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U.S.-Canada Agricultural Trade Issues

by

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U.S.-CANADA AGRICULTURAL TRADE ISSUES*

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I. INTRODUCTION

U.S.-Canada bilateral trade in agricultural products topped approximately $15.6 billion in 1999, up from more than $14.9 billion in 1998 and more than $14.3 billion in 1997. International, and in particular U.S.-Canada, agricultural trade seems here to stay, and it is safe to predict that concomitant cross-border trade irritants will also always be with us.

However, it does not follow that those irritants will continue to take their traditional form of unilateral trade actions, with all of the disruptive effects of unilaterally imposed duties, quotas, and other import restraints. At first blush, the length of the recent list of irritants is not encouraging. Recent agricultural disputes make almost a full meal: beef and cattle problems, live swine issues, wheat and dairy disputes, market access disputes, and actions relating to consumer health and safety standards and regulations. With the Internet, potential U.S. petitioners have increased access to information on foreign government agricultural programs and industries, easing their task of bringing new trade actions.

The view alters through the lens of past U.S.-Canada agricultural trade disputes. From that perspective, there are tentative but distinct signs that cross-border industry-to-industry trade bashing is starting to give way to the more orderly

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The view alters through the lens of past U.S.-Canada agricultural trade disputes. From that perspective, there are tentative but distinct signs that cross-border industry-to-industry trade bashing is starting to give way to the more orderly process of government-to-government negotiations and international dispute settlement. This paper examines the evolving U.S. trade remedy landscape as applied to imports of agricultural products from Canada.[3]

II. UNILATERAL VERSUS NEGOTIATED REMEDIES

The legal mechanism used to pursue a trade dispute can be crucial to its outcome. Hence, a review of the available trade remedy mechanisms is a helpful and necessary basis for assessing the list of agricultural trade disputes.

Trade actions are usually categorized by type—such as antidumping ("AD") and countervailing duty ("CVD") measures[4]—or by source of authority—based on multilateral or regional agreements[5] or unilateral national mechanisms.[6] For U.S.-Canada agricultural trade, a useful variation is to look at these disputes as involving either unilateral or negotiated measures. The unilateral category would encompass

Canada, 64 Fed. Reg. 56,739 (1999); Final Results of Full Sunset Review: Live Swine From Canada, 64 Fed. Reg. 60,301 (1999); *Canada - Measures Affecting the Importation of Milk and Exportation of Dairy Products - Request for the Establishment of a Panel by the United States*, WT/DS103/4 (Feb. 3, 1998) [hereinafter WT/DS103/4]; *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products - Report of the Panel*, WT/DS103/R (May 17, 1999) [hereinafter WT/DS103/R]; *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products - Appellate Body Report*, WT/DS103/AB/R (Oct. 13, 1999) [hereinafter WT/DS103/AB/R]; *North Dakota Wheat Commission Threatens Canadian Wheat Board*, INSIDE U.S. TRADE, Apr. 7, 2000, at 23, 23 [hereinafter *North Dakota Wheat Commission*]; *USDA Draft Report Finds High Costs, WTO Fights for Meat Labeling*, INSIDE U.S. TRADE, Aug. 13, 1999, at 5, 5.

3. While the focus of this Article is on imports into the U.S. from Canada, the U.S.-Canada trade agricultural relationship has also included application of Canadian trade remedy laws to U.S. imports.

4. *See* Tariff Act of 1930, 19 U.S.C. § 1671, 1673 (1994).

5. *See* North American Free Trade Agreement [hereinafter NAFTA], Dec. 17, 1992, Can.-Mex.-U.S., ch. 19, 107 Stat. 2057, 32 I.L.M. 289, 682 (1993); Multilateral Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], LEGAL INSTRUMENTS–RESULTS OF THE URUGUAY ROUND vol. 31, Annex 1A, *reprinted in* MULTILATERAL TRADE AGREEMENTS SUBJECT TO THE WTO DISPUTE SETTLEMENT UNDERSTANDING (DSU) (compiled by Frank W. Swacker et al., 1996) [hereinafter MULTILATERAL TRADE AGREEMENTS]; Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, WTO Agreement, Annex 2, 33 I.L.M. 1226 (1994) [hereinafter DSU Agreement].

6. In addition to the AD and CVD laws, these would include safeguard (or escape clause) actions, section 332 inquiries, and section 301 actions, as discussed further in the text.

all national measures (including those imposed under authority of a multilateral agreement), and the negotiated category would contain all disputes resolved pursuant to the North American Free Trade Agreement ("NAFTA") and World Trade Organization ("WTO") dispute settlement procedures.

In particular, unilateral national measures under U.S. law would include:

- antidumping actions, such as the U.S. case against live cattle from Canada, in which the aggrieved domestic industry charges that imports are unfairly priced because they are too cheap relative to home market prices and are injuring the complaining U.S. industry;[7]
- countervailing duty actions, such as live swine from Canada, in which a foreign government is charged with unfair subsidization of exports to the U.S., which is injuring the U.S. industry;[8]
- safeguard or escape clause actions such as the recent action on lamb, in which the U.S. industry claims that imports are a substantial cause of serious injury to the domestic producers; no unfair trade practices, however, need be alleged;[9]
- so-called section 332 proceedings, which are not really trade actions but are studies of the conditions of competition (including competition from imports) of particular industries and can be trade action precursors;[10]
- in theory, section 337 actions, in which unfair methods of competition and unfair acts in the importation of products into the U.S. are alleged to destroy or injure a domestic industry, "prevent

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7. *See* Tariff Act of 1930, 19 U.S.C. § 1673 (1994); Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico, 63 Fed. Reg. 71,886 (1998); Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 Fed. Reg. 56,739 (1999).

8. *See* Tariff Act of 1930 § 701, 19 U.S.C. § 1671(c) (1994); Initiation of Countervailing Duty Investigation: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada, 49 Fed. Reg. 47,079 (1984); Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products From Canada, 50 Fed. Reg. 2507 (1985); Countervailing Duty Order: Live Swine From Canada, 50 Fed. Reg. 32,880 (1985); Initiation of Five-Year (Sunset) Reviews, 63 Fed. Reg. 66,572 (1998); Final Results of Full Sunset Review: Live Swine From Canada, 64 Fed. Reg. 60,301 (1999).

9. *See* Trade Act of 1974 § 201, 19 U.S.C. § 2251 (1994); Presidential Memorandum of July 7, 1999: Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat, 64 Fed. Reg. 37,393 (1999).

10. *See* Tariff Act of 1930 § 332, 19 U.S.C. § 1332 (1994). For example, the 1998 live cattle from Canada CVD and AD cases were preceded by section 332 investigations and reports by the U.S. government on the conditions of competition in the beef and cattle industry. *See* Cattle and Beef: Impact of the NAFTA and the Uruguay Round Agreements on U.S. Trade, 61 Fed. Reg. 57,451 (1996).

the establishment of an industry, or restrain or monopolize trade and commerce in the U.S.;"[11] these cases usually involve patent infringement claims and have never involved agricultural products; and

- section 301 actions, which address the enforcement of U.S. rights under bilateral and multilateral trade agreements and which may be used to address unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce.[12] The section 301 action is perhaps the most controversial U.S. trade remedy action. It empowers the U.S. unilaterally to challenge and impose sanctions against a foreign country's trade practices.[13]

These unilateral remedies have certain common features. They:

- are instigated by domestic industry groups that target one or more exporting countries;[14]
- involve written industry petitions that lay out the concerns and trigger intensive and intrusive government investigations of the challenged practices;[15]
- apply standards that are frequently perceived as biased in favor of relief being granted; for example, in antidumping cases, whether any allegedly unfair pricing is at market-seeking levels is irrelevant to the antidumping duty calculation;[16]
- usually follow very short deadlines that can significantly hamper a defense, particularly when the deadlines set tight time

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11. *See* Tariff Act of 1930 § 337, 19 U.S.C. § 1337 (1994).

