

MANITOBA CORN GROWERS ASSOCIATION VERSUS U.S. CORN EXPORTS

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INTRODUCTION

Dr. Loyns presented a very interesting paper. It chronicles the anti-dumping (AD) and countervailing duty (CVD) action brought under the Canadian trade remedy laws by certain Canadian prairie corn producers in the case of the Manitoba Corn Growers Association Inc. (MCGA) versus U.S. Corn Exports. As Loyns recounts, the ultimate disposition of this case was to deny relief to the petitioning industry because it was unable to demonstrate the applicable standard for material injury. He concludes, "This particular case also demonstrates an important, basic and growing flaw in NAFTA." (Loyns, 2003).

We, the National Corn Growers Association (NCGA), would offer several comments on the paper from the perspective of our 32,000 members and the 300,000 growers whose interests we represent. On behalf of the growers, the NCGA works on six major issues: biotechnology, ethanol, research and market development, transportation, and two that are linked to this discussion, U.S. farm policy and trade. No sector of the U.S. economy is more dependent on trade than agriculture, and corn growers are significantly influenced by trade. One of every five rows of U.S. corn is exported, and exports of other value-added corn products such as meat, dairy, poultry and other foods add to the importance of international trade to the NCGA members and the other growers that we represent.

OUR CONCLUSIONS

We respectfully disagree with the contention that the failure of the MCGA to obtain AD or CVD relief in this case was either the result of a questionable decision by the Canadian International Trade Tribunal (CITT),

or because of a “flaw” in NAFTA. Manitoba corn production is a small and recently developed regional industry that emerged because of increased hog production among Manitoba farmers. In its biggest year the Manitoba crop was barely 10 million bushels. Much of that corn is fed on the farm, and the recent lower prices in the corn market—suffered by both U.S. and Canadian corn farmers alike—had an offsetting effect in Manitoba. Commercial sales prices were lower, but so also were input costs for hog production.

NAFTA did not create the rules that govern under the Canadian trade remedy laws. In forming NAFTA, the United States, Canada and Mexico agreed to permit each country to continue to apply its AD and CVD laws to the others’ imports. The MCGA attempted to invoke Canadian law, and was found by a Canadian legal tribunal not to have met the Canadian legal requirements for relief. If Loyns’ argument is that NAFTA is inadequate because it did not create a perfectly level playing field, the Canadian government’s decision to favor the protection of Canada’s eastern poultry and dairy sectors rather than to promote a more trade liberalizing agenda contributed significantly to establishing the current trade environment.

BASIS FOR CONCLUSIONS

We base these conclusions on ten points:

- We think it is difficult to attribute the failure of the MCGA to obtain relief in this case to a “flaw” in NAFTA.

The decision was rendered by CITT and under Canadian law. Pursuant to NAFTA, the member countries are free to retain their trade remedy laws, including AD and CVD actions and to apply those laws to one another’s exports. Indeed, there have been several AD and CVD cases brought since the inception of NAFTA, and various industries in the several NAFTA member countries have successfully invoked those laws to obtain relief in the form of special and additional duties. NAFTA does, however, provide a special mechanism that provides for a bilateral review of trade actions to

prevent a member country from inappropriately granting relief where the facts do not so merit.

- In this case however, the special review procedures did not have to be invoked for the simple reason that the MCGA was denied relief by its own government.

One might understand the paper's complaint about a "flaw" in NAFTA had the MCGA prevailed before their national tribunal, and subsequently had that decision overturned in the course of a special NAFTA review. But that was not the case. The Canadian authorities determined that the MCGA had not met their burden for demonstrating material injury under Canadian law. Given this basic fact, it is difficult to agree that this case represents a "flaw" in NAFTA.

- We would note our disagreement with the initial decision of the Canada Customs and Revenue Agency (CCRA) in concluding that U.S. corn had been "dumped" in Manitoba.

Under both national and international law, the preferred method of determining whether a product has been dumped is to compare prices in the export market with the prices for the like produce in the home market where the product originated. Without a question, there was adequate information about U.S. prices to conclude that no dumping had occurred and there was no reason therefore, for CCRA to fall back in its investigation on a less economically coherent approach, the so-called "unprofitable prices" or "normal value" rule.

- Interestingly, while Loyns is critical of CITT's decision in this case, he is notably tolerant of the CCRA's failure to proceed on the basis of comparison with home market prices and its questionable foray into cost of production methodology.

The Marketing Loan and Crop Insurance programs that were the subject of the CCRA's investigation are not export subsidy programs, but rather domestic support programs designed to provide a safety net for U.S. farm

income. The marketing loan rates during the period had been set under the terms of the *Freedom to Farm Act* well below traditional marketing clearing levels. If the Marketing Loan and Crop Insurance programs had the effect of dramatically increasing production, there might be a stronger argument that they lowered prices or caused excessive exports. But, U.S. corn production has not increased over the past four years when low world prices began to trigger marketing loans. Indeed, U.S. corn production in 2001 (9.55 billion bushels) was almost the same as it was in 1998 (9.76 billion bushels).

