MANITOBA CORN GROWERS ASSOCIATION INC. vs U.S. CORN EXPORTS (An Application of Regional Market Rules under Canadian Trade Remedy Law)

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INTRODUCTION

Prairie corn production is, by almost all standards, a small crop. Manitoba production represents most of the corn produced on the Canadian Prairies so its production is also small. But it is not a "small" crop for the three or four hundred producers who grow it, and it is a relatively high input and risky crop. These growers, like most other Canadian crop producers, are aware of the high level of public support available to crop producers across the border in the United States. They are also aware that their ability to obtain favourable returns from the marketplace is reduced by that public support. Along with a fledgling soybean effort in a few areas, U.S. production and imports dominate the corn market more than any other commodity on the Canadian Prairies. As a consequence, this small group of Manitoba corn producers attempted to seek relief from the unbalanced trading environment by an application to Canadian trade remedy law as expressed in the *Special Imports Measures Act*. In August 2000,

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[1] The author researched and wrote this paper and is responsible alone for contents and accuracy of the paper. I am indebted to several colleagues for helpful review comments at various stages of writing, and for suggestions from both U.S. and Canadian officials with expertise on their respective trade laws.

the Manitoba Corn Growers Association (MCGA) filed anti-dumping and countervailing duty actions against imports of grain corn from the United States. Because of the geographic area covered by the action, this case was subject to regional, as opposed to the more frequently used national, rules of inquiry, findings and injury.

In its preliminary investigation reported in October 2000, Canada Customs and Revenue Agency (CCRA) upheld the claims of dumping and subsidization and proceeded to determining the initial assessment of injury. On November 7, 2000, large dumping and countervailing duties were applied which effectively cut off all corn imports from the United States into the Prairies. This development caused major disruptions in the livestock/feed sectors of southern Manitoba, and many groups became involved in lobbying the investigation process to have the duties removed. There was very little visible intervention in this process from the United States. On March 7, 2001, the Canadian International Trade Tribunal (CITT) reported a finding of *non-injury "to all or almost all producers" in the prairie region* and, according to the rules, terminated the action and the duties. This finding occurred in the presence of a large, combined dumping and subsidization margin, despite the finding of significant price reductions for many producers, and despite evidence of a direct and close relationship between U.S. corn prices and prairie corn prices. The finding of no-injury was entirely the result of the "regional rules" under which the case was administered.

This purpose of this paper is to describe the nature and the process of this regional application of Canadian trade remedy law. Background information is intentionally limited because ordinary market relationships had little to do with the outcome of the case. For this workshop, what is important is the action that was filed, the findings and reasons given by Canadian regulators, and an economic assessment of those factors in relation to two factors:

- the contribution of this trade remedy action to removing policy and trade stress; and
- how these factors relate to the use of NAFTA as a vehicle for promoting free trade and harmonious trade relations.

Table 1: Canadian Grain Production, by Region

Production	*1990/1991*	*1999/2000*	*2000/2001**
Total E. Canada	271 million bu.	350 million bu.	257 million bu.
Manitoba	6.5	9.4	10.4
Total W. Canada	7.1	10.2	11.5
United States	> 30 x Canada	> 30 x Canada	> 30 x Canada

Note: * indicates estimates.
Sources: CITT Research Branch Paper dated 1.2.01 and Canada Grains Council, *Statistical Handbook 2001*.

Contrary to comments made by the discussant from the National Corn Growers Association (discussion following), the author of this paper is much more interested in implications of this case for dispute resolution and trade harmony within NAFTA than in the actual outcome. This objective fits the intent of presenting four case studies at the workshop.

THE PRAIRIE CORN MARKET

Grain corn production on the Canadian Prairies is a relatively new crop and it is highly concentrated in southern Manitoba. Its history really began in the late 1970s when lower degree-day varieties became available, weather conditions seemed more favourable, and producers were shopping for alternatives to congested conventional crop markets. Acreage reached 225,000 acres in 1981 but high interest rates, weather problems and production limitations reduced acreage to early 1970 levels in the 1980s. Production increased again after 1996 when there were 45,000 acres in Manitoba and by 2000 there were 110,000 acres. Production in 2000 and 2001 was about 10 million bushels. By contrast, Quebec and Ontario produce up to 350 million bushels which represents 96 percent of Canadian production. Barley, historically the main feed grain, is grown on over 1 million acres in Manitoba and around 10 million acres on the Prairies. (Table 1 and Appendix Table A.1).

The major use of grain corn on the Prairies, both domestic and imported, is livestock feed. A small amount is used in distilling, ethanol production and other minor uses. As a result, grain corn competes with

domestically produced wheat and barley, and it co-exists with soybean and canola meal as protein sources, in feed mixes. The livestock feed market in Manitoba has been growing very rapidly since the mid-1990s because of the growth of livestock feeding in the area, mainly hogs. For example, from 1994 to 2000 hog slaughter in Manitoba doubled and when weanling and finished pig exports are included, the data indicate that total Manitoba hog production has almost tripled in ten years.