12. *See* Trade Act of 1974 § 301, 19 U.S.C. §§ 2411-2420 (1994).

13. *See id.* A WTO Panel has, however, recently found section 301 not to be inconsistent with U.S. obligations under the WTO because of U.S. government explanatory statements in the legislative history of section 301 to the effect that the United States would not apply that provision in a WTO-inconsistent manner. *See* United States–Sections 301-310 of the Trade Act of 1974, art. IV(A), paras. 4.1-4.6, art. VII.(C)(7), WT/DS152/R (Dec. 22, 1999).

14. *See, e.g.*, Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, 64 Fed. Reg. 34,194 (1999).

15. *See, e.g.*, 19 U.S.C. §§ 1671a(b), 1673a(b), 2252(a), 2412(a) (1994) (outlining petition requirements).

16. *See* 19 U.S.C. §§ 1673e(a), 1677a, 1677b (1994) (defining the prices used to calculate the dumping margin and the margin calculations without regard to competitor pricing).

limits for responding to the investigating authority's sometimes overwhelming requests for information;[17] and

- typically result in the assessment of additional duties or other import measures on the imported product, often at levels greater than might be necessary to remedy the injury.[18]

Despite government "prosecution," these cases also usually entail intensive legal activity by the petitioning and defending industries, making them very costly.

A negotiated resolution, by contrast, offers a dispute resolution pursuant to agreed government-to-government processes, with a more balanced assessment of the issues, sometimes longer deadlines, and a considerably more flexible approach to the remedies. In addition, these processes are much more truly government-to-government, greatly reducing the time and cost demands on the industries involved in the dispute. Negotiated dispute resolution stems from these provisions. The NAFTA, which built upon the 1989 U.S.-Canada Free Trade Agreement (CFTA), establishes a mechanism for independent binational panels to review final U.S., Canadian, and Mexican AD and CVD determinations.[19] Binational panel review of these determinations is available to any person entitled to judicial review of the final determination under the domestic law of the importing country.[20] It incorporates the CFTA's "extraordinary challenge" procedure to deal with concerns that certain actions may have affected a panel's decisions and threaten the integrity of the review process.[21] In addition, the NAFTA creates a mechanism to address cases in which application of a country's domestic law undermines the panel process.[22]

The NAFTA dispute resolution system for antidumping, countervailing duty, and other disputes is relatively intricate. Its chapters 18, 19, and 20 set out the

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17. *See, e.g.*, Antidumping and Countervailing Duties, 19 C.F.R. 351, Annexes I-IV (2000) (setting deadlines in AD, CVD cases).

18. *Compare* 19 U.S.C. §§ 1671e(a)(1), 1673e(a)(1) (1994) (authorizing countervailing duties at amount of net countervailing subsidy and antidumping duties at amount of dumping margin) *with* Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, art. 19.2, *reprinted in* MULTILATERAL TRADE AGREEMENTS, *supra* note 5, at 251 ("amount of countervailing duty to be imposed shall be the full amount of the subsidy or less") *and* Agreement on Implementation of Article 6 of the General Agreement on Tariffs and Trade 1994 (Antidumping), Apr. 15, 1994, WTO Agreement, Annex 1A, art. 9.1 *reprinted in* MULTILATERAL TRADE AGREEMENTS, *supra* note 5, at 159 (antidumping duty may be "less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry").

19. *See* NAFTA, *supra* note 5, art. 1904, at 683 (Review of Final Antidumping and Countervailing Duty Determinations).

20. *See id.* art. 1904(5), at 683.

21. *See id.* Annex 1904.13, at 688 (Extraordinary Challenge Procedure).

22. *See id.* art. 1905, at 684 (Safeguarding the Panel Review System).

procedures to be followed for dispute resolution.[23] Chapter 20 on the general institutional arrangements for dispute resolution specifically provides that NAFTA signatories must at all times attempt to agree on the interpretation and application of the NAFTA, using consultations as the primary means of reaching a satisfactory resolution.[24]

The NAFTA also provides methods for protecting signatory industries from injury or threat of injury from surges in imports through two safeguard provisions.[25] A bilateral safeguard mechanism permits a temporary "snap-back" to the normal, non-NAFTA (i.e., most-favored nation or "MFN") tariff rates, and a global safeguard limits the right to impose measures on other NAFTA signatories as part of a multilateral action on imports from all countries.[26]

The NAFTA also ensures that product standards, regulations, and conformity assessment procedures do not discriminate against other signatory exports or create needless barriers to trade.[27] The agreement preserves the signatories' right to enforce their own product standards and regulations, particularly those designed to promote safety and protect the environment and human, animal, and plant life and health.[28]

The GATT/WTO unified dispute settlement system subjects most trade disputes at the WTO to a single set of dispute resolution rules.[29] It grants governments the right to initiate a panel review process and ensures that the initiation process (and the adoption of any resulting panel decision) is not subject to blocking.[30] The system basically has four stages: (1) bilateral consultations where disputing parties meet to discuss the trade issue; (2) conciliation where trained professionals assist the parties in resolving their dispute; (3) panels and appellate body rulings where impartial panel members hand down "legalistic" decisions that are intended to be independent of the political and diplomatic negotiations processes; and (4) implementation and enforcement provisions to ensure that panel and

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23. *See id.* ch. 18-20, at 681-99 (Chapter Eighteen: Publication, Notification and Administration of Laws; Chapter Nineteen: Review and Dispute Settlement in Antidumping and Countervailing Duty Matters; Chapter Twenty: Institutional Arrangements and Dispute Settlement Procedures).

24. *See id.* art. 2003, 2006, at 694 (Article 2003: Cooperation; Article 2006: Consultations).

25. *See id.* art. 801-802, at 383 (Article 801: Bilateral Actions; Article 802: Global Actions).

26. *Id.*

27. *See id.* ch. 9, at 386 (Standards-Related Measures).

28. *See id.* art. 712, 904, at 377-78, 386.

29. *See* Understanding on Rules and Procedures Governing the Settlement of Disputes, Dec. 15, 1993, General Agreement on Tariffs and Trade-Multilateral Trade Negotiations (The Uruguay Round) [hereinafter GATT], 33 I.L.M. 112, 114, 132 (1994).

30. *See id.* art. 6, at 112, 117.

appellate body reports are implemented when a country's practice has been found to be illegal by WTO standards.[31]

The special WTO rules on agriculture also indirectly bear on negotiated dispute resolution because new disciplines on non-tariff barriers to trade and increased transparency of government support measures simultaneously reduce the sources of trade friction and channel agricultural issues into the WTO. The main characteristics of the WTO Agreement on Agriculture with these benefits are: (1) the phase-out of non-tariff barriers and the conversion of those barriers to tariffs (although temporary restraints may be imposed on imports when agricultural imports cause particular difficulties);[32] (2) commitments on reducing domestic support levels;[33] (3) agreement that certain governmental programs, such as general services and non-production-related income support programs, are not actionable or countervailable and are not subject to the reduction commitment because they are non-trade distorting (so-called green box measures);[34] (4) reduction in export subsidies—WTO members are obliged to reduce the amount of export subsidies over time;[35] and (5) a peace clause—governments are obliged for the first nine years of the agreement to refrain from taking domestic countervailing duty and WTO action against certain agricultural practices.[36]

A separate but related agreement on the application of sanitary and phytosanitary measures addresses product standards and health and safety issues.[37]

The distinctions between the unilateral remedies described above and negotiated dispute resolution proceedings go to the heart of what may be a shifting balance in the nature of U.S.-Canada agricultural trade disputes.

