considering getting rid of the necessity for Canadian organic products to achieve equivalency requirements from registered foreign certification organizations in order to meet the Japanese standard for organics, although this would not be implemented before June 2006.[164]

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[161] *Opening Doors to the World*, p. 110
[162] *Opening Doors to the World*, p. 133
[163] *Opening Doors to the World*, p. 133
[164] *Opening Doors to the World*, p. 102

New Zealand – Pork

Effective September 1, 2001, New Zealand suspended imports of unprocessed pork products from Canada and other countries due to alleged animal health concerns relating to porcine respiratory and reproductive syndrome. These requirements, similar to Australia's, require the measure requires that imported pork must be cooked either in the exporting country or in a transitional facility in New Zealand. These measures raise the cost of Canadian pork and exclude Canadian exporters from direct access to New Zealand's retail market. Canada considers the measure to be more trade-restrictive than necessary.[165]

New Zealand – Trout

In December 1998, New Zealand imposed a "temporary" ban on the import of trout and since then the ban has been extended five times. In October 2004, the ban was extended until 2007. New Zealand claims that the ban was imposed to complement and ensure the effectiveness of the domestic sales ban and for conservation reasons. New Zealand has provided no scientific information to justify the ban on conservation or any other grounds. Thus, it is inconsistent with New Zealand's international trade obligations. Canada and New Zealand are consulting about how to reduce this trade impediment.[166]

China – Alfalfa Seed

China requires all shipments of alfalfa seed from Saskatchewan to be chemically treated for verticillium. This requirement has negatively affected Saskatchewan's exports of alfalfa seed to China. While bilateral consultations may remedy this problem, lack of science-based rules has once again impeded trade.[167]

China – Antler Velvet

In August 2003, China suspended the issuance of permits for the import of antler velvet from Canada, due to concerns about chronic wasting disease in deer and elk.[168]

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165 *Opening Doors to the World*, p. 119
166 *Opening Doors to the World*, p. 120
167 *Opening Doors to the World*, p. 111
168 *Ibid*

Japan – Fresh Fruit and Vegetables

Japan routinely requires that imported produce be fumigated for insect species that are already present in Japan. The fumigation requirement is particularly detrimental to trade in fresh fruits and vegetables, including lettuce, citrus, and cut flowers. Fumigation adds unnecessary costs and results in produce deterioration, making products unmarketable. The U.S. lettuce industry estimates that exports would increase by at least $100 million if this issue could be resolved.[169]

Japanese practice is inconsistent with international practice and with the International Plant Protection Convention (IPPC). Japan claims these pests are under official control by the Ministry of Agriculture, Forestry and Fisheries (MAFF) in order to limit their spread within Japan. In practice, however, MAFF does not appear to have internationally recognized official control programs for domestically grown produce.

After repeated representations from foreign governments for reform, MAFF has begun to implement a non-quarantine pest list by partially amending the Plant Quarantine Law to exempt 53 pests and 10 plant diseases from fumigation requirements. While this appears to be an important positive step, the exemption list does not include ten common insect species found on North American fresh fruits and vegetables, which are also known to occur in Japan.[170]

Korea – Deer and Elk

In December 2000, Korea also suspended the import of live cervids and their products (elk and deer products including antler velvet) from Canada and the U.S. because of concerns relating to chronic wasting disease. Chinese Taipei (Taiwan) applies similar restrictions.

Mexico – Meat

In 2004, the Mexican Ministry of Health published a mandatory technical regulation (NOM 194) which established new sanitary requirements for domestic and imported meat. Implementation will occur in September 2005. The proposed regulation requires zero tolerance for salmonella in uncooked meat. This standard is inconsistent with international sampling protocols. Canada has

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169 *Ibid*

170 *Ibid*

made several representations before the Ministry and submitted comments regarding the proposed regulation. While Canada was to be consulted prior to publication, this did not happen, and Canada's comments were not considered in the final publication of the regulation.[171]

Panama – Pork

Panama's requirement for individual inspections of plants wishing to export to Panama continues to be a matter of concern for Canadian pork exporters, even though most exporting plants have passed inspection by Panamanian authorities. Canada continues to press the Panamanian government for overall approval of the Canadian system. Problems still arise with the Panamanian system because it is Canada's perception that Panamanian government policy changes may be enacted to appease the demands of domestic stakeholders.[172]

Venezuela – Various Products

Concerns have been raised over Venezuela's SPS-related import licensing system, which restricts imports of agricultural products, specifically with respect to ***meat (beef and pork)***, ***table potatoes***, ***onions*** and, ***most recently, pulses***. Canadian exporters report import licenses are either not granted on a timely basis, granted but not for the full amount of the request, or not granted at all. No legitimate reasons are provided for denying or delaying the licenses.[173]

Sanitary regulations at the Ministry of Agriculture and Lands (MAT-SASA) are not fully transparent, and Venezuelan authorities do not respond in a timely fashion to official enquiries regarding sanitary and phyto-sanitary issues.

