

CRS Report for Congress

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U.S.-Canada Corn Trade Dispute

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Summary

On April 20, 2006, the Canadian International Trade Tribunal (CITT) issued a final ruling of no injury in an anti-dumping (AD) and countervailing (CV) investigation of Canadian imports of U.S. unprocessed grain corn. The CITT finding reverses an earlier (December 15, 2005) preliminary positive injury finding by the Canada Border Services Agency (CBSA) that had resulted in provisional duties of \$1.65 per bushel applied to imported U.S. corn. Following the CITT finding, no further AD/CV duties will be imposed on U.S. corn, and all provisional duties collected following the preliminary CBSA ruling will be refunded.

U.S. trade officials, policy makers, and market participants, as well as Canadian corn users, have expressed satisfaction with the CITT ruling. In contrast, Canadian corn growers have voiced disappointment with the CITT ruling and have suggested that they might pursue further trade sanctions against imports of U.S. corn. This report provides background for understanding the U.S. and Canadian corn trade dispute, as well as historical and potential future developments in Canada's investigations of imports of U.S. corn. This report will be updated as events warrant.

Background

The United States is the world's leading producer and exporter of corn. Since 1980 U.S. corn production has accounted for over 40% of world production, while U.S. corn exports have represented over two-thirds of world corn trade. Canada is also an important producer and consumer of corn. However, Canada's average production of 8.7 million metric tons (MMT) annually since 2000 is markedly smaller than U.S. average annual production of nearly 260 MMT.

Although it is grown widely throughout the world, corn grows best in temperate conditions with deep, fertile soils such as exist in the U.S. Corn Belt. Corn's agroclimatic requirements, coupled with Canada's northerly latitudes, limit the extent of Canadian corn planting to the more southerly regions of Ontario and Quebec (see **Figure 1**). As a result, growth in Canada's corn production has been limited almost entirely to yield growth. In contrast, strong and steady domestic demand for corn — driven by the livestock (dairy,

swine, and poultry) and ethanol sectors — has outpaced domestic production and made Canada a net importer of corn, primarily from the United States, since the early 1990s (see **Figure 2**).

Figure 1. Eastern Canada Corn Production Zones

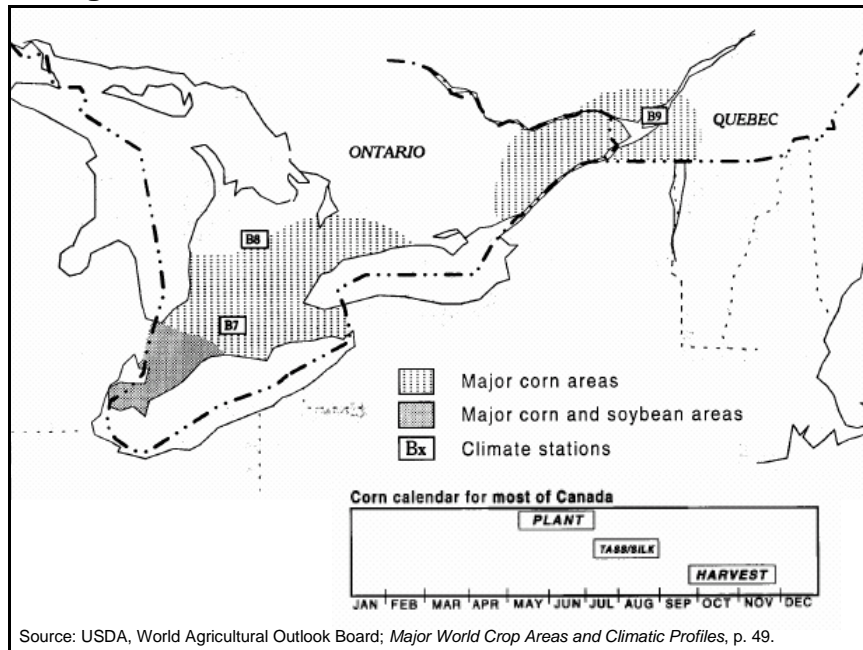
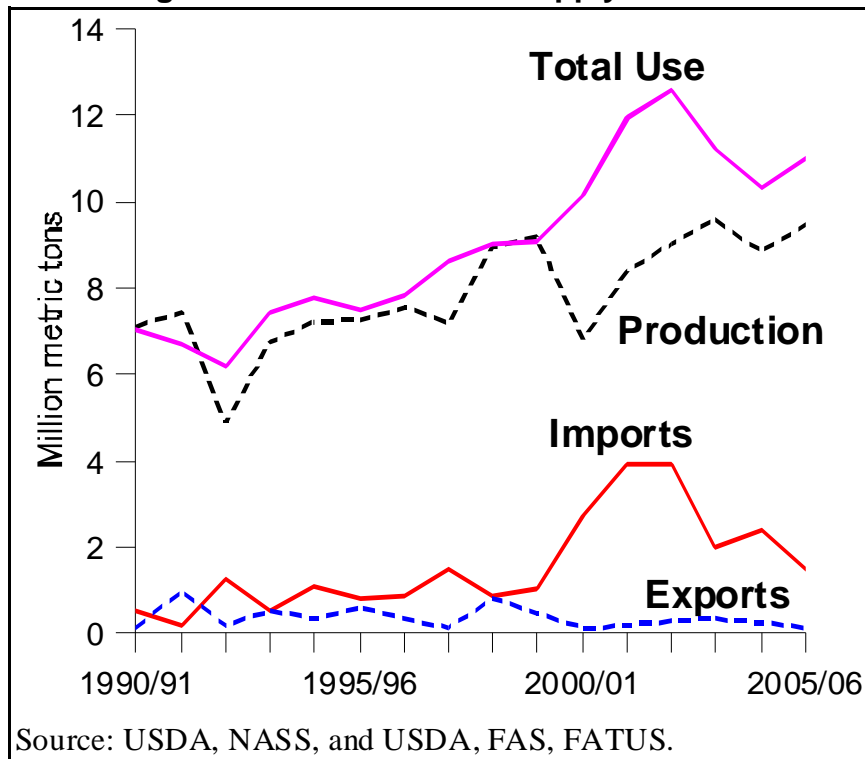


