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DEPARTMENT OF COMMERCE

International Trade Administration

C-122-846

C-122-848

Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada.

SUMMARY: The Department of Commerce has made final determinations that countervailable subsidies are being provided to certain producers and exporters of certain durum wheat and hard red spring wheat from Canada. For information on the estimated countervailing duty rates, please see the “Suspension of Liquidation” section, below.

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho, or Daniel Alexy,

Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S.

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20230; telephone (202) 482-3534, (202) 482-3798 and (202) 482-1540, respectively.

Petitioners

The petitioners in these investigations are the North Dakota Wheat Commission (hard red spring wheat), United States Durum Growers Association (durum wheat), and the Durum Growers Trade Action Committee (durum wheat) (collectively, the “petitioners”).

Period of Investigations

The period for which we are measuring subsidies is August 1, 2001 to July 31, 2002, which coincides with the fiscal year of the Canadian Wheat Board (“CWB”), the sole responding exporter. See 19 CFR § 351.204(b)(2).

Case History

The following events have occurred since the publication of the preliminary determinations in the Federal Register on March 10, 2003. See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada, (68 FR 11374) (“Preliminary Determinations”).

On March 17, 2003, the petitioners submitted ministerial error allegations relating to the Preliminary Determinations. The Department of Commerce (“the Department”) addressed these ministerial allegations in the April 1, 2003, memorandum to Susan Kuhbach entitled “Ministerial Error Allegations for Preliminary Determination,” which is on file in the Department’s Central Records Unit in Room B-099 of the main Department building (“CRU”). The Department sent out supplemental questionnaires to the Government of Canada (“GOC”) and the CWB on March 18, 2003 and received responses to these supplemental questionnaires between March 27 and April 14, 2003. On May 5, 2003, the Department issued a memorandum entitled “Preliminary Determination for the Initial Payment Guarantee Program” in which the Department preliminarily determined that the GOC’s guarantee of the CWB’s initial payment to producers does not confer a measurable subsidy on hard red spring or durum wheat. See May 5, 2003, memorandum to Acting Assistant Secretary Joseph A. Spetrini from

Deputy Assistant Secretary Jeffrey May which is on file in the CRU. The Department's Preliminary Determinations had not addressed this new subsidy allegation raised by the petitioners.

On May 16, 2003, the CWB requested an extension of the final determinations for the dumping and countervailing duty investigations, therefore the Department published a Notice of Postponement of Final Antidumping Determinations and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada, (68 FR 35381) on June 13, 2003.

The Department conducted verifications of the questionnaire responses submitted by the GOC, the provincial governments (e.g., the Government of Alberta ("GOA") and the Government of Saskatchewan ("GOS")), and the CWB from May 5 through May 14, 2003 in Canada. We received case briefs from the GOC, GOA, GOS, CWB and the petitioners between June 20 to 23, 2003. These same parties submitted rebuttal briefs between June 27 to June 30, 2003. We held a hearing in these investigations on July 8, 2003.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.10.00.10, 1001.10.00.91,

1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Scope Comments

Since the Department's Preliminary Determinations, we have received several requests for exclusions from and clarifications of the scope of these investigations. On April 24, 2003, Montana Flour & Grains and Kamut International requested that the Department exclude Khorasan wheat from the scope of these investigations. The GOC made the same request on July 31, 2003. On June 27, 2003, the Organic Trade Association requested that the Department exclude organically produced

wheat from the scope of these investigations. On July 29, 2003, Cargill, Incorporated (“Cargill”) requested that the Department clarify the scope of these investigations and specifically exclude from the scope Canadian Eastern Soft Red Winter Wheat and Canadian Eastern Hard Red Winter Wheat. On July 30, 2003, the petitioners submitted comments on all but the Cargill submission, and also raised an additional issue concerning Canadian feed wheat. We have considered these requests and the comments from interested parties. We have determined that organically grown wheat is covered by the scope of these investigations and that the scope of the hard red spring investigation should be clarified by adding the following language to the scope: “This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat.” For a complete discussion of these scope issues, see the August 28, 2003, [Scope Exclusion and Clarification Requests: Khorasan Wheat, Organic Wheat, Canadian Eastern Soft Red Winter Wheat, Canadian Eastern Hard Red Winter Wheat, and Canadian Feed Wheat](#) memorandum, which is on file in the CRU.

