



Corn Trade Update

Revised - June 28, 2006

Background:

On September 16, 2005, the Canadian Corn Producers (CCP) initiated countervail and dumping investigations against imports of U.S. grain corn.

The Canada Border Services Agency (CSBA) issued positive preliminary findings for both countervail and dumping on November 15, 2005 and established combined duties of \$U.S. 1.65/bushel. The duty rates were re-confirmed by final determinations from the CBSA on December 15, 2006.

However, an April 18 ruling by the Canadian International Trade Tribunal (CITT) determined that imports of U.S. grain corn into Canada did not, and would not, cause injury to the Canadian corn industry.

Update:

On May 19, the Canadian Corn Producers (CCP) filed a Notice of Intent, signaling its intention to seek a judicial review of the Canadian International Trade Tribunal's 'no injury' decision on imports of U.S. grain corn, in the Federal Court of Canada.

As well, Corn Products International, CASCO/Canada Starch, Commercial Alcohols and Maple Leaf Foods, all users of grain corn, earlier challenged the Canada Border Services Agency's positive countervail and dumping findings, which established combined duties of \$U.S. 1.65/bushel on American grain corn imports. They are seeking a review through a North American Free Trade Agreement (NAFTA) Binational Panel Review process. They are doing so in an effort to undermine the determination that there has been dumping or illegal subsidization, in order to eliminate (or reduce) the level of duties established by the CBSA. In the event that the Trade Tribunal's 'no injury' findings are reversed, duties could not be imposed (or could be lessened) on grain users, if the challenge of the CBSA decisions are successful.

The Canadian Pork Council has examined the basis for its participation in these separate reviews, as are its partners in the Animal Industry Corn Users (AICU) coalition. This includes involvement in defending the Canadian International Trade Tribunal's 'no injury' finding; but also contributing to the efforts to challenge the findings of, and duties established by, the Canada Border Services Agency.

The CPC Executive Committee has concluded that the Pork Council should definitely continue to participate in the proceedings related to the corn trade actions, and has instructed counsel to file a Notice of Appearance in these cases to protect the CPC interests and to ensure that CPC can continue to be involved. The Pork Council is now being provided with information, including budget estimates, by which to consider the level of involvement.

Steps Taken to Date:

CITT No Injury Finding

The Canadian Corn Producers filed its Notice of Application for Judicial Review of the Canadian International Trade Tribunal's no injury finding on June 7, 2006. The Notice of Application was served by the Canadian Corn Producers on other parties on June 8, 2006.

Counsel filed a Notice of Appearance on behalf of the Canadian Pork Council and its Animal Industry Corn Users partners on June 15, 2006. The Notice of Appearance indicated that the AICU members would oppose the Canadian Corn Producers.

The Federal Court case is proceeding on the basis of the timetable set out below.

Binational Panel Review

Counsel filed a Notice of Appearance with the NAFTA Secretariat indicating that the Animal Industry Corn Users members would participate in the Binational Panel Review of the CBSA decisions in support of the Complaint filed by Corn Products International, CASCO/Canada Starch, Commercial Alcohols and Maple Leaf Foods.

The Complainants have requested that the Binational Panel Review be stayed pending conclusion of the Federal Court of Appeal review of the Canadian International Trade Tribunal's no injury finding. Counsel has been instructed to consent to the stay on behalf of the AICU. The stay would put off the hearing by the NAFTA Binational Panel until after final resolution of the Federal Court of Appeal's review of the CITT no injury finding. If the Canadian Corn Producers' Application is dismissed, and the CITT no injury finding is upheld, the NAFTA Binational Panel process will be moot. At this point, counsel has advised that the AICU will consent to the stay but formal documents providing the consent have not yet been received from counsel for the Complainants. At this point, we assume that the Binational Panel process will be stayed.

Timelines:

Below are the approximate timelines for Federal Court and NAFTA Binational Reviews. Typically, the Federal Court Review is a 130-day process (plus the time required to schedule and hold a hearing, currently estimated at 12-18 months), with the NAFTA Review taking as long as 315 days. (Please note that these timelines are often extended, and Panel selection may be a lengthy process.)

Federal Court Review (of Canadian International Trade Tribunal's 'no injury' finding):

Day 0 – Application for Judicial Review (Canadian Corn Producers)

Day 10 – Notice of Appearance is filed within 10 days of service of Application for Judicial Review (interested parties)

Day 30 – Applicant's Affidavits and documents are served and filed (CCP)

Day 60 – Respondents' Affidavits and documents are served and filed (other interested parties)

Day 80 – Cross Examination on Affidavits and Documents

Day 100 – Applicant's Records are served and filed (CCP)

Day 120 – Respondent's Records are served and filed (other interested parties)

Day 130 – Requisition for Hearing by the Applicant within 10 days of service of Respondent's Record (CCP)

Hearing – Date to be set

NAFTA Binational Panel Review (of Canadian Border Services Agency's affirmative countervail and dumping findings):

Day 0 – Application for Panel Review (Corn Products International, CASCO/Canada Starch, Commercial Alcohols and Maple Leaf Foods)

Day 30 – Complaint is filed within 30 days of the Request for Panel Review (Corn Products International, CASCO/Canada Starch, Commercial Alcohols and Maple Leaf Foods)

Day 45 – Notice of Appearance is filed (interested parties)

Day 60 – Records (materials that were presented before the CBSA) are filed (all interested parties)

Day 120 – Briefs in Support of the Complaint are filed (other interested parties)

Day 180 – Briefs Opposing the Complaint are filed (Canadian Corn Producers)

Day 195 – Reply to Briefs Opposing the Complaint are filed (other interested parties)

Day 205 – Book of Authorities (caselaw and legislation referred to by Parties) to be filed (all interested parties)

Day 225 – Hearing to begin within 30 days after Replies filed

Day 315 – Panel Decision