Canadian Pork Council
Conseil canadien du porc

# U.S. Trade Action Update

This is an update on current and impending developments in the U.S. antidumping and countervailing duty investigations of live swine from Canada.

The U.S. Department of Commerce (DOC) in March initiated two separate investigations against live swine from Canada based on a petition submitted by the National Pork Producers Council, representing the U.S. hog industry. One is an investigation into whether Canadian live swine are subject to countervailable subsidies and the second is in response to allegations that our live swine exported to the United States are sold at below fair value (the antidumping case).

## ***Preliminary Injury***

The U.S. International Trade Commission (ITC) on May 7th decided that there was a reasonable indication that the U.S. hog industry was being materially injured from imports of Canadian swine (comprising weanlings, feeder pigs, slaughter hogs, sows and boars and hybrid breeding stock).

This preliminary ITC decision, although disappointing in that it did not result in the trade actions being terminated at an early stage, was not surprising. The tendency in recent years is for the vast majority of these trade cases to go forward with the ITC terminating at the preliminary phase only those which lack any substantive evidence to support the allegations.

The International Trade Commission reverses itself in many cases — the 1999 action against Canadian cattle being an example where the final injury determination was negative after a positive preliminary finding. The Canadian industry remains just as confident as it has been from the beginning that overall, the evidence strongly suggests U.S. purchases of live swine from Canada are not causing, nor threaten to cause, material injury to the U.S. swine industry.

## ***Subsidization/Countervail***

Also in May, the U.S. Department of Commerce (DOC) issued questionnaires to be completed by the federal and several provincial governments on the specific programs which are alleged to be providing countervailable benefits. Federal programs include the Canadian Farm Income Program (CFIP), the Canadian Agricultural Income Stabilization (CAIS) program, and two Farm Credit Corporation programs.

In addition, seven individual producers, five based in Manitoba (Elite Swine/Maple Leaf Foods, Hart Feeds, HyTek, and the Parkview and Willow Creek Colonies) and two in Ontario (Premium

Pork and Sureleen Albion/Bujet Sow Group), were named as respondents to provide information on benefits, if any, they (or their cross-owned affiliates) have received from such programs. Questionnaire responses are expected to be submitted to the DOC before the end of June.

The preliminary determination by Commerce on whether there are countervailable subsidies exceeding *de minimis* (i.e., less than1% ad valorem) will be announced not later than August 16. A rate greater than de minimis for any individual respondent will result in previsional duties being collected with the official publication of those results.

The DOC will also announce an "all others" rate which will apply to everyone other than the seven mandatory respondents (and their affiliates). This is a weighted average of the mandatory respondents' margins, except that zero (or *de minimis*, under 1%) margins and any punitive, non-cooperating companies' margins will not be counted in the "all others" rate.

Even if all of the results are found to be *de minimis* (i.e., less than 1% *ad valorem)*, the process will continue through to a final determination. This stage of the process involves different teams from Commerce coming to Canada to verify the information provided in the questionnaires. Changes would be reflected in the final result which is expected in November or December).

***Dumping***

In this investigation, the Department of Commerce examines whether the imports are sold in the United States below the prices at which they are sold in Canada (the 'home market'). If the DOC finds that the 'home market' sales are at prices below the cost of production (COP), the COP becomes the reference point.

On May 14, the U.S. DOC identified four respondents for the dumping investigation, two based in Manitoba (HyTek, Inc. and Excel Swine Services) and two in Ontario (Ontario Pork and Premium Pork). The current date for a preliminary dumping determination by Commerce is August 25$^{th}$, although it is expected that the DOC will extend that date as they did for the countervail investigations, putting it off to at least mid-October.

Once again, if dumping margins are found above *de minimis* (2% *ad valorem* in the case of dumping), provisional antidumping duties will start to be collected (or customs bonds filed) on imports on and after the official publication of the preliminary dumping determination. As with the countervail case, there will also be an "all others"rate. These results could come as soon as late August; however it is expected the Commerce will extend their investigation period due to the complexities of the case, such that their preliminary results will be released in mid-October.

Final antidumping results will likely not be known until later in December.

## ***Deposits and Duties***

These margins and provisional duty deposit rates that are calculated by Commerce, including the "all others" rate, are not the assessed duties, nor even the final margins. They are estimated dumping duties and are what importers must deposit at the time of importation. If the U.S. International Trade Commission finds no injury to the U.S. industry by reason of Canadian exports in their final investigation, the process will end and all deposits paid will be refunded.

If the DOC determines that there are countervailable and/or dumping margins greater than de minimis *and* the ITC finds injury, then duty orders will be issued and deposits will continue to be collected. The actual assessment of dumping duties does not occur until after an annual review which could conclude as much as two years or more after preliminary margins are calculated.

An annual review is not automatic. It can be requested by either an exporter, importer or the petitioners. If the review result is zero, or lower margins than the deposit rate in effect during the review period, the duty deposits (or difference) are refunded, some with interest. If, however, the review results in higher margins than the deposit rate, the difference is assessed retroactively, with interest.

## ***Final Injury***

No duty can become permanent in the absence of a final determination by the International Trade Commission that the U.S. industry is either experiencing, or is threatened with, injury which is linked to the imports in question.

As indicated earlier, if the final injury determination (February, 2005) is positive, permanent duty orders take effect.

The earliest a final injury determination could be made (for the countervail investigation) is October 12th. What is more likely is that there will be extensions due to the complicated circumstances of this case, and that the countervailing duty and antidumping investigations are 'aligned', in which case the final ITC injury determination will be issued in February 2005.

*Canadian Pork Council*
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