This livestock/feed expansion occurred during a period when two major events influencing the feed grain market unfolded. The first is deregulation. In 1995 the Government of Canada removed a long-standing U.S. irritant in the grain industry by terminating almost all of the freight subsidy programs that existed for grains exported from the Prairies. The impact was to significantly lower grain prices within the Prairies and to increase the motivation to feed livestock. In Manitoba, prices were influenced the most and incentives were strongest to diversify to hogs. But higher transportation costs also caused crop producers to grow higher valued crops (canola, peas, beans, lentils, soybeans, forage seed, corn and potatoes) with the result that wheat production is falling and barley production is not increasing despite increased demand for feed.

The second major event is the incidence of fusarium head blight (FHB). In most of southern Manitoba, FHB has progressed to the point where it is severely limiting the ability to produce wheat and barley, effectively cutting off local supplies of hog-quality feed wheat and barley. Corn, despite its other production risks in northern conditions, is the only feed grain that has reasonable FHB resistance in the infected area. The alternatives are to import barley and wheat from non-infected areas to the west and north, or to import U.S. corn. Both of these feed sources have increased in Manitoba over the past five years.

When these factors are combined, they mean that the intensive livestock area of Manitoba has become an import-based market for feed grain that meets the quality requirements of hog feed. The import basis, by itself, provides a transportation advantage to local producers who have hog-quality feed stocks; corn producers and a few “lucky” wheat and bar-

Table 2: Manitoba Hog and Weanling Exports (million live hogs)

Category	*1994*	*1995*	*1998*	*1999*	*2000*	*to Nov. 2001*
< 50 kg	0.26 m	0.41 m	0.85 m	1.35 m	1.44 m	1.56 m
> 50 kg	0.17 m	0.32 m	0.81 m	0.93 m	0.90 m	0.81 m

Source: Janet Honey, Policy and Program Branch, Manitoba Agriculture.

ley producers are the only ones in the area who can supply that quality. Corn (and soybean) imports from the United States, as well as the subsidy impacts of U.S. programs on wheat and barley in international markets, reduce overall price levels, limit profitability of crop production and, along with FHB, reduce the incentive to produce corn and all feed grains in the area.

On top of this, the United States has feed prices which are held down by crop subsidies. The impact of these factors has been to switch the competitive advantage in livestock feeding from the prairies and the Manitoba corn area, to the producers south of the border. In market terminology, there has been a "basis switch" between southern Manitoba and the northern states sometime after 1996. What began as an advantage to the eastern prairies in feeding livestock (when the transportation subsidies were removed) has shifted south as U.S. crop subsidization has increased. This proposition is confirmed by feed mill buyers and by the fact that Manitoba exports of weanling pigs has increased from 260,000 in 1994 to over 1.5 million in 2001 (Table 2).[2] This situation has evolved despite the significant fall in on-farm prices resulting from termination of the export freight subsidies on the Prairies.

Imports of U.S. corn into western Canada have exceeded production in the area every year since 1990-'91 except 1991-'92, sometimes by a factor of two or three (Table 3). Over the period 1990–2000, at least half of the imports were into Manitoba. Imports from the United States into eastern Canada (distributed between Ontario and Quebec) are about double those into western Canada, but they represent a much smaller proportion of production (on average about 10 percent).

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[2] Data released by Manitoba Agriculture since this paper was presented indicate that weanling exports in 2002 will show a further increase.

Table 3: Canadian Grain Corn Imports (Million Bushels) from the United States, by Region.

Volume	***1990-91***	***1994-95***	***1995-96***	***1996-97***	***1998-99***	***1999-2000***
E. Canada	6.7	31.8	21.7	20.7	20.6	25.0
W. Canada	8.5	9.9	9.3	9.7	13.1	13.6
Manitoba	1.2	6.9	5.8	4.7	8.3	9.4

Source: CITT Research Publication dated 1.02.01.

One other market characteristic that is relevant is the relationship between U.S. and Manitoba corn prices. There are no barriers to importing U.S. corn, there is a virtual infinite supply of corn (relative to demand) within easy trucking distance, and there is a constant supply of grain trucks prepared to load soybean meal and corn at "backhaul rates" from anywhere along the route between Minneapolis and Winnipeg. Usually, not much more organization is required to get immediate delivery of U.S. corn than having the right cell phone numbers. *If one ignores the existence of significant direct public support to U.S. corn growers*, this highly integrated, well-arbitraged little market could be said to perform very well in economic terms.

Casual analysis and an unpublished AAFC paper conducted for the CITT indicate that Manitoba cash corn prices track very closely those in Minneapolis, both in level and in direction of change. Unusually large supplies of feed quality barley and wheat on the eastern prairies may drive a wedge between Minneapolis and Manitoba corn prices because these markets do not arbitrage as closely as corn, but generally there is a close relationship in corn prices. Domestic feed wheat, barley and corn prices on the eastern prairies cannot move much above corn equivalent prices without attracting more U.S. corn imports.

