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Introduction

Agricultural trade between the United States has been an important feature since they each were still colonies. Trade disputes and other tensions in the relationship have also been common over a long history. Here we focus on the recent relationship and look to the future. We find that despite tensions, the agricultural trade is large and growing; to the benefit of economies on both sides of the border.

The conflicted nature of this the agricultural trade relationship between Canada and the United States is manifest in the continuing series of bilateral trade disputes co-existing with, falling trade barriers, growing trade quantities and a generally cooperative approach to multilateral agricultural trade issues. The paper attempts to explain the nature of trade disputes; identify the causes of trade frictions; explore the commonality of positions in the regional and multilateral trade talks; discuss the institutional framework that exists to reduce tensions and promote trade cooperation; and suggest ways in which the relationship might be improved.

We begin with an historical perspective on the agricultural trade relations between the United States and Canada and then turn to a comparison of the agricultural policies and markets in the two countries, which constitute the environment in which the trade relations exist. Section 3 discusses the development of bilateral agricultural trade flows that has led to or exacerbated trade tensions. We then describe and explain some of the more contentious and persistent trade disputes, including tensions in grains, dairy fruits and vegetables, meat and live animals, and problems that have occasionally arisen in other agricultural industries such as sugar and wine. Institutions for resolving or avoiding disputes are outlined and we then consider cooperation in the broader arena of regional and multilateral trade relationships. A final section of the paper gives some conclusions on ways to enhance the relationship between Canada and the United States and avoid allowing agricultural trade tensions to further detract from the benefits of more open borders and gains from agricultural trade in North America.

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1. History of Agricultural Trade Relations

Canada and the United States share one of the longest and most commercially active borders in the world. Each country is the largest trade partner for the other, and flows of investment and persons take place with minimal restrictions. This has not always been the case, as trade tensions have flared up at various times over the past centuries. Trade policy in the United States historically revolved around the need to collect tariff revenue, and Canada was not exempt from such taxes. In its early years Canadian trade policy was run by the colonial administrations, both French and British, and also revolved around the collection of tariff revenue. Canadian policy was perhaps the more dependent on the actions of others. Split between cultural and emotional ties to Britain and close geographic proximity to the United States, Canada had little choice but to react to developments in each of its two dominant trade partners.

Attempts to facilitate trade across the border between the United States and –Canada are almost as old as the countries themselves. Bilateral trade pacts between Canada and the United States are a manifestation of these tensions. Table 1.1 shows a timeline for such efforts. In 1854, in part as a reaction to the repeal of the Corn Laws in the United Kingdom (the start of a period of unilateral trade liberalization by the world’s foremost industrial power, at the expense of countries that had enjoyed preferential access) Canada sought better access into US markets. The short-lived Elgin-Marcy pact of the mid nineteenth century exchanged such access for transit and fishing rights, but Canada raised duties against US goods, and lost the support of free-traders in the United States with the end of the Civil War. After some further attempts to negotiate trade agreements with the United States after Confederation, Canada resorted to more inward-looking policies in the latter half of the Century. The United States also increased the protection of its domestic market and some took the view that statehood was the desirable solution for Canada. The United States did not pursue favoured trade status with an independent neighbour. However, the United States itself reduced tariffs in the early years of the 20th century, and by 1911 tariffs were at their lowest levels for decades. Canadian attempts to harmonize tariffs and ensure free movement of resource-based products floundered, and Canada once again turned to the UK and its prospect of imperial preferences.

The dramatic increase in the US tariff rates in 1930, with the passage of the Smoot-Hawley Act, precipitated reactions from both the UK and Canada. The immediate result was the introduction of trade preferences into the British market, agreed at the Ottawa Imperial Economic Conference in 1932. When the United States passed the Reciprocal Trade Act in 1934, offering reduced tariffs for those that would open up their markets to US goods, Canada responded. The 1935 Agreement opened the way to better access, though still predominantly on terms favourable to the United States. By 1938, attempts were made to resolve the ambiguities in Canadian trade policy by a series of trilateral trade talks, but world event prevented an agreement. In effect, the GATT, emerging in 1947 from the preparations for the Havana Conference of 1948, in large part became, for Canada, the reconciliation between imperial preferences and the search for a special trade relationship with the United States.

