International Agricultural Trade Disputes:
Case Studies in North America

Agricultural trade disputes will likely increase in the future, according to attorneys, economists and private industry representatives participating in the International Agricultural Trade Disputes Conference in Gainesville, Fla., March 20 and 21, 2003.

The increase in disputes, conference participants agreed, will result from three main factors. Less developed countries argue that U.S. farm policy is being used as a vehicle to dump export products abroad.

Second, there remains a wide discrepancy between trade law and economics. For example, trade law cannot deal adequately with perishable agricultural products, which both U.S. farmers and foreign competitors sometimes sell below the cost of production. Here a normal business practice criterion should be used as a basis for determining whether dumping has occurred. Third, in cases of alleged product dumping, there is controversy over the appropriateness of the models used to determine when material injury has occurred.

Measures used by Canada, Mexico and the United States to resolve trade disputes provide a means for governments to protect domestic industries from competition due to allegedly unfair import surges. While these trade remedies are legal mechanisms of the World Trade Organization (WTO), their use is often contentious due to concerns that they are used to unfairly block trade. In the U.S., trade remedies can be applied if a relevant government agency determines a domestic industry is injured, or is facing threat of injury, from imports and the effects of imports on prices and production.

A rise in U.S. agricultural imports, coupled with slowness of U.S. agricultural exports, has led to increased interest in dispute resolution policies. The positive and normative economics used to explain how the current system has evolved will hopefully yield new solutions to more quickly resolve agricultural trade disputes.

Here are other issues highlighted by conference presenters:

* Agricultural trade disputes often involve unique issues. For example, in the case of fresh produce, the standard criteria for dumping are questionable since it is a normal business practice for producers of perishables to sell below their cost of production.

* Trade dispute resolution frequently benefits producers in both countries because of formal, and/or informal price agreements.

* The impact on trade of state trading enterprises, a common and continuing basis of disputes, is not well understood, nor is the law clear on how to deal with trading done by state trading enterprises.

* The Continued Dumping and Subsidy Offset Act of 2000 allows producers and manufacturers, who successfully petition the U.S., to impose anti-dumping tariffs on imports to keep the proceeds of those tariffs. These windfalls from countervailing tariffs create unusual incentives to use trade laws for economic gain.

* There is discontinuity of U.S. trade policy relative to domestic laws. U.S. agricultural trade policy results in reduced subsidies and increased market access, while U.S. law continues to subsidize agriculture at significant levels, and often operates to limit market access for imports. This results in part from the U.S. Constitution, which grants the Executive Branch the power to negotiate treaties, but giving Congress sole power to set duties and regulate commerce with foreign nations.

* Differences exist in the dispute settlement systems of the WTO and NAFTA. One example is Mexico's imposition of anti-dumping duties on U.S. imports of high fructose corn syrup (HFCS). The two trade agreements differ on how the process is invoked; how a panel is formed; the panel's jurisdiction; the standard of review used; how precedent is treated; what role private counsel will play in the process; the nature of an appeal of a panel decision; and how the decision will be implemented.

* Anti-dumping duties in agriculture have merits as a means to deal with trade-distorting structural domestic subsidies, and to prevent the long-term dumping of agricultural products at prices below the cost of production.

* Trade remedy laws—considered a major vehicle for protection in U.S. agriculture—generally do not yield the desired results because countries turn to alternative sources of imports.

* There are extensive inconsistencies and misconceptions regarding the Country of Origin Labeling (COOL) provisions of the Farm Security and Rural Investment Act of 2002. COOL also presents the potential for trade retaliation, and will have varied impacts on selected regions, consumers and the food supply chain. There is also debate on whether suppliers or retailers should bear the cost of compliance, which USDA estimates at $2 billion in the first year of mandatory labeling beginning Oct. 1, 2004.

* The Canadian COOL program is a response to producer demands for new forms of protection from imports, rather than a means to meet consumer demands. The COOL program may redirect value-added activities from the U.S. and encourage other countries to use similar programs to restrict market access, thus diverting attention away from food chain issues of more valid concerns.

To spotlight the diversity and complexity of issues in agricultural trade disputes, the conference featured case studies on disputes involving lumber, sugar, tomatoes, shrimp, fresh garlic, wheat and barley, and dairy products. Abstracts of all the papers presented at the conference are available at http://www.fred.ifas.ufl.edu/conference/fre/agtradedispute

Conference sponsors were Farm Foundation; Ben Hill Griffin Jr. Chair, University of Florida; Agriculture and Agri-Food Canada; American Farm Bureau Federation; Center for Agricultural Business, Fresno State University, Center for Agricultural Policy & Trade Studies, North Dakota State University; Center for North American Studies, Texas A&M University; Centre for Studies in Agriculture Law & the Environment, University of Saskatchewan; Florida Farm Bureau; International Agricultural Trade and Policy Center, University of Florida; and the University of Saskatchewan, College of Law.

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