This brief description of the prairie corn market illustrates the market environment into which the MCGA imposed their anti-dumping and countervail action in August 2000. This action ultimately led to imports being terminated on November 7, 2000 by the imposition of duties. Clearly Manitoba corn growers are small players in the overall feed and livestock market and they are directly impacted by market conditions in the United States. However, their market situation, and the conditions that brought

about their trade action, are symbolic of a much larger element of Canadian agriculture. Corn imports into Ontario and Quebec certainly impact on prices there. Indeed, in the final determination by CITT, it was reported that subsidization margins were the same across Canada on imported corn.

Further, according to evidence and comments provided by Mexican participants throughout our workshops, it is probable that the Manitoba corn situation is also representative of the situation facing many Mexican farmers. Consequently, this trade action and its outcome have economic significance far beyond MCGA and the prairie corn market. There are direct and immediate economic effects of subsidization in open markets like this one whether the program is "domestic" as claimed by the U.S. Corn Growers Association, or targeted in some other manner.

THE ACTION AND PRELIMINARY FINDINGS

Canada Customs and Revenue Agency (CCRA) has the responsibility under the *Special Imports Measures Act* of conducting the preliminary investigation of unfair trading complaints and of making preliminary findings related to the imposition of duties. CITT is responsible for the final determination of amount of duties and determination of any "material injury" to domestic producers. The CCRA investigation, other than geographic scope, was not altered by the fact that this trade remedy law action was "regional." The significance of regional rules is apparent in the second level of investigation, conducted by CITT, when injury determination is made. At that point, the "all or almost all" (producers) rule applies which severely tightens the evidence on injury, making injury determination much less likely than in an national action. CITT required that more than 90 percent of producers had to be materially injured to meet the regional test. This section provides an overview of how these steps unfolded in the Manitoba corn case.

The MCGA filed an action in August 2000, alleging injurious dumping and subsidization on grain corn exported by the United States for use in the geographic area west of the Manitoba/Ontario border. There were minor exclusions for corn used as seed and for consumer products manu-

facture but these exclusions are not important in either volume or impact on the case. On November 7, 2000 CCRA announced the results of its preliminary investigation and imposed anti-dumping and countervailing duties on U.S. grain corn imported to the Prairies.

The Preliminary Dumping Investigation

According to the rules, *grain corn is dumped when it is sold to importers in Canada at prices which are lower than prices in the United States* ***or*** *when it is sold into Canada at unprofitable prices.* The latter application of this rule is the so-called "normal value rule." In economic terms these two versions are very different in substance and in testing. The agricultural economic literature is full of theoretical and empirical evidence that there is no compelling "normalcy" to the notion that prices should be above "cost of production" (COP) in any particular, short time period. Nor is there a single "cost of production" for a large or even small group of farmers. Instead there is an array of costs just as there is an array of market prices at any point in time. Cost of production is an inappropriate measure in agricultural dumping because farmers usually have little or no market power. However, these are the rules and it is the "normal value " version of the rule that was applied in the corn case.[3]

The investigation determined that over the previous two years, 45 percent of the corn imports came from Minnesota, 34 percent came from North Dakota and 10 percent from South Dakota. For determination of normal value, USDA ERS data on COP were used, indicating that in 1998 the "normal value" was US$2.60/bu., and US$2.78/bu. in 1999.[4] CCRA claimed that in aggregate, grain corn had not generated commercial profit in those states in four years. According to their definition, they reported that nearly all corn had been dumped over the period of investigation. The

[3] Throughout our workshops, participants have been critical of the use of cost of production as "normal value." In this case, corn prices were readily available on both sides of the border, they could have been used, and likely they would have changed the dumping finding. But regulators appear to avoid this approach. This example is one among many of how arbitrary administrative rules might swing results.

[4] At existing exchange rates and all other things held constant, these estimates imply that the corn would be valued at about C$4.30 in southern Manitoba.

average dumping margin was determined to be 36 percent which was equal to US$1.01/bu. on the "normal" price of US$2.80/bu.

This stage of the investigation also found that the U.S. LDP and MAL programs, Marketing Loss Assistance Payments, and federal Crop Insurance programs constituted subsidization. The estimates were *US$0.32/bu. in 1998 and US$0.57/bu. in 1999 which represented 33 percent of the weighted average export price*. Applying the countervailing duty rules, this magnitude of subsidization was found to be "significant." CCRA announced these findings on November 7, 2000 and anti-dumping duties and countervailing duties were applied to all corn imported to the Prairies equivalent to ***US$1.58/bu.*** Duties of this magnitude effectively shut down imports of U.S. corn to the Prairies.