India – Seeds

India's Plant Quarantine Order of 2003 has introduced additional import requirements that have further restricted Canadian agri-food exports to this very large potential market.

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171 *Ibid*, p. 59
172 *Ibid*, p. 76
173 *Ibid*, p. 71

Restricted items include poppy seeds. Import permits are required for seeds for sowing, beef and beef products and rennet are prohibited as are livestock products.[174]

Agricultural Biotechnology

China

China has introduced regulations on imported agricultural commodities to include measures on GMO (Genetically Modified Organisms) safety evaluations, GMO imports and GMO labeling. These measures include the addition of an additional pre-product trial stage before commercial approval, new regulations for processing GMO products, mandatory labeling requirements for domestic and international use, new import and export regulations, and local and provincial GMO monitoring guidelines.

While Canada has been able to obtain certificates permitting canola exports to China to continue, the system does not provide clear and unimpaired access.

E.U.

Since 1998, Canada has had difficulties with securing agricultural biotechnology approvals, despite the absence of any legitimate health or scientific reason. The process is slow, and unpredictable.

Several E.U. Member States, including Austria, Luxembourg and Italy, have imposed marketing bans on some biotechnology products despite existing E.U. approvals. The European Commission has been less than enthusiastic and proactive in its efforts to overturn these bans.

TRADE REMEDY HARASSMENT

Canada has, particularly since negotiation of the Canada-USA Free Trade Agreement experiences significant growth in its production of beef and pork. There are two contributing factors:

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174 *Ibid*, p. 132

- the increased competition in the Canadian market from low-priced subsidized feed grains from the USA. These low prices, while not attractive to grain farmers improved the economies of beef cattle and swine production, particularly in Western Canada;
- the CUSTA provided for cross-border free trade in red meat;
- the CUSTA exempted Canada from the application of the U.S. Meat Import Law.

This latter move, together with mutual recognition of inspection facilities improved access to the USA.

USA – Beef and Live Swine

U.S. interests have invoked their trade laws to harass Canadian exports of beef cattle and live swine. These investigations have been very burdensome for Canadian producers, processors and governments. In the end, both actions were found to be without merit. While it is somewhat comforting to know that in the end the system can work, the ability of U.S. producers to use these rules, without good reasons, in order to harass their neighbours suggests that the improved rules which Minister MacLaren spoke about require much more improvement.

Beef

In 1998, Ranchers – Cattlemen Action Legal Foundation (R-CALF), a minor U.S. producers association, filed an anti-dumping and countervailing duty complaint against live cattle from Canada and Mexico.

This case cost the Canadian Cattlemen's Association upwards of US$5 million in professional fees to defend. Canadian provisions and the federal government also incurred significant costs of defence.

The countervailing duty investigation was terminated on grounds of de minimis subsidies. The anti-dumping investigation found dumping equivalent to 0.62% (de minimis) to 15.69%, with an all other rate of 5.63% of the export price. The U.S. International Trade Commission found no injury because:

- the subject imports would have been priced slightly higher if they had been fairly traded;
- the subject imports had only a 3.7% market share by weight in 1998;
- there would have been only a small increase in demand for domestic cattle, had the subject imports been fairly traded.

While Canadian beef exporters eventually benefited from the increased "de minimis" levels which emerged from the Uruguay Round, the standing rules as applied by the USA were lax enough to permit harassing action by a relatively minor part of the U.S. industry.

Live Swine

In 2004, the National Pork Producers Council (NPPC) filed an anti-dumping and countervailing duty complaint against live hogs from Canada.

Once again, Canadian producers and federal and provincial governments incurred considerable expenses for representation – Ontario Pork alone estimated US$4 million in legal fees and imposed and additional levy to cover them.

The CVD investigation resulted in a de minimis preliminary margin which was confirmed at the Final Determination when the CVD investigation was terminated.

The Anti-dumping investigation resulted in final dumping margins of 0.53% to 18.87% (the others rate was 10.63%) of the export price. In a unanimous 5-0 decision the U.S. International Trade Commission (USITC) found no injury.

Not satisfied with the result, the NPPC website advises that it will continue to monitor the situation.