III. RECENT AGRICULTURAL TRADE IRRITANTS

This review brings us to the most recent list of agricultural trade disputes between the two countries. The claims are summarized below:

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31. *See id.* arts. 4, 5, 12, 17, 21, at 116-17, 120-26.

32. *See* Agreement on Agriculture, Apr. 15, 1994, WTO Agreement, Annex 1A, art. 5, *reprinted in* MULTILATERAL TRADE AGREEMENTS, *supra* note 5, at 36 (Compiled by Frank W. Swacker et al., 1996) [hereinafter Agriculture Agreement].

33. *See id.* art. 6, at 39-40.

34. *See id.*

35. *See id.* art. 9, at 41-42.

36. *See id.* art. 13, at 44-45.

37. *See* Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, *reprinted in* MULTILATERAL TRADE AGREEMENTS, *supra* note 5, at 61-75 [hereinafter SPS Agreement].

- Live cattle: the Canadians were alleged to be selling too much cattle to cheaply in the U.S. because of dumping by Canadian cattle producers and subsidies by the Canadian federal and provincial governments (no remedies were imposed because of a final negative decision as to subsidies, and a final negative decision on injury in the dumping case).[38]
- Lamb: imports of lamb meat from Canada and elsewhere were claimed to be causing serious injury to the U.S. industry (Canada was excluded from the remedy).[39]
- Milk: Canadian milk marketing boards were alleged to be selling milk in Canada too cheaply as an input for dairy products to be exported, thereby subsidizing exported milk products.[40] A WTO panel, confirmed by WTO appellate body review, ruled that the Canadian practices were an export subsidy.[41]
- Barley: the Canadian Wheat Board ("CWB") was alleged to be selling too little barley to the U.S., causing barley to be sold too cheaply in Canada to cattle producers.[42] The U.S. Commerce Department did not agree with this allegation in the live cattle case.[43]
- Durum wheat: in contrast to its alleged practices as to barley, with respect to wheat, the CWB is claimed to be selling too much durum wheat too cheaply to the U.S., and the wheat is also alleged to be tainted.[44]

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38. *See* Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico, 63 Fed. Reg. 71,886 (1998); Initiation of Countervailing Duty Investigation of Live Cattle from Canada, 63 Fed. Reg. 71,889 (1998); Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 Fed. Reg. 56,739 (1999); Final Negative Countervailing Duty Determination: Live Cattle from Canada, 64 Fed. Reg. 57,040 (1999); Live Cattle from Canada, USITC Pub. 3255, Inv. No. 731-TA-812 (Final) (Nov. 1999).

39. *See* Presidential Memorandum of July 7, 1999: Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat, 64 Fed. Reg. 37,393 (1999); Lamb Meat, USITC Pub. 3176, Inv. No. TA-201-68 (Apr. 1999).

40. *See* WT/DS103/4 *supra* note 2.

41. *See Canada–Measures Affecting the Importation of Milk and the Exportation of Dairy Products–Report of the Panel*, WT/DS103/R, WT/DS113/R (May 17, 1999). *See also Canada–Measures Affecting the Importation of Milk and the Exportation of Dairy Products–Appellate Body Report*, WT/DS103/AB/R, WT/DS113/AB/R (Oct. 13, 1999).

42. *See U.S. Cattle Ranchers Launch Trade Cases Against Canada, Mexico*, INSIDE U.S. TRADE, Oct. 2, 1998, at 4, 4.

43. *See* Final Negative Countervailing Duty Determination: Live Cattle From Canada, 64 Fed. Reg. 57,040, 57,047-52 (1999).

44. *See Barshefsky Says Canadian Durum Poses Problems, Promises Price Check*, INSIDE US TRADE, Oct. 1, 1999, at 8 [hereinafter *Barshefsky*]; *North Dakota Wheat Commission*, *supra* note 2,

- Meat labeling: Canada has agreed to abide by new U.S. rules on country of origin markings.[45]
- Live swine: Canada was found to have subsidized exports of live swine through countervailable subsidies for a number of years before the subsidy rate declined to zero and the countervailing duty order was revoked.[46]
- Tomatoes: two section 201 safeguard actions claimed that increased imports of tomatoes from Canada and elsewhere injured the U.S. industry, but on both occasions the petitions were unsuccessful.[47]
- Bell peppers: peppers were included in the second of the two tomato safeguard actions.[48]
- Broom corn brooms: a section 201 action on broom corn brooms found that imports from Mexico were causing injury, but not imports from Canada.[49]
- Potatoes, apples, alfalfa products, and dry peas and lentils: these Canadian products have all been subject to section 332 investigations over the past decade.[50]

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at 23; North Dakota Wheat Commission, *Data Confirms Large Share of Wheat from Canada of Lesser Quality* (modified June 19, 2000) <http://ndwheat.com/in/news/news_detail.asp?ID=103> [hereinafter *Data Confirms*]; NORTH DAKOTA WHEAT COMM'N, GRAINS OF TRUTH ABOUT U.S.-CANADA WHEAT TRADE 4-5 (1999) [hereinafter GRAINS OF TRUTH].

45. *See United States–Canada Action Plan Regarding Areas of Agricultural Trade*, at Annex 16 (visited Sept. 26, 2000) <http://www.fas.usda.gov/itp/canada/action.html> [hereinafter *Canada Action Plan*].

46. *See* Countervailing Duty Order: Live Swine From Canada, 50 Fed. Reg. 32,880 (1985); Initiation of Five-Year (Sunset) Review, 63 Fed. Reg. 66,527 (1998); Final Results of Full Sunset Review: Live Swine From Canada, 64 Fed. Reg. 60,301 (1999).

47. *See* Fresh Winter Tomatoes, 60 Fed. Reg. 16,883 (1995); Fresh Winter Tomatoes, USITC Pub. 2881, Inv. No. TA-201-64 (Apr. 1995) [hereinafter USITC Pub. 2881]; Fresh Tomatoes and Bell Peppers, 61 Fed. Reg. 13,875 (1996); Fresh Tomatoes and Bell Peppers, USITC Pub. 2985, Inv. No. TA-201-66 (Aug. 1996) [hereinafter USITC Pub. 2985].

48. *See* USITC Pub. 2985, *supra* note 47.

49. *See* Broom Corn Brooms, USITC Pub. 2963, Inv. No. TA-201-65 (May 1996).

50. *See* Fresh and Processed Potatoes: Competitive Conditions Affecting the U.S. and Canadian Industries, 62 Fed. Reg. 5,484 (1997); Fresh and Processed Potatoes: Competitive Conditions Affecting the U.S. and Canadian Industries, USITC Pub. 3050, Inv. No. 332-378 (July 1997); Apples: Certain Conditions of Competition Between the U.S. and Canadian Industries, 55 Fed. Reg. 49,434 (1990); Apples: Certain Conditions of Competition Between the U.S. and Canadian Industries, USITC Pub. 2408, Inv. No. 332-305 (Aug. 1991); Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries, 56 Fed. Reg. 20,021 (1991); Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries, USITC Pub. 2472, Inv. No. 332-310 (Dec. 1991); Dry Peas and Lentils: Conditions of Competition Between the U.S. and Canadian Industries, 57 Fed. Reg. 43,985

These issues cross the major food groups and all possible legal weapons, including the antidumping law (live cattle, threat against durum wheat), countervailing duty law (live cattle, live swine), safeguard action (tomatoes, lamb), WTO actions (dairy), and NAFTA (meat labeling).[51]

IV. HISTORICAL VIEW OF U.S.-CANADA AGRICULTURAL TRADE DISPUTES

To step back from the current disputes and take a wider perspective, U.S.-Canada agricultural trade disputes show unquestionable signs of an evolution from unilateral to negotiated remedies. Attachment 1 to this paper surveys U.S. trade actions against Canadian agricultural products from 1947 through the present. The survey starts with the General Agreement on Tariffs and Trade ("GATT") 1947,[52] a comprehensive worldwide agreement on government regulation of cross-border trade, and uses the following significant trade events as milestones: the Tokyo Round of negotiations (under GATT auspices), which resulted in the U.S. enactment of the Trade Agreements Act of 1979[53] and the beginning of U.S. trade law as it is now applied; the 1988 CFTA;[54] and the 1994 NAFTA,[55] combined by proximity in time with the 1995 WTO agreements produced by the Uruguay Round of trade negotiations (also under GATT auspices).[56]

(1992); Dry Peas and Lentils: Conditions of Competition Between the U.S. and Canadian Industries, USITC Pub. 2627, Inv. No. 332-335 (Apr. 1993).