On February 5, 2001 the CCRA announced the results of their final investigation, concluding that subsidy and dumping of U.S. corn "**was not insignificant**" . . . **but slightly reduced the combined margin of US$1.30/bu.** composed of US$0.63/bu. for subsidization and US$0.67 for dumping. As a consequence of this finding, CITT initiated the next stage of the inquiry under the regional case rules into injury or potential injury to "all or almost all" producers on the Prairies.

FINAL DISPOSITION

The 2001 Annual Report (March 2001) of CITT summarizes the major findings and the final decision and disposition of the Manitoba corn case. CITT noted that the injury standard for a regional market is very stringent. The evidence must demonstrate that the imported product injured producers of "all or almost all" grain corn in western Canada. The following excerpts are provided almost verbatim but are presented in relation to the purpose of the paper. Comments follow each excerpt to reflect the role of this paper in the workshop.

CITT found that ***dumped and subsidized corn imports from the United States had caused prices of corn sold in western Canada to de-***

cline, causing financial injury to many domestic (corn) producers. This conclusion in a final report of a trade law administrative agency is somewhat unusual; in national cases it is common at this stage to determine that there was no injury caused to domestic producers, or that the degree of injury was not significant (*de minimus*). When significant injury is found, as this statement indicates, then the conclusion is to ensconce the duties. But this was a regional case and the rules require much more than this level of evidence. Following are the arguments related to determining what proportion of producers were injured.

CITT also reported that there was a certain proportion of commercial production that had not been "materially" injured. The rational for this conclusion was that "*some producers were able to achieve better than average prices for their corn despite the presence of dumped and subsidized imports from the United States.*" Analytically, this statement is tautological and trivial, unless CITT assumes there should have been one price for corn over the relevant period. That proposition would be taking the notion of the Law of One Price to the extreme. Clearly in any distribution of market prices, some prices are above and some must be below an (arbitrarily determined) mean. This wording also suggests that a market organization in which producers were paid a flat price (as in a pooled price) would help ensure a finding of injury.

> "*In addition, certain major corn users pay a higher-than-average price for domestic corn because it has qualities or characteristics that may be required in processing*."

As in any agricultural market, all product is not perfectly substitutable; some product may have added value for some purposes, other product, less. But the real question is: higher than what "average price?" Clearly according to CITT's own findings, the answer is "an average price that has been reduced by the claimed subsidized and dumped imports." Alternatively, this statement demonstrates the total irrelevance of market characteristics in the administrative process that is applied in assessing injury.

> "*It was apparent that some producers were able to achieve reasonable rates of return, even in the 1999/2000 crop year when U.S. import prices were at their lowest levels*."

To an economist, this statement reads much more like a value-loaded assessment than an evidentiary statement. In addition, simple logic says that if subsidized and dumped imports had not depressed prices, these particular producers would have had a **higher** rate of return. That conclusion would be consistent with evidence of economic injury. The dichotomy between the conclusions of CITT (and trade remedy law in general) and the way economists analyze market results comes about largely because injury in these cases is not determined in relation to the economic losses/costs created by the imports. **The criterion employed in these cases is an administrative concept—"*material injury*"—which means reducing returns below administratively defined costs of production.** This definition is extremely restrictive and its application to the broader issue of free trade and gains from trade creates problems. It is also one of the fundamental complaints by economists about the application of trade remedy law and it is particularly troublesome when applied to agricultural markets.

CITT identified another category of corn growers that was not affected by subsidized and dumped imports in the same way as producers that operate in the commercial market. . . . *Diversified farmers who have livestock operations and who also grow their own corn for feed . . are able to achieve "certain synergies between their animal and grain operations." The evidence showed that these producers have costs of production that are much lower than the industry average.*

Livestock manure is used as fertilizer, usually on all crops. Notice how the argument has shifted to cost of production from corn prices. Even though the dispute is about corn prices, livestock accounts became relevant to the analysis, meaning that the enterprise mix of farmers in Manitoba is part of the assessment of impacts of U.S. crop subsidization. If the livestock aspects of enterprise mix is important, in economic terms, other feed grains should be as well.

> "*On-farm users are also effectively insulated from most market price fluctuations*."

Although some of these TRL cases consider price variability contributions of imports, the author saw no reference in the documents about that being a criterion in this case. Fluctuations in prices are not levels of prices. Moreover, this CITT argument applies only if corn has no opportunity value which is certainly not the case for Manitoba corn—corn in southern Manitoba very decidedly has a market price and the price is readily available. In fact, CITT used time series data on Manitoba prices in its analysis. The impact of dumped and subsidized corn imports on **all** livestock producers in the area was not considered. Only if CITT had recommended the continuation of the duties and had initiated a third stage of the investigation to explore the "public interest" aspects of the duties, would the interests of all livestock feeders have been considered.

> "*Finally, corn grown for on-farm feed use was a significant and increasing part of the western Canadian corn growing industry, comprising as much as 30 percent of total production according to some estimates*."