Injury Test

Because Canada is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Tariff Act of 1930, as amended (“the Act”), the International Trade Commission (“ITC”) is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On November 25, 2002, the ITC transmitted to the Department its preliminary determinations finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of durum and hard red

spring wheat. See Durum and Hard Red Spring Wheat from Canada, 67 FR 71589 (December 2, 2002).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these investigations are addressed in the “Issues and Decision Memorandum for the Final Countervailing Duty Determinations of the Investigations of Certain Durum Wheat and Hard Red Spring Wheat from Canada” from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated August 28, 2003, (“Decision Memorandum”), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in these investigations and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://www.ia.ita.doc.gov/frn/summary/list.htm> under the heading “Canada.” The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual net subsidy rate for each manufacturer of the subject merchandise. In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the “all others” rate as CWB’s rate, because it is the only exporter/manufacturer investigated. We determine the total estimated net subsidy rate for the CWB and “all others” to be:

Exporter/Manufacturer	Net Subsidy Rate (Hard Red Spring Wheat)	Net Subsidy Rate (Durum Wheat)
Canadian Wheat Board	5.29 percent	5.29 percent
All Others	5.29 percent	5.29 percent

As a result of our Preliminary Determinations and pursuant to section 705(c)(1)(B)(ii) of the Act, we instructed the U.S. Bureau of Customs and Border Protection (“BCBP”) to suspend liquidation of all entries of durum wheat and hard red spring wheat from Canada which were entered or withdrawn from warehouse, for consumption on or after March 10, 2003, the date of the publication of the Preliminary Determinations in the Federal Register. In accordance with section 703(d) of the Act, we instructed the BCBP to discontinue the suspension of liquidation for subject merchandise for countervailing duty purposes entered on or after July 8, 2003, but to continue the suspension of liquidation of entries made from March 10, 2003, through July 7, 2003.

We will issue countervailing duty orders and reinstate the suspension of liquidation under section 706(a) of the Act if ITC issues final affirmative injury determinations, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-proprietary information

related to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (“APO”), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These determinations are published pursuant to sections 703(f) and 777(i) of the Act.

James J. Jochum
Assistant Secretary
for Import Administration

Date

APPENDIX

List of Comments and Issues in the Decision Memorandum

- Comment 1: The Department Should Treat the Government-Leased Railcars Differently from the Government-Owned Railcars.
- Comment 2: The Provision of Government-Owned and Leased Railcars is Tied to Non-U.S. Markets.
- Comment 3: The Provision of Rail Cars Does Not Result in an Indirect Subsidy to the CWB.
- Comment 4: Countervailability of Subsidies Given to Third Party Service Providers.
- Comment 5: The Governments' Entrustment or Direction of the Railways to Provide Rail Service.
- Comment 6: The Provision of Government-Owned and Leased Railcar Confers No Benefit.
- Comment 7: Measurement of Benefit from the Government-Provided Railcars.
- Comment 8: The Revenue Cap Does Confer a Benefit.
- Comment 9: The Rail Freight Revenue Cap Does Not Provide a Financial Contribution.
- Comment 10: The Department Should Determine That the Revenue Cap Does Not Provide a Financial Contribution Because It is Consistent With Market Principles.
- Comment 11: The Benefit of the Revenue Cap Extends to All CWB Shipments, Including Shipments to the United States.
- Comment 12: The Closure Fee for Grain Dependent Branch Lines Confers a Financial Contribution.
- Comment 13: Impact of the Lending and Initial Payment Guarantees on the CWB's Cost of Borrowing.
- Comment 14: The Benchmark.
- Comment 15: The Borrowing Guarantee is Tied to Non-U.S. Markets.
- Comment 16: The Department's Analysis of the Initial Payment Guarantee is Based on Incomplete and Inaccurate Data.