51. *See* Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico, 63 Fed. Reg. 71,886, 71,888-89 (1998); Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 Fed. Reg. 56,739, 56,739 (1999); Live Cattle from Canada, USITC Pub. 3255, Inv. No. 731-TA-812 (Nov. 1999); Initiation of Countervailing Duty Investigation of Live Cattle From Canada, 63 Fed. Reg. 71,889, 71,890 (1998); Final Negative Countervailing Duty Determination: Live Cattle From Canada, 64 Fed. Reg. 57,040, 57,041 (1999); Presidential Memorandum of July 7, 1999: Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat, 64 Fed. Reg. 37,393, 37,393 (1999); Lamb Meat, USITC Pub. 3176, Inv. No. TA-201-68 (Apr. 1999); WT/DS103/4, *supra* note 2; WT/DS103/R, *supra* note 2; WT/DS/103/AB/R, *supra* note 2; *Barshefsky, supra* note 44 at 8; *North Dakota Wheat Commission, supra* note 2, at 23; *Data Confirms, supra* note 44; Grains of Truth, *supra* note 44; *Canada Action Plan, supra* note 45, at Annex 16; Countervailing Duty Order: Live Swine From Canada, 50 Fed. Reg. 32,880 (1985); Initiation of Five-Year (Sunset) Reviews, 63 Fed. Reg. 66,527 (1998); Final Results of Full Sunset Review; Live Swine From Canada, 64 Fed. Reg. 60,301 (1999); Fresh Winter Tomatoes, 60 Fed. Reg. 16,883 (1995); USITC Pub. 2881, *supra* note 47; Fresh Tomatoes and Bell Peppers, 61 Fed. Reg. 13,875 (1996); USITC Pub. 2985, *supra* note 47.

52. *See* GATT, May 30, 1950, 61 Stat. 6(a), T.I.A.S. 1700, 55 U.N.T.S. 194.

53. *See* Trade Agreements Act of 1979, Pub. L. No. 96-39, 1979 U.S.C.C.A.N. 93 Stat. 144.

54. *See* United States-Canada Free Trade Agreement, Jan. 2, 1989 U.S.-Can., H.R. Doc. No. 100-216 (1988).

55. *See* NAFTA, *supra* note 5.

56. *See* WTO Agreement, *supra* note 5, at Annex 1A.

Prior to 1979, the vast majority of U.S. trade actions were safeguard related under section 201.[57] Between 1979 and 1988, the year the U.S.-Canada Free Trade Agreement came into effect, there was a sharp increase in the number of antidumping and countervailing duty actions.[58] In the years since 1988, most U.S.-Canada agricultural trade disputes have been raised in GATT/WTO and NAFTA fora.[59] Section 332 and 301 actions have remained relatively steady over the period, although the latter should (at least in theory) decline over time, as the scope for the U.S. to use this most unilateral of remedies will likely diminish as WTO coverage expands.

The shift from safeguards to AD/CVD actions in the 1980s makes sense from a legal perspective. While antidumping and countervailing duty remedies were available under U.S. law prior to 1979,[60] the procedures became subject to much greater transparency and legalization under the 1979 Trade Agreements Act. Antidumping and countervailing duty procedures are also usually more attractive to the domestic industry than section 201 actions because of the lower standard of proof of injury, and the inability of the President to veto relief.[61]

Of greater long-term significance, is the move in the 1990s to GATT/WTO and NAFTA processes, discussed in the next section.

V. THE INFLUENCE OF NAFTA AND WTO DISPUTE SETTLEMENT

The influence of NAFTA and WTO dispute settlement can be seen in statistics on new trade actions. Attachment 1 illustrates that the CFTA (followed by NAFTA and the WTO agreements) coincided with a noticeable drop in antidumping and countervailing actions in the U.S. against Canadian agricultural products. From 1979 to 1988, there were fifteen such trade actions against Canada.[62] Since 1988, there have been only five.[63] In the same period (since 1988), agricultural trade issues ripened into CFTA, NAFTA, and WTO disputes or negotiations involving over a

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57. *See* Trade Act of 1974 § 201, 19 U.S.C. § 2551 (1994). *See also infra* Attachment 1.

58. While one antidumping action and no countervailing duty actions were reported in the agricultural sector between 1947 and 1978, fifteen antidumping and countervailing duty actions were reported between 1979 and 1988. *See infra* Attachment 1.

59. *See* WT/DS103/4, *supra* note 2; WT/DS103/R, *supra* note 2; WT/DS103/AB/R, *supra* note 2.

60. *See* 19 U.S.C. §§ 160, 1303 (1994).

61. *Compare* 19 U.S.C. §§ 1671(a), 1673 (1994) *with* 19 U.S.C. §§ 2252-2253 (1994).

62. See *infra* Attachment 1 for a summary of the antidumping and countervailing duty cases arising during this ten year span.

63. See *infra* Attachment 1 for the antidumping and countervailing duty cases arising after 1988.

dozen commodities.[64] There could be many reasons for the drop in number of disputes brought under national laws, but it seems reasonable to infer that CFTA/NAFTA and WTO disciplines on agriculture and the availability of bilateral dispute settlement at least contributed to the decline.

In some particularly prominent cases, NAFTA and WTO consultations have so far succeeded in diverting the U.S. from unilateral trade action. In March of 1998, for example, the U.S. (and New Zealand) established a WTO panel to examine whether Canada is violating its trade obligations under the WTO with respect to its dairy pricing system.[65] The U.S. complained that Canada's programs providing cheaper milk to make products for export amount to an export subsidy and that Canada has not complied with a WTO agreement-based obligation to open a tariff-rate quota for fluid milk and cream.[66] The U.S. action stemmed from the petition of three major U.S. dairy organizations to the U.S. Trade Representative under section 301 of the Trade Act.[67] In the past, the U.S. could and likely would have more readily acted unilaterally in such a situation. Its embrace of the WTO dispute resolution system in this case (among others not involving Canadian agriculture) marks a turning point of sorts—traditional 301 action may be used to initiate an action, but the U.S. is prepared to have the WTO finish it.

Another example can be found in the long-running U.S.-Canada wheat dispute. The U.S. Government investigated Canadian and U.S. competition in the durum wheat industry under section 332 in 1989-1990.[68] In 1993, a panel formed under the CFTA upheld the Canadian interpretation of wheat "acquisition price" as the initial payment the CWB makes to Canadian producers plus storage and handling.[69] For several years, the U.S. has claimed that this definition is too

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64. See *infra* Attachment 1 for the CFTA/NAFTA and GATT/WTO disputes arising after 1988.

65. *See* WT/DS103/4, *supra* note 2; *Canada–Measures Affecting Dairy Exports–Request for the Establishment of a Panel by New Zealand*, WT/DS113/4 (Mar. 13, 1998).

66. *See* WT/DS103/4, *supra* note 2.