The implication of this statement, reinforced by feed manufacturers in hearings and the U.S. Corn Producers in discussion comments on this paper, is that *injured corn producers would not increase acreage*. There are several reasons for expansion in corn acreage, not the least of which are the removal of freight subsidies and the increasing impossibility in Manitoba to produce economically wheat or barley for feed because of the increase in (FHB) disease. Corn growers, like any other prairie farmers, do not make their production decisions in isolation of other production possibilities. Their production decisions are made in the face of many factors. In this region those factors include rotational considerations, growing marketable feed, and an assessment of relative (not absolute) profitability of corn, cereals and oilseeds. All of these options, including corn, are influenced by field crop production in the United States because U.S. production has a direct impact on Canadian prices.

These arguments by CITT in support of their conclusions manifest a remarkable absence of basic economic principles (opportunity cost and value, arbitrage, relative profitability) and of market realities (array of market prices, array of production costs). This conclusion arises as a result of the application of administrative rules for determining material injury. The rules are applied in absolute terms and they are administrative estimates of conditions which may or may not exist. In addition, the application of regional rules are, as indicated, firm/enterprise specific, not product specific.

This latter observation has very important implications. If, for example, two separate regional corn cases were brought in Canada, one in a strictly mixed farming area (say Quebec) and one in a strictly corn monoculture area (irrigated southern Alberta), the same subsidization and dumping margins could produce injury (and permanent duties) in one region (Alberta), and nothing in the other region (Quebec). This polar- extreme finding would turn strictly on the organization of farms (enterprise mix). Such a conclusion flies in the face of simple economics and it would be contrary to positive, economics-based public policy. On a final point, the rules as they were applied in this case might also have been used on the interrelationship between corn and other feed grains as there are likely potential and real "synergies in corn/barley/wheat production combinations," especially under the disease conditions of crop production in Manitoba. If this relationship had been examined, it would have produced the opposite conclusion to livestock because depressed corn prices mean all feed grains in the area are depressed. The arbitrary inclusion of farm fed corn makes no economic sense.

CITT's main conclusion on injury was as follows:

> **"Thus, while many domestic producers who sold their corn on the commercial market had been [materially] injured by the subject imports, when the non-injured production represented by on-farm use was combined with the portion of commercial sales that had achieved reasonable returns, there was little doubt that the *'all or almost all' injury threshold had not been met in this case*."**

The duties were removed, effective March 7, 2001 and imported corn began to flow again.

CITT CONCLUSIONS AND SOME OBSERVATIONS

The inquiries by CCRA and CITT, the dual trade remedy agencies in Canada, concluded that subsidized and dumped U.S. imports reduce corn prices on the Prairies. This conclusion was not a major revelation to market observers because U.S. subsidies are reducing all crop prices on the Canadian Prairies. What may have been a revelation was the magnitude of the subsidization and dumping margins. The combined margin was originally determined to be US$1.58/bu. in the preliminary investigation, then revised to US$1.30/bu. These are large margins, both in absolute and relative terms. The trading price on corn in southern Manitoba in late 2000 was around C$2.80/bu. or about US$1.80/bu. These duties cut off the supply of U.S. corn for feed.

Putting aside for the moment the issue of accuracy of the margin estimates, in economic terms, the price effect of U.S. imports on the corn market in the Prairies is the critical issue, given that those imports reflect a heavily subsidized production system. Casual analysis of adjustment in futures and cash prices when the duties were imposed in November 2000 and their subsequent levels suggest an upward movement of $10–20/tonne on local corn, feed wheat and barley.[5] Certainly the impact extended beyond Manitoba. If the dumping margin had been determined by direct use of reference prices and found to be small or zero, the subsidization impact would still have been significant in economic terms.

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[5] To put these numbers in perspective, an average C$15/tonne for barley, wheat and corn represents between 30 and 40 cents per bushel. That further represents between $20/acre to $35/acre for producers in southern Manitoba at conservative yields, with corn being the larger amount because of its absolute yield advantage. Most producers in the area would be satisfied to receive a costless increase in net return, and even half the official margins over total costs would be extremely positive in terms of farm health. In economic equilibrium with free trade and no U.S. subsidization, these amounts should be larger because U.S. corn prices would be higher. Of course, this would create the undesirable spin-off of rising land prices on the Canadian Prairies!