UNDISCIPLINED DOMESTIC SUPPORT

The USA and E.U. are major subsidizers of agricultural production. The OECD found:

> "The great bulk of support to agriculture in the OECD area is still delivered through mechanisms that distort production and trade and are inefficient in generating increased net income for farmers."[175]

The 1996 and 2002 U.S. Farm Bills have produced a vast structural, price-depressing oversupply of most major agricultural commodities.[176] The cause was not so much the substantial subsidies to American, European and Chinese producers, which were not new, but the ending of controls on U.S. supplies in 1996.[177] The second destructive impact of the subsidies in the rich countries is that they facilitate a flooding of developing country markets with these products, in the process destroying domestic agriculture. [178]

Some subsidies are direct, such as payments to farmers; others are indirect, such as government support for irrigation infrastructure, which allows producers to exclude that cost from their prices. But tariffs or price supports are definitely excluded. [179]

In theory it is claimed that these subsidies have no influence on production. In practice, they provide farmers with capital and a guarantee against risk and they enable the U.S., the world's largest exporter of agricultural commodities, to sell at prices far below production costs. [180]

The U.S. has also been far more adept than Europe in repackaging support to agriculture as WTO-friendly "decoupled" subsidies.[181] Europe is trying very hard to catch up.

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[175] Small Farmers Seen Gaining Little from Subsidies", International Herald Tribune, January 17, 2003

[176] *WTO Agreement on Agriculture: A Decade of Dumping, United States Dumping on Agricultural Markets,* Publication No. 1, Institute for Agriculture and Trade Policy, p. 4

[177] *Cancun: Subsidies for Agribusiness, Le Monde dilpomatique,* By Jacques Berthelot, Global Policy Forum, September 2003

[178] *The Mirage of Farm Exports, IDEAs*, By C. Rammonohar Reddy, Global Policy Forum, August 4, 2003

[179] *Barking Up the Wrong Tree: Agricultural Subsidies, Dumping and Policy Reform*, Timothy A. Wise, Comment – Bridges, No. 5, May 2004, www.ictsd.org

[180] *Partners in Farming Subsidies Crime, Financial Times,* by Kevin Watkins, Global Policy Forum, February 20, 2003

[181] *Ibid*

The data suggests, in fact, that Mexican producers are not being subsidized by such market support policies but are instead *subsidising consumers*, as farmers drive down their own prices in an attempt to compete with under-priced U.S. exports. [182]

One alternative policy blueprint that government polices should return to recently-abandoned models of supply and stock management in an effort to take land out of cultivation, reduce production, and raise farm prices.[183]

Prior to the failed Cancun Ministerial, the U.S. and E.U. arrived at an agreed framework for addressing subsidies. Jacques Berthelot commented in Le Monde Diplomatique that the joint U.S.-E.U. agreement of August 13, 2003, on a further series of reductions is not credible. It suggests that the two conspirators will continue to cheat on a massive scale when reporting on their subsidies to the WTO.[184]

This is essentially an agreement between the United States and the E.U. It reflects the agricultural policies embodied in the 1992, 1999 and 2003 CAP reforms and the 1996 and 2002 U.S. Farm Bills. These subsidies are weapons of war designed solely to benefit the multinational agri-foodstuffs industry – all wrapped up in talk of consumer interests, the environment and animal welfare in nations of the North, with a few tears for the starving peoples of the South (three-quarters of them, mainly farmers, living in rural communities).[185]

To pretend that these payments will have no effect on production or prices, according to M. Berthelot, is a huge hoax. Most of the negotiators from the South and all the NGOs in both North and South know it, but the U.S. and the E.U. persist in the subterfuge because the agreement on agriculture allows it.[186]

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[182] *Op cit*,, Timothy A. Wise, Comment – Bridges, No. 5, May 2004, www.ictsd.org
[183] *Ibid*, No. 5, May 2004, www.ictsd.org
[184] *Cancun: Subsidies for Agribusiness, Le Monde dilpomatique,* By Jacques Berthelot, Global Policy Forum, September 2003
[185] *Ibid*
[186] *Ibid*

The most depressing aspect is that the governments of the Southern countries have been conned into campaigning for open markets in the North instead of defending their own markets against Northern dumping, if only to protect them against imports of certain basic foodstuffs. [187]

We do, however, have control over opening up our markets, which is where the focus should lie. The U.S. position has completely advocated free trade – the elimination of barriers and the reduction of subsidies.[188]

DISPUTE SETTLEMENT

"Gap-filling" or re-writing the rules

The rules of the WTO have been changed by dispute settlement to deny countries benefiting from TRQs the ability to export. The two most blatant examples are – *Canada – Dairy*[189] and *E.C. – Sugar*. [190] These panels introduced the concept of cross-subsidization from high domestic prices – and found that these conferred export subsidies. This became an obligation which was never the subject of negotiation.