67. *See* UNITED STATES TRADE REPRESENTATIVE, REPORT TO CONGRESS ON SECTION 301 DEVELOPMENTS REQUIRED BY SECTION 309(a)(3) OF THE TRADE ACT OF 1974 3-4 (1998) (The National Milk Producers Federation, the U.S. Dairy Export Council and the International Dairy Foods Association petitioned the USTR on September 5, 1997).

68. *See* Durum Wheat: Certain Conditions of Competition Between the U.S. and Canadian Industries, 54 Fed. Reg. 51,238 (1989); Durum Wheat: Conditions of Competition between the U.S. and Canadian Industries, USITC Pub. 2274, Inv. No. 332-285 (June 1990).

69. *The Interpretation of and Canada's Compliance with Article 701.3 with Respect to Durum Wheat Sales*, Final Report of the Panel Under Chapter 18 of the Canada-United States Free Trade Agreement, Secretariat File No. CDA-92-1807-01 (1993).

narrow.[70] In April 1998, the U.S. requested an audit of the CWB that would include both durum wheat sales and other spring wheat—previously covered in a U.S.-Canada voluntary restraint agreement that expired in September 1995—and requested that the CWB's definition of acquisition price be broadened.[71] According to publicly available sources, the purpose of the audit is to gather information for arguments in future agriculture negotiations in the WTO.[72] While a trade action against wheat recently has been brought by the North Dakota Wheat Commission,.[73] government-to-government consultations and dispute settlement will have held off that step for over a decade.

Another effect of the CFTA and NAFTA has been to keep Canada out of a spate of global safeguard actions on agricultural products (e.g., tomatoes, wheat gluten), as it did most recently in the case against imported lamb meat.[74] In September 1998, the U.S. lamb industry filed a section 201 global safeguard petition claiming that there has been a surge of imports of inexpensive lamb, driving domestic lamb prices down.[75] Special NAFTA rules for safeguard actions allowed Canada to be excluded from the remedy ultimately imposed.[76] Canada was able to invoke the NAFTA provision that allowed safeguard actions against Canadian products only if the Canadian products separately are significant in volume and contribute importantly to the U.S. industry's injury.

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70. *See, e.g., U.S. Loses Panel on Wheat Subsidies, but May Learn More About Canadian Pricing,* INSIDE U.S. TRADE, Feb. 12, 1993, at 17, 18-19; *Audit Finds Canada Trades Wheat Fairly in Majority of Cases,* INSIDE U.S. TRADE, March 11, 1994, at 19, 20. "The results of the audit met with strong opposition from the National [Association] of Wheat Growers, which attacked the price definition used in the audit for not reflecting the transportation subsidies or the administrative costs associated with the wheat sales." *Id.*

71. *See U.S., Canada Clash on Market Access, Wheat Board Pricing Audit,* INSIDE U.S. TRADE, Apr. 3, 1998, at 5, 5.

72. *See id.* at 6.

73. *See* Initiation of Section 302 Investigation and Request for Public Comment: Wheat trading Practices of the Canadian Wheat Board, 65 Fed. Reg. 69,362 (2000).

74. *See* Presidential Memorandum of July 7, 1999, Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat, 64 Fed. Reg. 37,393 (1999); Lamb Meat, USITC Pub. 3176, Inv. No. TA-201-68 (Apr. 1999).

75. *See* U.S. Lamb Producers File for Section 201 Protection from Imports, INSIDE U.S. TRADE, Oct. 2, 1998, at 5.

76. *See* NAFTA, *supra* note 5, art. 802 (specifying criteria to be met before global action will be extended to a NAFTA member); 19 U.S.C. §§ 3371-3372 (1994) (defining criteria for exclusion from NAFTA action).

VI. U.S.-CANADA AGRICULTURAL MOU

One of the most effective examples of U.S.-Canada cooperation diverting agricultural disputes came on December 4, 1998 when those countries signed a Memorandum of Understanding ("MOU") covering seventeen different irritants in their bilateral agricultural trade, some on the U.S. side and some on the Canadian side.[77] The MOU defused a blockade by some northern border states of trucks bearing Canadian grains and livestock, which had threatened to kindle a major U.S.-Canada trade war.[78] In response, Canada requested WTO and NAFTA consultations, initiating negotiations with the U.S. on the health and sanitary issues driving the blockade.[79] The MOU resulted.

The understanding included commitments on multiple points of friction, including:

- increased access for U.S. hogs to the Canadian market by modifying Canadian testing and quarantine procedures (the required modifications came into force on October 7, 1999);[80]
- facilitated access to the Canadian market for U.S. feeder cattle from states free of certain diseases;[81] and
- an undertaking by Canada to review generally its phytosanitary regulations governing imports of animals and animal products.[82]

In addition, under the MOU:

- the U.S. will work to eliminate inconsistencies between federal and certain state animal health requirements;[83]
- the U.S. will initiate regulatory changes to its requirements governing the importation of equine semen;[84]

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77. *See Canada Action Plan, supra* note 45.

78. *See Glickman Meets with Governors on Border Dispute with Canada*, INSIDE U.S. TRADE, Oct. 2, 1998, at 1, 2; *U.S. Canada Officials Try to Hammer Out Common Agenda*, INSIDE U.S. TRADE, Oct. 9, 1998, at 5, 6; *U.S., Canada Ag Officials Set Work Plan to Address Trade Disputes*, INSIDE U.S. TRADE, Oct. 16, 1998, at 6, 7.

79. *See id.*

80. *See Canada Action Plan, supra* note 45, at Annex 1.

81. *See id.* at Annex 2.

82. *See id.* at Annex 8.

83. *See id.* at Annex 4.

84. *See id.* at Annex 4.

- the U.S. will initiate regulatory changes to eliminate certain inspection requirements for imported horses;[85]
- the two countries will cooperate in the exchange of information related to cattle trade;[86]
- Canada will implement a system to facilitate the rail transport in-transit within Canada of certain grains from certain states that are free of specified grain diseases;[87]
- Canada will improve access for U.S. farmers to primary grain elevators in Canada;[88]
- wheat and other grains originating in specified disease-free states will be eligible for reduced phytosanitary testing on importation into Canada, pursuant to a phased-in schedule over several years;[89]
- the U.S. will implement a certification requirement for certain imports from Canada of sugar-containing products of Canadian origin.[90]

Finally, the two governments agreed:

- to meet at least quarterly to consult on global grain production and marketing, with the consultation to include among other things an exchange of information on each country's projected quantity of certain grains likely to be exported to the other country in the current marketing year;[91]
- to develop initiatives to facilitate trade in seeds;[92]
- to take measures to avoid disruption in bilateral trade in veterinary drugs;[93]
- to take certain initiatives with respect to pest control products;[94]

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85. *See id.* at Annex 4.
86. *See id.* at Annex 5.
87. *See id.* at Annex 6.
88. *See id.* at Annex 7.
89. *See id.* at Annex 8.
90. *See id.* at Annex 17.
91. *See id.* at Annex 9.
92. *See id.* at Annex 10.
93. *See id.* at Annex 12.
94. *See id.* at Annex 13.

- to work together to reduce sampling requirements for fresh produce;[95]
- to continue to cooperate in areas of biotechnology;[96] and
- that country of origin labeling requirements for food products must be consistent with NAFTA and WTO country of origin rules.[97]

While the MOU did not resolve all of the parties' outstanding disputes, it established a process by which the two governments worked together to advance their industries' interests in these areas without a forced resolution through unilateral trade actions.[98] To date, it is the best encapsulation of the relative advantages of negotiated over unilateral trade action reviewed above—including reduced litigation costs to the disputing industries.

VII. REMAINING PRESSURES FOR UNILATERAL TRADE ACTION

All that being said, a logical next question is why the NAFTA and WTO agreements have not moved all U.S.-Canada agricultural trade disputes into an international forum. Four reasons suggest themselves.

