USTR AFFIRMATIVE FINDING
IN RESPONSE TO
NORTH DAKOTA WHEAT COMMISSION PETITION
February 15, 2002

Summary

In response to a petition filed by the North Dakota Wheat Commission under section 301 of the Trade Act of 1974, the U. S. Trade Representative (USTR) finds that the Government of Canada grants the Canadian Wheat Board (CWB) special monopoly rights and privileges which disadvantage U.S. wheat farmers and undermine the integrity of the trading system. USTR's 16-month investigation concludes that the monopoly CWB has taken sales from U.S. farmers, and is able to do so because it is insulated from commercial risks, benefits from subsidies, has a protected domestic market and special privileges, and has competitive advantages due to its monopoly control over a guaranteed supply of wheat. The wheat trade problem with Canada is long-standing and affects the entire U.S. wheat industry.

USTR will aggressively pursue a four prong approach to level the playing field for American farmers, including: (1) examining a possible dispute settlement case against the CWB in the World Trade Organization (WTO); (2) working with the U.S. wheat industry to examine the possibility of filing U.S. countervailing duty and antidumping petitions; (3) working with the U.S. wheat industry to identify specific impediments to U.S. wheat entering Canada and presenting these to the Canadians so as to ensure the possibility of fair, two-way trade; and, (4) vigorously pursuing comprehensive and meaningful reform of monopoly state trading enterprises in the WTO agriculture negotiations.

Introduction

On October 23, 2000, at the request of the North Dakota Wheat Commission, USTR initiated an investigation under Section 301 of the Trade Act of 1974 of the wheat marketing practices of the Canadian Wheat Board (CWB), a monopoly government trading enterprise. Section 301 provides a means for businesses, farmers and workers in the United States to seek the aid of the U.S. government to gain relief from foreign unfair trade practices which burden or restrict U.S. commerce.

The North Dakota Wheat Commission alleged that the CWB's special privileges and benefits as a government-sanctioned monopoly trading enterprise provided the CWB unfair competitive advantages in the hard red spring and durum wheat markets for many years. The petition states that the CWB - as a "single desk seller", or monopoly exporter - maintains the ability to price discriminate among buyers. The petition alleges that the CWB has substantial discretion in pricing grain due to its operating system. The CWB enjoys exclusive access to the western Canadian wheat supplies, is able to pool wheat sales revenues, and makes initial payments to producers based on a portion of the price that the CWB anticipates it can obtain for the grain. The margin between the initial payment and final payment permits the CWB maximum pricing flexibility. The CWB also enjoys the full backing of the Canadian Government, freeing the CWB of certain financial risks. The petitioners also allege that the CWB provides standing offers to undersell U.S. wheat in third markets. The petition alleges that these practices have resulted in the CWB taking traditional U.S. markets. The petitioners also highlighted that the CWB operates in a protected domestic market with cumbersome regulatory procedures that act as a barrier to imports of U.S. wheat.

USTR 16-Month Investigation

USTR's 16-month investigation under Section 301 was unprecedented in terms of the efforts taken to examine the North Dakota Wheat Commission's allegations and USTR's efforts to fully engage all interested parties. On November 16, 2000, USTR requested public views, including the methodology to be used in conducting the investigation. In light of the North Dakota Wheat Commission's request that USTR gather extensive market data, for the first time ever in a Section 301 investigation, on March 30, 2001, USTR asked the ITC to conduct an exhaustive investigation.

As part of its investigation, the ITC held a public hearing, invited public comment, and issued questionnaires, backed by the ITC's subpoena power, to wheat buyers and sellers in the United States. In addition, USTR and USDA sent questionnaires to buyers in third-country markets. The ITC obtained a comprehensive set of data on sales of Canadian wheat in the U.S. market through its questionnaires. The ITC also obtained some information from U.S. firms that sell Canadian wheat in third-country markets. However, due to the lack of cooperation from the CWB, the investigation did not yield a comparable set of data on sales of Canadian wheat in third-country markets. USTR sent a questionnaire directly to the CWB, but the CWB refused to provide any sales data.

ITC issued a public version of its report, released on December 21, 2001, to allow interested parties an opportunity to participate fully in the investigation. USTR asked for yet another round of public comment on the issues in the investigation through a Federal Register notice issued on December 21, 2001.

Investigation Findings

USTR finds that the acts, policies and practices of the Government of Canada and the CWB are unreasonable and burden or restrict U.S. commerce. The investigation has played a critical role in developing important new information. The ITC report found that the CWB can unfairly benefit as a monopoly state-trading enterprise through subsidies, a protected domestic market, special benefits and privileges sanctioned by the Canadian government. Specifically, the ITC found that:

- The CWB is insulated from commercial risk because the Canadian government guarantees its financial operations, including its borrowing, credit sales to foreign buyers, and initial payments to farmers.

- The CWB benefits from subsidies and special privileges, such as government-owned rail cars, government-guaranteed debt and below market borrowing costs. Considerable monies from the Canadian Federal government at below-market interest rates resulted in a cost benefit, according to the ITC, of Can$107 million (approximately US$66 million) in 2000, 24 percent less than what a private borrower would have paid.

- The CWB has a competitive advantage due to its monopoly control over a guaranteed supply of wheat that Canadian farmers are required to sell to the Board, and monopoly control to export western Canadian wheat. These advantages allow the CWB to enter into forward contracts without incurring commercial risks and provide other benefits.