Imposition of duties and cutting off imported corn threw the feed market in the intensive livestock area of Manitoba into major confusion and uncertainty. Hedges on corn were immediately rendered useless; forward buying of feed became uncertain; feed costs rose unpredictably; and the market area for feed was extended further westward contributing to higher freight costs on feed grain. These outcomes are not trivial and it is not at all surprising that there were strong opponents in the livestock and feed sectors to the duties. In November and December 2000, holding a long cash corn position in Manitoba was a decided asset for livestock feeders, a feedlot or feed mill operator, or grain dealers. However, a long cash corn position for members of the MCGA produced some symptoms not unlike being declared infected with a serious communicable disease.[6]

Table 4 summarizes some of the impacts of these trade actions and the distribution of costs and benefits of the actions. The categories of costs and benefits are defined in relation to economic considerations and in terms of criteria deduced from objectives of free trade agreements. Without conducting quantitative analysis, it appears that these actions produced a negative sum game outcome.[7]

In the author's view, the Manitoba corn case has the markings of a seminal case in the application of trade remedy actions as a solution to agricultural trade disputes for two reasons:

- The estimate of the combined subsidization and dumping effects was incredibly large, representing about 90 percent of the trading price in the affected area. The estimate was conducted in accordance with usual administrative rules, and was not seriously challenged in terms of accuracy.[8] A subsidization/ dumping valu-

[6] These impacts of the imposition of duties reinforce the comments made by two bankers at the workshop indicating they are reluctant to lend to firms subject to trade actions.
[7] Loyns, Young, and Carter (2001) reported the same result in the 1998 R-CALF case.
[8] At a similar conference to this one in Chicago in August 2001, Carole Goodloe criticized the administrative approach to determining dumping margins in the Manitoba corn case. Her comments were directed at the process of determining dumping margin, not its application in this particular case. That is the perspective that is intended in this paper as well.

Table 4: Descriptive Summary of Costs and Benefits of the MCGA Action on U.S. Exports.

Factor		*Bearer*	*Prairie Region*	*United States*
COSTS:	***Process***	Producer Association	√√	very small
		Government	some federal	small
		TRL Agencies	√	some
	Corn Acquisition	Dealers	√√√	0
		Livestock Feeders	√√√	0
	Trade Relations	Corn Producers	damaged	?
		Federal Governments	improved	improved
		Provincial/State Governments	0	0
BENEFITS:	***Corn Price***	Corn Producers	√√ short term	almost 0
	Feed Wheat/Barley Price	Wheat/Barley Producers	√√ short term	0
	Reduce subsitization		n.a.	no
	Reduce dumping		n.a.	no
	Remove irritant		no	n.a.
Create Freer Trade Environment			no	no
Improve Economic Efficiency			no	no
BALANCE SHEET			**NEGATIVE**	**NO CHANGE**

ation of the magnitude determined is very unusual in NAFTA agricultural cases.

- The finding of no-injury and termination of the countervailing and dumping duties turned on ”regional” (as opposed to “national” case) rules. CITT described the rules as being very “stringent” which is an accurate description. Those rules require that “all or almost all” of grain corn producers in western Canada were injured.

Apparently a 90 percent rule was applied. The corn growers case missed that threshold by a small amount, according to the methods used to calculate injured producers. This finding of no injury has a very significant implication—it seems that an already extremely high estimated margin could have been double, triple or even more, and the same lack of injury would be determined. In situations where a region has some production, it is contrary to economic logic that injury is not related to the magnitude of subsidization and dumping. In fact, a reasonable economic hypothesis would be that injury is directly related to the level of the margin through price and the level of market integration. These particular markets are highly integrated because there are no trade barriers beyond the differential subsidization levels.

The injury arguments posed for the finding of less than “all or almost all” production were wrong in several economic and market analysis terms. They ignore opportunity cost/value, arbitrage, relative profitability and enterprise accounting principles; they lead to the absurd implication that if all corn produced in western Canada were fed on-farm there would be no subsidy or dumping impact, and no cause for action. Size of subsidy or dumping margins would not alter that absurd conclusion. In other words, the supply curve for corn in Manitoba is deemed to be perfectly inelastic, another absurdity.

In relation to Canadian farm and food policy, this case typifies the inherent Canadian tendency to promote divergent and counterproductive interest representation based on regional and commodity lines, to the point of inhibiting policy development and collective gains associated with pro-

moting "national interest."[9] The intervention by the livestock and livestock feed sector on the Prairies, particularly in Manitoba, successfully defended the status quo of accepting subsidized imports. At the same time, because of subsidized grain markets in the United States, the competitive (not comparative) advantage in livestock production is moving toward the northern tier states, away from the Canadian Prairies where reduction of a major subsidy (freight for grain exports) had created a comparative advantage. This situation demonstrates the serious dilemma for livestock producers and the entire feed/feeding sectors in Canada in the presence of U.S. crop subsidization. They are forced to be U.S. competitive on feed costs in the livestock sector, but the U.S. level of subsidization has created the situation where that objective, relative to normalized market conditions, cannot be achieved. Accepting subsidized corn from the United States reduces the risk of becoming even less competitive, at the same time increasing economic costs associated with distorted markets.