First is that agriculture has been a notoriously difficult subject to negotiate at the multilateral level, due in part to the almost mythic importance many countries attach to their agricultural sectors.[99] Decades of protectionism must be overcome. The current NAFTA/WTO agriculture regime is just a first attempt at fixing long-running and intractable problems, with many issues still unresolved.[100]

The second reason is that the main goal of the agriculture agreements has been to turn quotas into duties or tariff-rate quotas and phase them out over time.[101] Experience on the manufacturing side, however, suggests that when high tariffs come down countries resort to more subtle non-tariff trade barriers.[102] With new

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95. *See id.* at Annex 14.

96. *See id.* at Annex 15.

97. *See id.* at Annex 16.

98. The MOU may also prove to have sown the seeds for yet further trade disputes, particularly with respect to Canadian wheat and durum exports to the U.S.

99. *See generally* JOHN H. JACKSON et al., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS AND TEXT 1160-73 (3rd ed. 1995) (discussing the details and functionality of international trade agreements focusing on GATT).

100. *See, e.g.*, BHAGIRATH LAL DAS, THE WTO AGREEMENTS: DEFICIENCIES, IMBALANCES AND REQUIRED CHANGES 58 (1998).

101. *See, e.g.*, Agriculture Agreement, *supra* note 32, at art. 4.

102. *See, e.g.*, JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 139-55, 213-45 (1998).

WTO agreements in traditionally unregulated areas such as standards on health and safety, governments will be somewhat constrained in the avenues they can take to change tariff to non-tariff barriers.[103] Trade remedy actions, therefore, will continue to play a role in absorbing the stresses caused by increasingly open borders to agricultural trade.

Third, any new set of legal rules prompts skirmishing and testing over what the new rules mean. Although many institutional issues that otherwise might arise with respect to NAFTA had been settled through the CFTA experience,[104] the same cannot be said for the WTO. Thus, disagreements on how the system actually works are to be expected.

Finally, trade remedy actions at the national level are unlikely to go away completely because of competition and politics. For better or worse, they allow companies and industries to slow or attempt to slow non-U.S. competitors with the costs and contingencies of trade litigation and any resulting import measure. They also allow governments to reassure their constituents that all legal remedies are available to domestic industries that truly are suffering the consequences of import competition.

However, continued work by governments to strengthen and extend agricultural trade disciplines in the next round of WTO negotiations, and vigorous and fair enforcement of agreed disciplines in the WTO dispute resolution context, should significantly diminish the number of disputes that are handled outside the WTO/NAFTA context.

VIII. CONCLUSION

Despite its seemingly scattershot nature, the list of current or recent U.S.-Canada agricultural trade disputes reflects the growing influence of NAFTA and WTO on absorbing or at least channeling the complaints of dissatisfied U.S. agricultural industries into different dispute resolution processes. New substantive rules and strengthened procedures allow disputes to be resolved in a less confrontational and more orderly manner than traditional industry-to-industry bashing under the antidumping and under trade remedy laws. The disciplines established by these agreements, coupled with government-to-government dispute settlement mechanisms, have already lifted several major agricultural trade irritants out of the disruptive realm of unilateral trade action into the more orderly world of government-to-government negotiation. If nurtured by governments and industries

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103. *See, e.g.*, SPS Agreement, *supra* note 37.

104. *See* JACKSON, *supra* note 102, at 135.

and not waylaid by economic catastrophe, this process could substantially reduce the number of unilateral U.S. trade actions in the foreseeable future.

ATTACHMENT 1
U.S.-CANADA AGRICULTURAL TRADE DISPUTES
1947-2000

	Pre-Tokyo Round (1947-1978)	**Tokyo Round to Free Trade Agreement (1979-1987)**	**Free Trade Agreement to NAFTA and Uruguay Round Agreements (1988-1993)**	**NAFTA and Uruguay Round to Present (1994-2000)**
Antidumping	♦ Instant potato granules (1971)[107]	♦ Sugar and syrup (1979)[108] ♦ Frozen french-fried potatoes (1982)[109] ♦ Fall-harvested, round, white potatoes (1983)[110] ♦ Fresh potatoes (1983)[111] ♦ Red raspberries (1984)[112] ♦ Dried salted codfish (1983)[113] ♦ Fresh-cut flowers (1986)[114] ♦ Rock salt (1986)[115]		♦ Milk at ultra high temperature (1997)[116] ♦ Cattle (1998)[117]
Countervailing Duty		♦ Frozen potato products (1979)[118] ♦ Fish, fresh, chilled or frozen (1980)[119] ♦ Hard-smoked herring filets (1981)[120] ♦ Swine and pork, fresh, frozen (1984)[121] ♦ Red raspberries (1985)[122] ♦ Atlantic groundfish (1985)[123] ♦ Fresh-cut flowers (1986)[124]	♦ Pork, fresh, chilled, frozen (1989)[125]	♦ Cattle (1998)[126] ♦ Swine Sunset (1999)[127]

	Pre-Tokyo Round (1947-1978)	**Tokyo Round to Free Trade Agreement (1979-1987)**	**Free Trade Agreement to NAFTA and Uruguay Round Agreements (1988-1993)**	**NAFTA and Uruguay Round to Present (1994-2000)**
Safeguards (U.S. global actions)	• Leaf Tobacco (1975)[128] • Asparagus (1976)[129] • Mushrooms (1976)[130] • Shrimp (1976)[131] • Honey (1976)[132] • Sugar (1977)[133] • Fresh cut flowers (1977)[134] • Alsike clover seed (1954)[135]	• Certain fish (1980)[136] • Roses (1980)[137] • Canned tuna fish (1984)[138] • Apple juice (1986)[139]		• Tomatoes I (1995)[140] • Tomatoes II (1996)[141] • Bell Peppers (1996)[142] • Broom corn brooms • (1996)[143] • Wheat gluten (1997)[144] • Lamb (1998)[145]
Safeguards (Canada's Article XIX notifications)	• Strawberries (1957)[146] • Frozen peas (1958)[147] • Turkeys (1967)[148] • Potatoes (1968)[149] • Corn (1968)[150] • Fresh and pre-served frozen strawberries (1971)[151] • Fresh cherries (1973)[152] • Cattle, beef, veal (1974)[153]	• Yellow onions (1982)[154]		
Section 301 (and Section 252 of the Trade Expansion Act of 1962)	• Quantitative restrictions on cattle, beef, veal, swine, and pork (1974) • Egg quota (1975)[155]	• Unprocessed herring and salmon (1986)[156]	• Beer (1990)[157]	• Export subsidies and market access measures on dairy products (1997)[158] • Wheat Trading Practices (2000)[159]
Section 22 of the Agricultural Adjustment Act	• Butter substitutes (1957)[160] • Rye, rye flour (1959)[161] • Tung oil and tung nut (1960)[162] • Cotton products (1961)[163] • Wheat (1974)[164] • Barley (1954)[165] • Oats (1953)[166] • Shelled filberts (1955)[167] • Shelled almonds (1957)[168] • Flax seed and			