Figure 2. Canada's Corn Supply and Use



The elimination of tariffs on corn trade between the United States and Canada, first under the U.S.-Canada Free Trade Agreement (FTA) and later under the North American Free Trade Agreement (NAFTA), have facilitated corn imports into Canada from the United States and strengthened the integration of the North American livestock feeding industry. Since 1989, over 99% of Canada's corn imports have come from the United States. During the 1990s, U.S. corn exports to Canada averaged less than 1 MMT per year; since 2000, they have averaged almost 2.8 MMT per year. The surge in imports of U.S. corn occurred at a time when U.S. government program payments to the corn sector were also growing. During the 1990s, U.S. corn program payments averaged \$2.7 billion per year; since 2000 they have averaged nearly \$5 billion per year. The increases in both U.S. corn program payments and imports of U.S. corn drew the attention and ire of Canada's corn-producing sector, which claimed that U.S. corn exports were being facilitated by large U.S. government payments and being sold into Canada at less than the cost of production.

Canadian Corn Growers Seek Action

In August 2005, the Canadian Corn Producers — a coalition comprised of the Ontario Corn Producer's Association, the Fédération des producteurs de cultures commerciales du Québec, and the Manitoba Corn Growers Association — announced that they would pursue action on three separate fronts against what they perceived as “unfairly traded U.S. grain corn imports.”¹ First, they asked the Canadian government to include U.S. grain corn imports on the list of products targeted for retaliation by Canada against the United States for the U.S. refusal to repeal the Byrd Amendment.² Second, they asked the Canadian government to commence World Trade Organization (WTO) dispute settlement proceedings by requesting consultations with the United States regarding the alleged “illegality of U.S. grain corn subsidies.” Third, Canadian corn producers filed a domestic trade remedy complaint under Canada's Special Import Measures Act (SIMA) for the alleged “injurious subsidization and dumping of imports of U.S. corn.”

Dumping occurs when goods are sold to importers at prices that are less than their selling prices in the exporter's domestic market or at unprofitable prices. If proven, dumping is addressed by the imposition of anti-dumping (AD) duties. Subsidizing occurs when imported goods benefit from government financial assistance in the exporting country. If proven, subsidizing is addressed by the imposition of countervailing (CV) duties. Canada's SIMA protects Canadian producers from the damaging effects of both of these unfair trade practices.

¹ Ontario Corn Producers' Association, News Release, August 31, 2005, available at [<http://www.ontariocorn.org/newsrel/newsrelease8.31.05.pdf>].

² The “Byrd Amendment,” or the Continued Dumping and Subsidy Offset Act (CDSOA), is a U.S. law providing for the distribution of import duties collected as a result of antidumping or countervailing duty orders to petitioners and other interested parties in the investigations that resulted in the orders. For more information on the Byrd Amendment, see CRS Report RL33045, *The Continued Dumping and Subsidy Offset Act (“Byrd Amendment”)*.

