

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than November 18, 2002, whether there is a reasonable indication that imports of durum and hard red spring wheat from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE**International Trade Administration**

[C-122-846 and C-122-848]

Notice of Initiation of Countervailing Duty Investigations: Durum Wheat and Hard Red Spring Wheat From Canada

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

ACTION: Initiation of countervailing duty investigations.

SUMMARY: The Department of Commerce is initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of durum wheat and hard red spring wheat from Canada receive countervailable subsidies.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT:

Craig W. Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1778.

Initiation of Investigations*The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (“the

Act”) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce’s (“the Department”) regulations are references to the provisions codified at 19 CFR part 351 (April 2002).

The Petitions

On September 13, 2002, the Department received petitions filed in proper form by the North Dakota Wheat Commission (hard red spring wheat), Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat) (collectively, “the petitioners”).¹ The Department received petition supplements from September 24 through October 21, 2002.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of durum wheat and hard red spring wheat, the subject merchandise, from Canada receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the respective domestic industries because they are interested parties as defined in sections 771(9)(E) and (F) of the Act and they have demonstrated sufficient industry support with respect to each of the countervailing duty investigations that they are requesting the Department to initiate. *See infra*, “Determination of Industry Support for the Petitions.”

Scope of Investigations

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

1. Durum Wheat

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

¹ In the September 13, 2002 petitions, the petitioners identified the North Dakota Wheat Commission as a petitioner for both the durum wheat and hard red spring wheat petitions. However, in a petition supplement dated September 24, 2002, the petitioners informed the Department that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is typically classified in the following HTSUS subheadings:

1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96.

Although the HTSUS subheadings provided for durum wheat and hard red spring wheat are for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

As discussed in the preamble to the Department’s regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Parties should submit any comments on the file of each (durum wheat and hard red spring wheat) case. Comments should be addressed to Import Administration’s Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada (“GOC”) for consultations with respect to the petitions filed in these proceedings. The Department held consultations with the GOC on October 1, 2002. The points raised in the consultations are cited in the Memorandum to the File, “CVD Consultations with Officials from the Government of Canada,” dated October 2, 2001, which is on file in the Department’s Central Records Unit,

Room B-099 of the main Department of Commerce building ("CRU").

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of an investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.²

² See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like products referred to in these petitions are the domestic like products defined in the *Scope of Investigations* section, above. Based upon our review of the petitioners' claims, we have accepted the petitioners' definitions of the domestic like products. For further discussion, see October 23, 2002 Memorandum from Team to Richard W. Moreland, "Domestic Like Product and Industry Support" ("*Like Product/Industry Support Memo*"), which is on file in the CRU.

On October 3, 2002, the Department extended the deadline for the initiation determinations to no later than October 23, 2002 in order to establish whether the petitions are supported by the respective domestic industries, pursuant to section 702(c)(1)(B) of the Act. See October 3, 2002 Memorandum to Faryar Shirzad from Richard W. Moreland, "Extension of Deadline for Determining Industry Support." The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support. See October 23, 2002 Import Administration AD/CVD Enforcement Initiation Checklist ("*Initiation Checklist*") and *Like Product/Industry Support Memo*, both of which are on file in the CRU.

We determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like products. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like products, and the requirements of section 702(c)(4)(A)(i) of the Act are met. The Department received no opposition to the petitions. Accordingly, we determine that these petitions are filed on behalf of the respective domestic industries within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC

must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of subject merchandise. The petitioners contend that each industry's injured condition is evident in the declining trends in domestic prices, production volume and value, market share, income and wages, net sales volume and value, and, for durum wheat, increasing U.S. inventory levels. The petitioners further allege threat of injury due to increased import volumes and import penetration, excess production capacity in Canada, and because inventory levels in Canada exceed its demand for wheat. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, reports from the ITC and United States Department of Agriculture, statistics compiled by the Canadian Wheat Board ("CWB") and Statistics Canada, as well as independent academic and economic studies.

We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (see *Initiation Checklist*).

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on durum wheat and hard red spring wheat from Canada and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain durum wheat and hard red spring wheat from Canada receive countervailable subsidies.