	Pre-Tokyo Round (1947-1978)	Tokyo Round to Free Trade Agreement (1979-1987)	Free Trade Agreement to NAFTA and Uruguay Round Agreements (1988-1993)	NAFTA and Uruguay Round to Present (1994-2000)
	linseed oil (1961)[169] ♦ Sugar (1978)[170]			
Section 332		♦ Live swine and pork (1984)[171] ♦ Vegetables (1986)[172] ♦ Live cattle and beef (1987)[173]	♦ Durum wheat (1989)[174] ♦ Apples (1991)[175] ♦ Alfalfa products (1991)[176] ♦ Dry peas and lentils (1992)[177]	♦ Fresh and processed potatoes (1997)[178] ♦ Live cattle and beef (1997)[179] ♦ Products covered by the WTO Agreement on Agriculture (1998)[180]
GATT/WTO	♦ Exports of potatoes to Canada (1962)[181] ♦ Canadian import quotas on eggs (1975)[182]		♦ Measures affecting exports of unprocessed herring and salmon (1987)[183]	♦ Dairy (1998)[184] ♦ U.S. farm blockade (1998) (wheat, cattle, hogs)[185]
Canada Free Trade Agreement/NAFTA			♦ West coast salmon and herring (1989)[186] ♦ US regulations on lobster (1989)[187] ♦ Durum wheat (1992)[188] ♦ Puerto Rico regulations on UHT milk from Quebec (1993)[189]	♦ Dairy, poultry, eggs, barley, and margarine (1996)[190] ♦ U.S. sugar-containing re-exports (1996)[191] ♦ U.S. meat labeling (1998)[192] ♦ U.S. farm blockade (1998) (wheat, cattle, hogs)[193] ♦ U.S.-Canada MOU on Agricultural Trade (1998)[194] (Swine, cattle, grain, transportation, phytosnaitary standards)[195]

107. *See* Instant Potato Granules: Antidumping Proceeding Notice, 36 Fed. Reg. 19,095 (1971); Instant Potato Granules From Canada: Determination of Sales at Less Than Fair Value, 37 Fed. Reg. 11,361 (1972); Instant Potato Granules From Canada: Determination of Likelihood of Injury, 37 Fed. Reg. 18,505 (1972).

108. *See* Sugar and Syrups From Canada: Antidumping Proceeding, 44 Fed. Reg. 25,284 (1979); Sugars and Syrups From Canada: Antidumping: Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value, 44 Fed. Reg. 64,946 (1979); Sugars and Syrups From Canada, 45 Fed. Reg. 19,687 (1980).

109. *See* Frozen French Fried Potatoes From Canada: Initiation of Antidumping Investigation, 47 Fed. Reg. 23,505 (1982); Frozen French Fried Potatoes From Canada, 47 Fed. Reg. 27,151 (1982).

110. *See* Initiation of Antidumping Investigation: Fall-Harvested Round White Potatoes From Canada, 48 Fed. Reg. 9677 (1983); Final Determination of Sales at Less Than Fair Value: Fall-Harvested Round White Potatoes From Canada, 48 Fed. Reg. 51,669 (1983); Fall-Harvested Round White Potatoes From Canada, 48 Fed. Reg. 52,134 (1983).

111. *See* Initiation of Antidumping Investigation: Fall-Harvested Round White Potatoes From Canada, 48 Fed. Reg. 9677 (1983); Final Determination of Sales at Less Than Fair Value: Fall-Harvested Round White Potatoes From Canada, 48 Fed. Reg. 51,669 (1983); Fall-Harvested Round White Potatoes From Canada, 48 Fed. Reg. 57,381 (1983).

112. *See* Certain Red Raspberries From Canada: Initiation of Antidumping Duty Investigation, 49 Fed. Reg. 30,342 (1984); Red Raspberries From Canada: Final Determination of Sales at Less Than Fair Value, 50 Fed. Reg. 19,768 (1985); Certain Red Raspberries From Canada, 50 Fed. Reg. 26,638 (1985).

113. *See* Certain Dried Salted Codfish From Canada: Initiation of Antidumping Duty Investigation, 49 Fed. Reg. 32,437 (1984); Final Determination of Sales at Less Than Fair Value· Certain Dried Heavy Salted Codfish From Canada, 50 Fed. Reg. 20,619 (1985); Certain Dried Salted Codfish From Canada, 50 Fed. Reg. 27,497 (1985).

114. *See* Initiation of Antidumping Duty Investigation: Certain Fresh Cut Flowers From Flowers, 51 Fed. Reg. 21,946 (1986); Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers From Canada, 52 Fed. Reg. 2126 (1987); Certain Fresh Cut Flowers From Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands: Import Investigation, 52 Fed. Reg. 8657 (1987).

115. *See* Rock Salt From Canada: Initiation of Antidumping Duty Investigation, 50 Fed. Reg. 7808 (1985); Rock Salt From Canada: Final Determination of Sales at Less Than Fair Value, 50 Fed. Reg. 49,741 (1985); Import Investigation: Rock Salt From Canada, 51 Fed. Reg. 3271 (1986).

116. *See* Ultra High Temperature Milk From Canada, 62 Fed. Reg. 14,442 (1997); Ultra High Temperature Milk From Canada, 62 Fed. Reg. 16,607 (1997).

117. *See* Initiation of Antidumping Duty Investigations: Live Cattle From Canada and Mexico, 63 Fed. Reg. 71,886 (1998); Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada, 64 Fed. Reg. 56,739 (1999).

118. *See* Certain Frozen Potato Products From Canada: Receipt of Countervailing Duty Petition and Initiation of Investigation, 44 Fed. Reg. 30,496 (1979); Frozen Potato Products From Canada: Determination of Reasonable Indication of Material Injury, Threat of Material Injury, or Material Retardation of the Establishment of an Industry, 45 Fed. Reg. 11,614 (1980).

119. *See* Certain Fish From Canada, 41 Fed. Reg. 31,240 (1976); Certain Fish From Canada, 42 Fed. Reg. 19,326 (1977); Certain Fish From Canada: Revocation of Countervailing Duty Orders, 45 Fed. Reg. 79,025 (1980).

120. *See* Hard-Smoked Herring Filets From Canada: Institution of Preliminary Countervailing Duty Investigation and Scheduling Conference, 46 Fed. Reg. 49,683 (1981); Initiation of Countervailing Duty Investigation: Hard-Smoked Herring Filets From Canada, 46 Fed. Reg. 57,335 (1981); Hard-Smoked Herring Filets From Canada, 46 Fed. Reg. 62,344 (1981).

121. *See* Live Swine and Fresh, Chilled and Frozen Pork From Canada, 49 Fed. Reg. 45,275 (1984); Live Swine and Pork From Canada, 50 Fed. Reg. 31,931 (1985).

122. *See* Certain Red Raspberries From Canada, 50 Fed. Reg. 31,048 (1985); Initiation of Countervailing Duty Investigation: Certain Red Raspberries From Canada, 50 Fed. Reg. 32,461 (1985); Termination of Countervailing Duty Investigation: Certain Red Raspberries From Canada, 56 Fed. Reg. 55,891 (1991).

123. *See* Certain Fresh Atlantic Groundfish From Canada, 50 Fed. Reg. 32,775 (1985); Initiation of Countervailing Duty Investigation: Certain Fresh Atlantic Groundfish From Canada, 50 Fed. Reg.

35,281 (1985); Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish From Canada, 51 Fed. Reg. 10,041 (1986); Fresh Atlantic Groundfish From Canada, 51 Fed. Reg. 17,679 (1986).

124. *See* Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From Canada, 52 Fed. Reg. 2134 (1987); Certain Fresh Cut Flowers From Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands: Import Investigation, 52 Fed. Reg. 8657 (1987).

125. *See* Fresh, Chilled, or Frozen Pork From Canada, 54 Fed. Reg. 1014 (1989); Initiation of Countervailing Duty Investigation: Fresh, Chilled, or Frozen Pork From Canada, 54 Fed. Reg. 5537 (1989); Final Affirmative Countervailing Duty Determination: Fresh, Chilled, or Frozen Pork From Canada, 54 Fed. Reg. 30,774 (1989); Fresh, Chilled, or Frozen Pork From Canada, 54 Fed. Reg. 37,838 (1989).