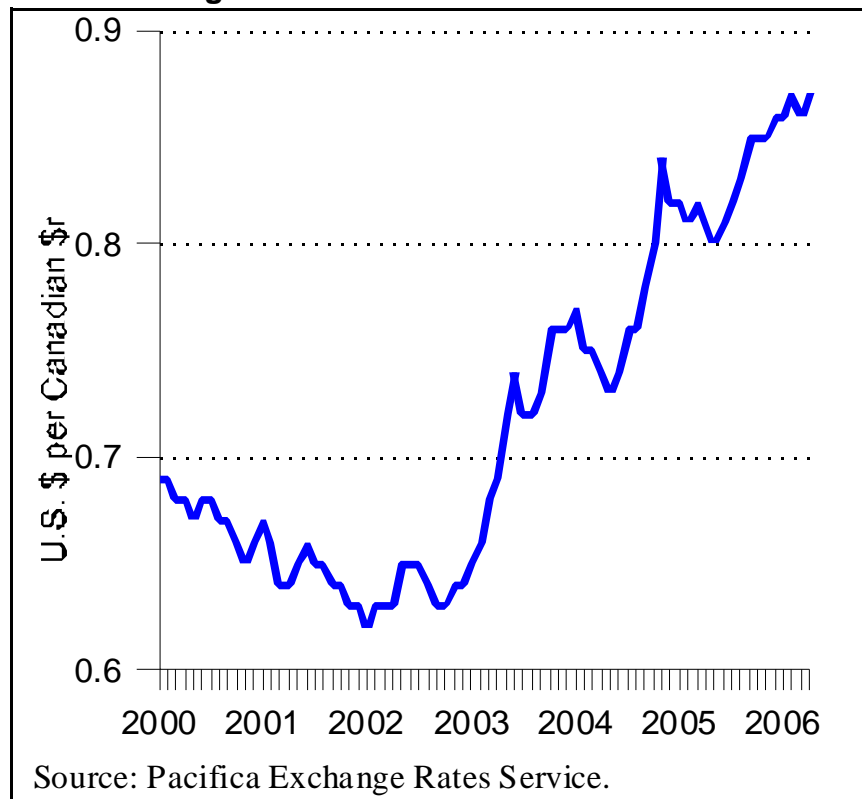
Canadian AD/CV Duty Investigation of U.S. Corn

On September 16, 2005, the Canadian Border Services Agency (CBSA) announced that, in response to the trade remedy complaint filed by the Canadian Corn Producers, it was beginning an investigation into the alleged dumping and subsidizing of grain corn from the United States. (Unprocessed grain corn includes whole-kernel grain corn and grain corn that has been milled to a limited degree, i.e., milled grain corn, regardless of its physical form, that preserves all the constituent parts of whole kernel grain corn and is chemically identical to whole kernel grain corn. The investigation excluded seed corn, sweet corn, and popping corn.)

At the same time that CBSA was conducting its investigation, Canada's International Trade Tribunal (CITT) also began a parallel investigation to determine whether imports of U.S. corn were harming Canadian producers.

U.S. Secretary of Agriculture Mike Johanns and U.S. Trade Representative Rob Portman issued a joint statement expressing their disappointment that Canada was proceeding with a formal AD/CV duty investigation, and said that the United States believes that Canada's petition calling for the investigation lacked "sufficient evidence of injury" to justify initiating such an investigation.³ In addition, they pointed out that U.S. corn exports to Canada have actually declined during the two most recent years (2003/04 and 2004/05), while Canadian corn production has increased (see **Figure 2**).

Figure 3. The Canadian Dollar Has Strengthened Against the U.S. Dollar Since 2002



³ USDA News Release No. 0382.05, September 16, 2005.

U.S. officials argue that a 46% drop-off in Canadian imports of U.S. corn the past two years coupled with a steadily strengthening Canadian dollar (**Figure 3**), which makes imports cheaper *ceteris paribus*, suggest that economic forces other than U.S. dumping or subsidies may have accounted for increased Canadian imports of U.S. corn and weaken Canada's case.⁴ In addition, 20 Canadian corn users from the livestock, food processors, and ethanol sectors voiced their disagreement with the Canadian Corn Producers' accusation that imports of U.S. corn are either dumped or subsidized and expressed their opposition to this case moving forward.⁵

On November 15, 2005, the CITT announced its determination that there was reasonable evidence that the dumping and subsidizing of unprocessed U.S. grain corn caused injury to Canada's domestic industry.⁶ On December 15, 2005, the CBSA announced its preliminary determination of dumping and subsidizing of U.S. grain corn. As a result, provisional duties of \$1.65 per bushel were imposed payable on imports of U.S. corn at any time on or after December 15, 2005, including a provisional AD duty of \$0.58 per bushel and a provisional CV duty of \$1.07 per bushel. (All amounts are in U.S. dollars.)