We are including in our investigations the following programs alleged in the petitions to have provided a countervailable subsidy to the CWB:

1. Railcar Lease Subsidy
2. Provision of Government-owned Railcars
3. Rail Freight Revenue Cap Subsidy
4. Maintenance of Uneconomic Branch Lines and Short Line Subsidies

5. Government Guarantee of Borrowing and Lending

A discussion of evidence supporting our initiation determination on these programs is contained in the *Initiation Checklist*.

At this time, we are not including in our investigations of certain durum wheat and hard red spring wheat the following programs alleged to benefit producers and exporters of the subject merchandise in Canada:

1. Railcar Allocation Subsidy

The petitioners allege that the GOC has given the CWB the power to allocate railcars for the transportation of its grain, thereby eliminating the risk premium that grain companies would otherwise charge to cover the impact of competing with non-Board users for railcars. The petitioners assert that this railcar allocation subsidy is a financial contribution because the railroads are providing their transportation services at less than adequate remuneration.

However, the petitioners have not identified the financial contribution being made (directly or indirectly) by the government. In the petitions, the petitioners state that the allocation authority granted to the CWB "is a financial contribution in the form of the provision of a service at less than adequate remuneration." However, the GOC is not providing rail service. Instead, this service is provided by the private railway companies.

Instead, it appears that the GOC has bestowed on the CWB certain authority with respect to the transportation of CWB grains. This authority originates in the CWB Act, which states that "no person other than the Corporation [Board] shall transport or cause to be transported from one province wheat or products owned by a person other than the Board," and is further addressed in a June 2000 memorandum of understanding ("MOU") between the GOC and the CWB.

The MOU, refers to the CWB's railcar allocation power and states, inter alia, that the authority will be used only with respect to the grain that the CWB markets. Also, in describing this provision in the MOU, the petitioners have characterized this provision as permitting the CWB to negotiate car supply requirements with the railways.

Although we do not have a clear understanding of what the CWB's authority is with respect to the allocation of railcars, the information provided by the petitioners appears to indicate that CWB negotiates the number of cars it will receive with the railways and that its allocation authority pertains only to cars for the grains it

markets, so that it is not allocating cars away from non-Board users.

Therefore, because the petitioners have not identified a financial contribution or a benefit, we recommend not including this alleged subsidy in our investigation.

2. Shipper of Record

The petitioners allege that in November 2000 the CWB declared itself the "shipper of record," enabling the CWB to receive multi-car discounts on freight movement, instead of the grain companies. The petitioners allege that the GOC accorded the right to the CWB to act as the "shipper of record" and, therefore, transferred the right to claim such discounts from the grain companies to the CWB.

The petitioners have not identified the financial contribution being made (directly or indirectly) by the government. As with the allegation regarding railcar allocation, the petitioners point to authority granted to the CWB, which allows it to declare itself shipper of record. According to the petitioners, this results in the CWB being able to negotiate multi-car discounts with the railways, discounts that would otherwise be paid to the grain companies. If these discounts are the financial contribution, then they appear to be bestowed by the railways.

Therefore, because the petitioners have not identified a financial contribution, we recommend not including this alleged subsidy in our investigation.

3. Noncommercial Provision of Forward Contracts

The petitioners allege that, by establishing the CWB as the only legal purchaser of western Canadian wheat and by guaranteeing CWB's initial payments to producers, the GOC has removed all acquisition risks from the CWB. Accordingly, in the absence of such risk, the CWB is able to provide forward contracts to U.S. buyers at a lower price. The petitioners allege that the financial contribution "is in the form of a government guarantee (which is equivalent to the cost of insurance that a private firm would have to pay to replicate the CWB's risk position) and the value of the CWB's monopsony status."

The petitioners have not provided sufficient evidence to support its contention that the GOC provided a financial contribution in the form of a guarantee that benefits the CWB. Additionally, the petitioners have not explained how the GOC grant of monoposony status to the CWB falls within the definitions of a "financial

contribution" enumerated in section 771(5)(D) of the Act. Therefore, we recommend not investigating this alleged subsidy.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public versions of the petitions have been provided to the GOC. We will attempt to provide a copy of the public versions of the petitions to each exporter named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than November 18, 2002, whether there is a reasonable indication that imports of durum and/or hard red spring wheat are causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination will result in the investigation(s) being terminated; otherwise, the investigation(s) will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government-owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of