Similarly the relationship between corn growers in Manitoba and Ontario has been fractured by this action. Ontario corn producers fought one of these battles in the 1980s and decided they did not want another one. In the meantime, they have apparently secured public support for corn processing plants in the province which implies motivation for a "harmonious" corn market in Ontario. To head off a second national trade action, the Ontario corn growers passed a motion that they opposed such a trade action, effectively killing the prospect of a larger, more visible, and potentially successful national initiative. Despite the reality (and the CITT finding) that the U.S. subsidy impact extends across Canada, corn grower interests were revealed to be different between eastern and western Canada vis-á-vis subsidized imports. None of the other crop interests made the connection between this case and their market prices and ignored the corn growers case.

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[9] Dr. Hartley Furtan observes in a recent book on agricultural policy in Canada that, because of regional, commodity and distance characteristics of Canadian agriculture, we may be unmanageable in a policy sense. (Personal communication with the author). There are innumerable examples of interest group posturing and government indecision that support this hypothesis. The outcome of this case certainly does not reject the hypothesis.

Together, the Ontario corn growers and the prairie livestock and feed sectors, provided the public (and perhaps their governments) with the image that subsidized and dumped corn from the United States is necessary to our economic existence, and that these matters are acceptably determined entirely south of the border. The manner in which the federal and provincial governments approached this action (there were no visible statements, analysis or positions put forward by either level of government) reinforces this observation.

On the matter of overall U.S./Canadian trade relations, this case probably did not even count. U.S. producers, other interest groups, and governments did not intervene in the process. This non-representation of "aggrieved" parties in a trade dispute may be precedent setting and it may imply that what occurred behind the scenes was much more important than the transparency of processing the action. In production terms, even though the situation is representative of a much wider set of producers, this action was small enough and isolated enough to be seen to be immaterial.[10]

At the government-to-government level (United States and Canada), this case likely had a small positive contribution to U.S./Canadian relations. That ironic outcome results from the fact that U.S. crop subsidization and its effects on prairie crop economics did not get much exposure from the case. Had the case gone to the next level of public interest hearings and the issue of dealing with semi-permanent loss of corn imports and livestock interests, greater attention would have focused on these issues. The action did not, and probably could not, address the rela-

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[10] A reviewer of a draft of this paper observed that regional rules must be much tighter than national rules to prevent repeated small group, harassment-type cases. While there is some substance to that argument, harassment is certainly not just a characteristic of small groups; governments may even be involved (Stiglitz 1997). The point is, this instrument is simply not suited to the task of dealing with serious subsidization and dumping, nor to promoting free-trade conditions. The logical starting point for reform when a "free trade" agreement exists is within the agreement. Knutson and Loyns present some observations on that argument in a paper on a "NAFTA Policy Leadership Commission" (included in this set of papers).

tionship across the feed market on the prairies of US. corn, wheat and soybean subsidies but those relationships do exist. From the standpoint of farm enterprises, the U.S. crop subsidies are more important in the grains sector than they are in the livestock sector. In economic, free trade, and policy harmonization terms, this isolated, relatively innocuous case involving a virtual handful of Manitoba corn growers, taking a position against the entire U.S. corn production system, had enormous symbolic importance which did not come through. It pitted Manitoba corn growers against the Canadian livestock and commercial feed sectors—U.S. subsidies won.

In the end, this case, like so many others, challenges one of the primary dispute resolution mechanisms being used among the NAFTA partners to settle policy and trade differences in agriculture. In an upcoming book from the Center for Agricultural Policy and Trade Studies at North Dakota State University (2002), Jabara and Reeder of the U.S. International Trade Commission make the point that NAFTA was never intended to achieve "free trade," rather it was intended to promote greater trade among the three countries and to achieve deregulation in some sectors. Assessed within that context, undoubtedly NAFTA has achieved considerable progress. In fact, addressing that issue was the purpose of the 2000 Policy Disputes Information workshop, and the results of the workshop supported this conclusion (Proceedings 2001) as have several others. Trade has increased and there has been major improvement in the terms of trade in many areas.

THE CORN CASE, TRADE DISPUTES AND NAFTA

The purpose of this paper and other case studies in the workshop was to examine how trade remedy laws are applied and how they contribute to resolution of trade disputes: are trade actions under domestic trade remedy law positive or negative contributors to longer-term freer trade and trade harmony among the NAFTA partners? The author's conclusion from reviewing the Manitoba case, and others presented in these workshops in the past, is that ***in economic terms, trade remedy laws do not fit the problem and their application is not contributing to more even terms***

of trade.[11] They are costly, they are divisive, and there is not much evidence that they effectively resolve trade and policy differences. Non-economists can argue that conclusions like these are reflective of a profession which is "not in the game." Certainly economics is not the only relevant discipline. However, free and increased trade are institutional arrangements which are grounded in economic principles. Unless one believes that free trade agreements are a form of formalizing a leadership-followership association, they are signed because the parties expect net economic benefits from their existence. When trade agreements designed to accomplish economic objectives are implemented, economic conduct and consequences have to work if the objectives are to be achieved. The purpose of freer trade is not to provide employment to particular categories of administrators and consultants, nor is it to provide a mechanism to allow groups or nations to protect the status quo. The politicians and the officials in three countries who negotiated NAFTA had a vision of the organization of the North American economy for the benefit of their own nations and for the benefit of the region. That organization is certainly grounded in economics, business and more balanced trading relations within the region.