126. *See* Initiation of Countervailing Duty Investigation of Live Cattle From Canada, 63 Fed. Reg. 71,889 (1998); Final Negative Countervailing Duty Determination: Live Cattle From Canada, 64 Fed. Reg. 57,040 (1999).

127. *See* Initiation of Five-Year (Sunset) Reviews, 63 Fed. Reg. 66,527 (1998) (concerning, among other issues, live swine From Canada); Final Results of Full Sunset Review: Live Swine From Canada, 64 Fed. Reg. 60,301 (1999).

128. *See* Wrap Tobacco, USITC Pub. 746, Inv. No. TA-201-3 (1975).

129. *See* Asparagus, USITC Pub. 755, Inv. No. TA-201-4 (1976).

130. *See* Mushrooms, USITC Pub. 798, Inv. No. TA-201-17 (1977).

131. *See* Shrimp, USITC Pub. 773, Inv. No. TA-201-12 (1976).

132. *See* Honey, USITC Pub. 781, Inv. No. TA-201-14 (1976).

133. *See* Sugar, USITC Pub. 807, Inv. No. TA-201-16 (1977).

134. *See* Fresh Cut Flowers, USITC Pub. 827, Inv. No. TA-201-22 (1977).

135. *See* Alsike Clover Seed, USTC Pub. 7-31, Inv. No. 7-31 (1954).

136. *See* Certain Fish, USITC Pub. 1028, Inv. No. TA-201-41 (1980).

137. *See* Fresh Cut Roses, USITC Pub. 1059, Inv. No. TA-201-42 (1980).

138. *See* Certain Canned Tuna Fish, USITC Pub. 1558, Inv. No. TA-201-53 (1984).

139. *See* Apple Juice, USITC Pub. 1861, Inv. No. TA-201-59 (1986).

140. *See* Fresh Winter Tomatoes, USITC Pub. 2881, Inv. No. TA-201-64 (1995).

141. *See* Fresh Tomatoes and Bell Peppers, 61 Fed. Reg. 13,875 (1996).

142. *See id.*

143. *See* Broom Corn Brooms, 61 Fed. Reg. 11,061 (1996); Broom Corn Brooms, USITC Pub. 2963, Inv. No. TA-201-65 (Aug. 1996).

144. *See* Wheat Gluten, 63 Fed. Reg. 14,476 (1998).

145. *See* Lamb Meat, 63 Fed. Reg. 56,940 (1998); Lamb Meat, 64 Fed. Reg. 18,448 (1999).

146. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 540 (1995) (*Canada - Strawberries*, L/642).

147. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 540 (1995) (*Canada - Frozen Peas*, AIR/124, L/1017).

148. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 544 (1995) (*Canada - Turkeys*, L/2924 & Add. 1).

149. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 545 (1995) (*Canada - Potatoes*, L/3066 & Add. 1).

150. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 545 (1995) (*Canada - Corn*, L/3097 & Add. 1).

151. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 546 (1995) (*Canada - Fresh and pre-served frozen strawberries*, L/3539 & Add. 1-2).

152. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 546 (1995) (*Canada - Fresh Cherries*, L/3887 & Add. 1-6).

153. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 547 (1995) (*Canada - Cattle, Beef, Veal*, L/4072 & Add. 1-5, L/4118 & Add. 1, Replies to GATT/AIR/1128).

154. *See* WORLD TRADE ORGANIZATION, GUIDE TO GATT LAW AND PRACTICE: VOLUME 1 555 (1995) (*Canada - Yellow Onions*, L/5392 & Add. 1-10).

155. *See* Section 301 of the Trade Act of 1974: Complaint, 40 Fed. Reg. 33,749 (1975) (petition alleging unfair trade practices by Canada against the U.S. and trade of eggs). Termination of Section 301 Review, 41 Fed. Reg. 9430 (1975) (termination of review of petition alleging unfair trade practices by Canada against the U.S. and trade of eggs).

156. *See* Unfair Trade Practices: Icicle Sea-Foods: Initiation of Investigation, 51 Fed. Reg. 19,648 (1986).

157. *See* Initiation of Section 302 Investigation and Request for Public Comment: Canadian Restrictions Affecting the Importation of Beer, 55 Fed. Reg. 27,731 (1990); Action Concerning Canadian Practices Affecting Canadian Imports of Beer, 57 Fed. Reg. 33,747 (1992).

158. *See* Initiation of Section 302 Investigation and Request for Public Comment: Canadian Export Subsidies and Market Access for Dairy Products, 62 Fed. Reg. 53,851 (1997).

159. *See* Initiation of section 302 Investigation and Request for Public Comment: Wheat Trading Practices of the Cananadian Wheat Board, 65 Fed. Reg. 69,362 (2000).

160. *See* Butter Substitutes, Including Butter Oil, Containing 45 Percent or More of Butterfat, USTC Pub. 22-14, Inv. No. 22-14 (1957).

161. *See* Rye and Rye Flour and Rye Meal, USTC Pub. 22-9c, Inv. No. 22-9c (1959).

162. *See* Tung Nuts and Tung Oil, USTC Pub. 22-23, Inv. No. 22-23 (1960).

163. *See* Certain Cotton Products, USTC Pub. 22-24, Inv. No. 22-24 (1961).

164. *See* Wheat and Milled Wheat Products, USTC Pub. 675, Inv. No. 22-38 (1974).

165. *See* Barley, Hulled or Unhulled, Including Rolled Barley Ground Barley and Barley Malt, USTC, Inv. No. 22-11 (1954).

166. *See* Oats, Hulled or Unhulled and Unhulled Ground Oats, USTC, Inv. No. 22-7 (1954).

167. *See* Shelled Filberts, USTC Pub. 22-4, Inv. No. 22-4 (1955).

168. *See* Almonds, USTC Pub. 22-17, Inv. No. 22-17 (1957).

169. *See* Flaxseed, Linseed Oil and Peanut Oil, USTC Pub. TC2, Inv. No. 22-6 (1961).

170. *See* Sugar, USITC Pub. 881, Inv. No. 22-41 (1978).

171. *See* Conditions of Competition between the U.S. and Canadian Live Swine and Pork Industries, USITC Pub. 1615, Inv. No. 332-186 (Nov. 1984).

172. *See* Competitive Position in U.S. Markets of Certain Vegetables Produced in the U.S. Great Lakes States and in Canada, USITC Pub. 1829, Inv. No. 332-219 (1986).

173. *See* The Competitive Position of Canadian Live Cattle and Beef in U.S. Markets, USITC Pub. 1996, Inv. No. 332-241 (July 1987).

174. *See* Durum Wheat: Conditions of Competition Between the U.S. and Canadian Industries, 54 Fed. Reg. 51,238 (1989); Durum Wheat: Conditions of Competition Between the U.S. and Canadian Industries, USITC Pub. 2274, Inv. No. 332-285 (1990).

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177. *See* Dry Peas and Lentils: Conditions of Competition Between the United States and Canada and Third-Country Markets, 57 Fed. Reg. 43,985 (1992).

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181. *See Conciliation - Exports of Potatoes to Canada - Report of the Panel*, GATT Doc. L/1927 - 11S/88 (Nov. 16, 1962).

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183. *See Canada - Measures Affecting Exports of Unprocessed Herring and Salmon - Report of the Panel*, GATT Doc. L/6268-35S/98 (Nov. 20, 1987).

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186. *See Canada's Landing Requirement for Pacific Coast Salmon and Herring*, CDA-89-1807-01 (Oct. 16, 1989).

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188. *See The Interpretation of and Canada's Compliance with Article 701.3 with Respect to Durum Wheat Sales*, CDA-92-1807-01 (Feb. 8, 1993).

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190. *See Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products*, CDA-95-2008-01 (Dec. 2, 1996).

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195. *See Supra* Part VI.