This expansion of obligations has occurred notwithstanding it is the role of dispute settlement panels and the Appellate Body to interpret the WTO Agreements not to re-negotiate them.

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[187] *Ibid*

[188] *International Food Wars, Foreign Policy Association*, by R. Nolan, Global Policy Forum, April 2003

[189] The Panels and Appellate Body consider *Canada – Measures Affecting the Importation of Milk and Exportation of Dairy Products* reported between May 17, 1999 and December 20, 2002 and included six distinct proceedings: *Report of the Panel* (WT/DS103/R, WT/DS113/R – 17May 1999), *Report of the Appellate Body* (WT/DS103/AB/R, WT/DS113/AB/R – 13 October 1999), *Recourse to Article 21.5 of the DSU by New Zealand and the United States, Report of the Panel* (WT/DS103/RW, WT/DS113/RW – 11 July 2001), *Recourse to Article 21.5 of the DSU by New Zealand and the United States, Report of the Appellate Body* (WT/DS103/AB/RW, WT/DS113/AB/RW – 3 December 2001), *Second Recourse to Article 21.5 of the DSU by New Zealand and the United States, Report of the Panel* (WT/DS103/RW2, WT/DS113/RW2 – 26 July 2002) and *Second Recourse to Article 21.5 of the DSU by New Zealand and the United States, Report of the Appellate Body* (WT/DS103/AB/RW2, WT/DS113/AB/RW2 – 20 December 2002). These Reports are referred to as relevant.

[190] WT/DS 265/R, October 15, 2004

SCFAIT suggested:

> "… Canada clearly can benefit from a rules-based as opposed to a power-based system, providing the rules are not loaded in favour of the powerful. What is crucial therefore is to get the right rules and to get the rules right." [191]

and went on to note:

> "Those who have been on the receiving end of decisions resulting from complaints made by other countries, such as magazine publishers, do not like the outcome if it adversely affects their interests." [192]

Canadian dairy farmers were certainly not pleased with these results which introduced into the WTO, without negotiation:

- a cost of production benchmark into Article 9(1)(c) of the A of A.
- obligations with respect to cross subsidization, a concept which appears nowhere in the negotiated WTO texts.

SCFAIT considered that:

> "Over time, precedents set by panel decisions will condition behaviour and the number of disputes relative to world trade is likely to decline." [193]

There has been no slowdown in dispute settlement. It has in fact accelerated – one does not know how much this is due to the invasive and petitioner-friendly nature of the process.

But the rules are not applied evenly. The WTO is not self-policing. It responds to challenges.

SCFAIT, after hearing Canadian stakeholders, felt strongly that Canada should pursue its rights and they recommended:

- **Recommendation 12** - Canada should open the discussion in the upcoming multilateral trade negotiations on agriculture by demanding that all signatory countries begin by respecting their current obligations. [194]

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[191] Canada at the WTO: Towards a Millennium Agenda; A Citizen's Guide to the World Trade Organization and to the Committee's June 1999 Report, Standing Committee on Foreign Affairs and International Trade, June 1999

[192] *Ibid*

[193] *Ibid*

[194] *Ibid*, Agriculture and Agri-Food Issues

- **Recommendation 13 -** Canada should also make sure that the new rules on agricultural trade are transparent and apply equally to all countries according to their respective commitments. [195]

The Government of Canada was presented in 2003 with detailed analysis of U.S. and New Zealand support programs and their inconsistency with WTO rules. It was open to Canada to challenge these programs, but it did not. Brazil and others did in *U.S. – Upland Cotton* and *E.U. – Sugar*.

Brazil estimated that its losses due to the 2002 Farm Bill would be US$9.6 billion – because the subsidies would cost South American exporters market share while driving down commodity prices.[196] Brazil did what SCFAIT said Canada should do. Brazil argued that the U.S. violated WTO rules through subsidies and export credits for cotton and soya production.

Roberto Azevedo, head of Brazil's WTO challenge operations, commented that the subsidies:

> "artificially increase production and depress international prices…. The U.S. has not met its reduction commitments".[197]

Brazil has shown leadership – and has defended its rights. In the words of SCFAIT, Brazil has, through its actions opened:

> "the discussions in the upcoming multilateral trade negotiations on agriculture by demanding that all signatory countries begin by respecting their current obligations".

The same course of action was available to Canada – but Canadian negotiators and trade officials, through their inaction to date, appear to be satisfied to pay the USA, in particular, once again, to ensure that the USA respects its existing obligations. They are prepared to buy an increasingly smelly fish twice.

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195 *Ibid*
196 "South America up in arms over U.S. Farm Bill", Inter Press Service, May 10, 2002
197 "Brazil in offensive to Challenge Subsidies", Financial Times, April 8, 2002