Canadian Government Proposes AD/CV Duty Rebate Program

Following numerous complaints by Canadian corn users, the Canadian government (mid-December 2005) announced a duty-relief program and a duty-drawback program designed to help the livestock and other Canadian corn user groups obtain at least a partial rebate of the \$1.65 per bushel punitive duty.⁷ The duty rebate programs would give an exemption to the tariff for Canadian corn users who import corn from the United States for use as an input, then send the finished product back outside the country. A corn user would apply for the duty rebate as the imported corn is re-exported in the form of a value-added product. Exports are not restricted to the United States, but exports must be made within four years of the release date of the imported corn.

Some market analysts expressed initial concerns that the duty rebate program would contribute to increased U.S. imports of Canadian agricultural products, particularly live hogs and processed pork products, since Canada's pig industry was a major user of imported U.S. corn.⁸ U.S. trade officials voiced an additional concern. They suggested that the duty-drawback program could result in U.S. trade action against Canada based on how such a duty-rebate program was implemented. For example, suppose that imported U.S. corn was fed to swine that were then slaughtered and processed into various meat cuts such as pork chops. Then, suppose that the Canadian meat packer exported the pork chops to the United States and claimed a certain share (say 30%) of the value of that pork

⁴ World Perspectives, Inc., "Canada Moves to Investigate U.S. Corn," by Dave Juday, Sept. 19, 2005.

⁵ Statement of the U.S. Trade Representative, Dec. 16, 2005.

⁶ CITT, *Dumping and Subsidizing: Determination*, Preliminary Injury Inquiry No. PL-2005-001, Grain Corn, Nov. 15, 2005; [http://www.citt-tcce.gc.ca/dumping/preinq/determin/pi2f001_e.asp].

⁷ Cattlennetwork.com; "Farmers to Get Rebates On U.S. Corn Tariff," Dec. 23, 2005.

⁸ *ProFarmer*, Vol. 34, No. 4, "So... did you know they could get the \$1.65 back?" Jan. 28, 2006.

chop as imported U.S. corn meritorious of a duty-drawback. If the true corn value-share of the pork chop were only 10%, than a duty-drawback based on a 30% corn share would represent an export subsidy, which is illegal under WTO rules.

CITT Removes AD/CV Duties on U.S. Corn

On March 15, 2006, the CBSA announced a final determination of dumping and subsidizing, and stated that it would continue to impose the \$1.65 per bushel tariff on imports of U.S. corn until the CITT concluded its investigation of injury to Canadian producers. Shortly thereafter, on March 17, 2006, the United States requested WTO dispute settlement consultations with Canada concerning Canada's imposition of provisional AD/CV duties on unprocessed U.S. grain corn. In its WTO request, the United States' arguments included an accusation that Canada's CITT had relied on weak causality between imports and injury, while ignoring other candidates more likely causing injury, such as exchange rate movements and unusually large world corn harvests leading to weak international corn prices.

On April 18, 2006, the CITT announced its final determination, reversing its earlier position, by issuing a finding of no injury regarding the importation of U.S. grain corn.⁹ Pursuant to this final finding, the preliminary AD/CV duties of \$1.65 per bushel were removed and all duties already assessed are to be returned. Similarly, the United States' motivation for pursuing its WTO case against Canadian AD/CV duties was ended.

Canadian Corn Producers Review Their Options

The Canadian Corn Producers have announced that they are reviewing their options for pursuing further legal action against imports of U.S. corn. Such options include requesting a NAFTA bi-national panel review or possibly encouraging the Canadian government to pursue a WTO dispute settlement case. However, such actions would likely have to be based on a new line of reasoning that was not a part of the AD/CV duty case, which focused on the presence of injury to Canadian corn growers. A NAFTA panel review would involve a review of whether Canadian trade authorities (in this case, the CITT) had correctly interpreted and applied existing Canadian law in reaching their negative injury determination. In contrast, a WTO case — which can only be brought by the Canadian government, not the Canadian Corn Producers — would likely be pursued under the Agreement on Subsidies and Countervailing Measures and would involve an investigation of whether “serious prejudice” occurred in the marketplace as a result of U.S. domestic corn program payments. Brazil's recent success in such a WTO dispute settlement case against U.S. cotton subsidies could provide both an encouragement and a template for future action against U.S. corn subsidies.

Role of Congress

Many market analysts and news media suggest that the U.S.-Canada corn trade dispute is a harbinger of future challenges against U.S. commodity programs. Given the importance of corn in the U.S. agricultural economy, Congress likely will closely monitor the legal followup and any further appeal or charges against U.S. corn exports or U.S. corn program payments, whether within a NAFTA or WTO forum.

⁹ CITT, *Dumping and Subsidizing: Finding*, Inquiry No. NQ-2005-001, Unprocessed Grain Corn, April 18, 2006, at [http://www.citt-tcce.gc.ca/dumping/inquirie/findings/nq2f001_e.asp].