- The Government of Canada's burdensome regulatory scheme controlling the varieties and segregation of wheat marketed restrict imports of U.S. wheat.

Pricing Flexibility

The ITC report supports allegations in the petition that the CWB has greater pricing flexibility than private grain traders. This flexibility arises from the fact that, by law, all western Canadian farmers must sell their wheat to the CWB at an initial payment price equal to only a portion of full market value, and the farmers must wait until far beyond the end of the marketing year to receive full payment. In addition, the Government of Canada guarantees the farmer's initial payment. Accordingly, the CWB can make sales at low prices without any risks to its financial position or of incurring losses, and with the only consequence being the reduction in the end-of-the-year pool return. The CWB also has a lower cost of capital than private firms, because the Government of Canada guarantees all CWB borrowings.

U.S. Market

The ITC report shows that U.S. imports of hard red spring wheat and durum wheat from Canada increased between marketing years 1996/97 and 2000/01. U.S. imports of Canadian hard red spring wheat increased from over 1 million metric tons in 1996/97 to 1.22 million metric tons in 2000/01 with a peak of 1.367 million metric tons in 1999/00. Concurrently, U.S. production of hard red spring wheat declined from 17.2 million metric tons in 1996/97 to 13.7 million metric tons in 2000/01. U.S. exports of hard red spring wheat also declined in that same time period from 8.2 million metric tons to 6.2 million metric tons.

U.S. imports of Canadian durum wheat increased in the past five marketing years. In 1996/97, imports of Canadian durum were 329,000 metric tons. In 1997/98, imports of Canadian durum reached 439,000 metric tons; 1998/99 shipments were 557,000 metric tons; 1999/00 shipments were 425,000 metric tons; and in 2000/01 imports were nearly 339,000 metric tons. Moreover, for the three intervening marketing years, imports of Canadian durum wheat jumped, ranging from over 425,000 metric tons to nearly 557,000 metric tons. U.S. production of durum decreased during the same time frame from 2.4 million metric tons to 2.27 million metric tons.

Third-Country Markets

Because the CWB refused to provide USTR certain necessary information, the investigation resulted in little useful price data for export markets.

The investigation focused on wheat markets in Algeria, Brazil, Colombia, Guatemala, Peru, the Philippines, South Africa and Venezuela. U.S. durum wheat shipments to those markets decreased from 420,000 metric tons in 1996 to 370,000 metric tons in 2000, while Canadian durum wheat shipments increased from 1.5 million metric tons to 1.9 million metric tons during that same time period. The CWB's aggressive durum wheat marketing has been a detriment to U.S. shippers, particularly in Colombia and Venezuela.

Because U.S. Census export statistics are not available for hard red spring wheat, the investigation examined the broader category of non-durum wheat exports to the eight targeted markets. Again, the CWB increased exports of non-durum wheat, while U.S. shipments to the 8 targeted foreign markets declined. Between 1996 and 2000, Canadian non-durum wheat exports to the 8 targeted foreign markets increased from 2.4 million metric tons to 2.5 million metric tons, while U.S. non-durum wheat exports dropped from 3.7 million metric tons to just under 3.2 million metric tons.

USTR Actions

Based on the findings of the investigation, USTR concludes that the CWB's subsidies, protected domestic market, special benefits and privileges disadvantage U.S. wheat farmers and infringe on the integrity of a competitive trading system. USTR will pursue multiple avenues to seek relief for U.S. wheat farmers from the trading practices of the monopolistic Canadian Wheat Board.

USTR will aggressively pursue a four-prong approach to level the playing field for American farmers:

- First, USTR will examine taking a possible dispute settlement case against the Canadian Wheat Board in the WTO;

- Second, the Administration will work with the North Dakota Wheat Commission and the U.S. wheat industry to examine the possibility of filing U.S. countervailing duty and antidumping petitions, with a special emphasis on applying our trade remedy laws to the unique factual circumstances arising from the CWB's monopoly status;

- Third, working with industry, USTR will also identify specific impediments to U.S. wheat entering Canada and present these to the Canadians so as to ensure the possibility of fair, two-way trade; and,

- Fourth, these short-term actions are complemented with the Administration's ongoing commitment to vigorously pursue comprehensive and meaningful reform of monopoly state trading enterprises in the WTO agriculture negotiations. Those negotiations gained new momentum with the launch in November of the Doha Development Agenda, set to conclude by 2005.

With the launch of the Doha Development Agenda, the United States has an unprecedented opportunity to pursue permanent reform of the CWB through the development of new disciplines and rules on state trading enterprises that export agricultural goods. Sharing the goal with the North Dakota Wheat Commission to end the CWB's monopoly status and enhance the transparency of this government-backed institution, the United States will aggressively seek in the WTO:

- To end exclusive export rights to ensure private sector competition in markets controlled by "single desk," monopoly exporters;

- To eliminate the use of government funds or guarantees to support or ensure the financial viability of single desk exporters; and,

- To establish WTO requirements for notifying acquisition costs, export pricing, and other sales information for single desk exporters.

USTR has decided not to impose a tariff rate quota (TRQ) at this time because such an action would violate our NAFTA and WTO commitments, which could result in Canadian retaliation against U.S. agriculture, and would not achieve a durable solution or a permanent change to the market distortions caused by the monopoly of the Canadian Wheat Board.