Trade remedy law as it is being applied is not contributing to that vision in the agricultural sector. It is not entirely clear from other papers in this workshop that the number of trade disputes is increasing under NAFTA. However, it is clear that there are some disputes processed under trade remedy law that are caused by increased trade because of NAFTA, and there is clear evidence that the application of trade remedy law is costing some NAFTA sectors significant amounts of resources. Certainly the most visible dispute resolution mechanism is the application of domestic trade remedy law.

This particular case also demonstrates an important, basic and growing flaw in the NAFTA. Canada and Mexico, both significant crop and livestock production sector partners within NAFTA have created "nearly"

[11] The Stiglitz article (1997) reaches the same conclusion from a more comprehensive review of the application of U.S. trade remedy law.

open borders in crop and livestock commodities and their products,[12] but the resulting trade is played out on a field where the dominant partner has been increasing subsidies to field crop producers. Those subsidies impact all the way through crop and livestock production.[13] Given the U.S. support to its producers, there are only two ways to level the playing field and to achieve the economic efficiencies contemplated under "free trade." The preferred economic option is to achieve balanced subsidization by removing it where it exists—in the United States. The other option is to balance subsidies by increasing them in Canada and Mexico, a solution bearing a host of negative economic consequences. Except for one provincial jurisdiction in Canada, that solution is claimed to be too expensive to be considered by either country. Retaining the status quo produces consequences and distortions like those discussed in relation to this corn action.

This paper and many others have demonstrated that trade remedy law contributions are at best evasive, and at worst counterproductive in settling most agricultural disputes. Clearly they are not tools that may be used to alter subsidy imbalances, particularly those that exist in the North American crop sector. As a result, we have to conclude that a level playing field within NAFTA for prairie corn growers, for most Canadian crop and livestock producers, and for most Mexican producers in these areas is not on the NAFTA agenda, nor is it likely to be. NAFTA does not even deal with these issues. Some policy analysts, including the discussant on this paper, use this observation to indicate that NAFTA is not part of the problem. That line of logic fits neither the author's views nor the raison d'Ltre of the workshops. From the economic perspective and from the economic evidence that has been generated by these workshops, major changes in

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[12] "Nearly" is the key word. The author of this paper is well aware of the lingering impediments to open trade in the crop and livestock sectors, and he is a strong supporter of negotiating them away. In fact, slowly, some progress is occurring. The issue of crop subsidies in the United States has become a new issue since NAFTA was put in place and it is an issue that dwarfs all others in terms of costs and economic significance.

[13] If there is any doubt about the validity of this statement, consider the "adjustments" that are being made in the new U.S. Farm Bill on soybeans and the export to the United States of Canadian weanling pigs.

both trade and policy dispute resolution are indicated. The executive summary circulated from the 2001 Policy Disputes Information workshop closed with the following conclusion:

> *Currently, there is a shortsighted tendency to protect domestic industries, rather than to plan for the long-term benefits to be gained from market integration.* (Executive Summary, 2001).

The MCGA case against imports from the United States demonstrates this conclusion yet another time, and it demonstrates that Canadian trade remedy law does not contribute to resolving major subsidization in neighboring markets. And it demonstrates that, for all the positive contributions of NAFTA to North American trade, NAFTA is of little use in achieving balanced terms of trade in the crop sector.

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APPENDIX

The data in Table A.1 indicate that in Canada, corn and barley are about equivalent as feed grain sources, and wheat is much smaller but still significant. Over the 1990s, wheat has been declining in production but it has been reasonably stable as a feed source. Corn production and imports are increasing. Barley production and use as a feed grain have grown. Feed barley exports from Canada have fallen significantly over this period.

Table A.1: Canadian Feed Grain Use 1991-92 to 2000-01 Averages.

CORN:	
Production	7.3 million metric tonnes ↗
Imports	1.1 mmt ↗↗
Exports	0.4 mmt ↘ since early 1990s
Human and Industrial Use	1.6 mmt ↗
Feed, Waste, Dockage*	**6.4 mmt** ↗
BARLEY:	
Production	12.4 mmt ↗
Imports	< 0.1 mmt
Exports and Domestic Human Use	5.5 mmt ↘
Feed, Waste, Dockage*	**6.5 mmt** ↗
NON DURUM WHEAT:	
Production	21.9 mmt ↘
Imports	—
Exports and Domestic Human Use	18.7 mmt ↘
Feed, Waste, Dockage*	**2.4 mmt** →

Note: The ‘Feed, Waste, Dockage’ category is a derived residual.
Source: Canada Grains Council, *Statistical Handbook 2001.* The wheat numbers were corrected to reflect 10-year averages.