- The annual U.S. corn crop is over 9 billion bushels, much of which is located in close proximity to the Canadian border. The Manitoba crop, in its biggest year, was barely 10 million bushels. Most of the Canadian crop (96 percent) is grown in Ontario and Quebec and the producers in those provinces actually opposed trade actions against the U.S. corn imports. Even if there were no Marketing Loan or Crop Insurance programs in the United States, Manitoba corn producers would still face competition from U.S. imports.
- It should also be noted that U.S. wheat and barley benefit from precisely the same government programs as U.S. corn (the Marketing Loan and Crop Insurance programs).

If these programs were subsidies that promoted unwarranted U.S. exports to Canada, then why have there been no significant wheat and barley exports to Canada during this same period? Indeed, during the very same period, almost all bilateral trade between the United States and Canada in wheat and barley has been U.S. imports from Canada.

- The failure of the MCGA to obtain relief under Canadian law was directly attributable to its decision to prosecute the action as a “regional industry.”

The paper points out that there is a stricter legal standard of injury applied when the case is brought by a regional industry rather than by a national

industry, Dr. Loyns' own description of CITT's decision indicates why this stricter standard makes good policy sense.

- Manitoba farmers are not monocultural producers who grow corn exclusively or even predominantly; they are diversified farmers who grow primarily wheat, barley and oilseeds and have increasingly moved into hog production.

While corn production has increased recently, this increased production has occurred while (and to a great extent because) hog production is increasing. A significant portion of the corn grown in Manitoba is fed on the farm to hogs. And while corn prices have been low in both the United States and Canada since 1998, have Manitoba farmers been materially injured by these low prices? CITT determined that many of them had not. CITT found that "diversified farmers who have livestock operations and 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."

- Loyns' complaint about NAFTA apparently is that the agreement did not go far enough to integrate the North American agricultural markets. He suggests that the NAFTA negotiators should have pursued the elimination or the equalization of governmental support rather than relied on the application of trade relief laws to protect regional producers.

If so, Loyns' criticism is directed at the Canadian government that steadfastly refused to negotiate the type of comprehensive agricultural deal that he would appear to favor. Recall that when NAFTA was negotiated in the early 1990s, there was no substantive negotiation between the United States and Canada on agriculture. The agreement on agriculture is not a single agreement; rather it is three two-way agreements. The United States negotiated a substantial market liberalization agreement with Mexico. Mexico and Canada negotiated a rather small agreement limited to a few products. The United States and Canada agreed to extend into NAFTA the agree-

ment on agriculture that they had previously reached in the negotiation of the Canada/United States Free Trade Agreement in 1988 which preserved Canada's ability to protect certain "supply control" Canadian agricultural sectors.

- The reason for Canada's refusal to negotiate a more liberal NAFTA agreement on agriculture is clear; Canada was unwilling to accept a free trade agreement that would have provided real access opportunities to the Canadian market for U.S. dairy and poultry products.

This decision was an accommodation to Canadian dairy and poultry producers in Quebec and Ontario who felt they needed protection, in the form of very high tariff walls, from their more efficient U.S. competitors. When Loyns states that NAFTA "created 'nearly' open borders in crop and livestock commodities and products," he may have forgotten Canada's decision to take dairy and poultry market access off the table in NAFTA negotiations, and the political importance of that decision on both Canada and the United States.

Loyns writes that the failure of the Canadian government to provide relief to the MCGA in the case under discussion indicates "corn grower interests appear to be different between eastern and western Canada vis-à-vis subsidized imports." Indeed, the decision taken by the Canadian government in both NAFTA and the WTO Uruguay Round negotiations not to pursue a more aggressive trade liberalizing agenda demonstrates that the east/west split in Canadian agricultural and trade policies extends well beyond corn.

FINAL COMMENTS

At the time of this case, the NCGA chose not to become directly involved because of the high costs of entry. The NCGA solicited information from a variety of law firms regarding the elements of the case and the estimated costs for being formally represented. We determined that the costs were prohibitive for the NCGA's involvement. We chose instead to

provide background information and comments through the U.S. Trade Representative's office. We would generally agree with Loyns' final comments. Trade remedy laws are at best evasive and at worst counterproductive in settling most agricultural trade disputes. They need continued and ongoing review and refinement. In this particular case our decision not to be directly involved paid off. But this decision was based on economic reasons and not on strength of argument or principle.

We also agree with Loyns in favoring the elimination or the equalization of subsidies throughout North America as a way of "leveling the playing field." However, a level playing field also requires the elimination of tariff and non-tariff barriers to trade. And as long as there are protected sectors and interests in any of the three countries, there is no level playing field.

REFERENCE

Loyns, R. M. A., "Manitoba Corn Growers Association Inc. versus U.S. Corn Exports: An Application of Regional Market Rules under Canadian Trade Remedy Law." In R. M. A. Loyns et al (editors). *Keeping the Borders Open*. Proceedings of the Eighth Policy Disputes Information Workshop. University of Guelph, Texas A&M University and El Colegio de México. Friesens printers, Winnipeg. March.