Post-war trade relations between Canada and the United States became closer with specific sectoral agreements on automobiles and parts (the Auto Pact) and defence

procurement in 1965, but any hope that these would blossom into a special trade relationship were dashed by the policies of the United States in the 1970s and the economic instability of the decade. By the mid-1980s Canada felt itself at a greater disadvantage than ever in terms of its access to the large US market. Renewed talks focused on forging an agreement that would at the least bring some degree of predictability to the trade relationship. The Reagan administration expressed strong ties to free trade principles, but the negotiation of the Free Trade Area (or CUSTA, as Canadian commentators preferred to call it) became more of an exercise in trade management than traditional liberalization. When Mexico wanted to have a similar special relationship with the United States, Canada joined in the trilateral North American Free Trade Agreement (NAFTA) of 1993 but now found itself sharing its newly established preferences (Hart, 2000).

The significance of regional and multilateral trade agreements in shaping and constraining the bilateral relationship has been reinforced in recent years. Canada has been a strong proponent of the complementarity of regional and multilateral trade agreements, and has supported negotiation of a Free Trade Agreement of the Americas and a stronger free trade agenda for the Asia-Pacific Economic Cooperation group, as well as NAFTA. While pushing actively in the World Trade Organization (WTO) for further trade liberalization, Canada has been a willing partner in such regional agreements. Table 1.1 shows the main regional and multilateral agreements that include the United States and Canada as well as other trading partners: each of these contributes importantly to the institutional framework in which bilateral trade takes place. Both the United States and Canada retain their full rights in these broader agreements, to be supplemented rather than replaced by bilateral (or trilateral) continental pacts.¹ The mutuality or divergence of attitudes toward these multilateral institutions makes up a major part of the bilateral trade relationship.

Agriculture has played an important role in the overall trade relationship between the United States and Canada from the start. Natural trade patterns exist on a north-south axis across the border, as a result of climatic and other factors, as well as along the east-west axis encouraged by the existence of the border. Fish, furs and forest products were exports that took advantage of Canada's vast natural resources, along with mineral extraction. Wheat, barley and beef became important farm exports, expanding to include fruits and vegetables from the valleys of BC and the Niagara Peninsular. Similar north-south cross-border trade occurred in the Maritimes and New England. In 2001, total merchandise trade (exports plus imports) for the United States was about \$1.9 trillion, of which about 20 percent was bilateral with Canada. Canada's total merchandise trade was about US\$480 billion, of which three quarters is bilateral with the United States (See Table 1.2). Agricultural trade makes up a significant part of the trade of each country. Total US agricultural trade (exports plus imports) was about \$138 billion, of which \$32 billion (23 percent) is bilateral. The bilateral agricultural trade comprises about 65

¹ The situation is thus different from that of the European Union, where member states give up the right to govern their bilateral trade relations by means of WTO rules as they adopt the more extensive rule-system of the EU.

percent of Canada's total agricultural trade. Canada exports about 22 billion to the United States and the United States exports about 10 billion to Canada²

Table 1.1: Timeline of Agricultural Trade Agreements involving both Canada and the United States

Year	Agreements
1854	Elgin-Marcy Reciprocity Agreement between the United States and Canada
1866	Abrogation (non-renewal) of the Elgin-Marcy Reciprocity Agreement
1935	Canada-US Reciprocal Trade Agreement
1947	General Agreement on Tariffs and Trade (GATT)
1987	Canada-US Free Trade Agreement signed
1989	Canada-US Free Trade Agreement (CUSTA or FTA) implemented Asia-Pacific Economic Cooperation (APEC) formed
1992	North American Free Trade Agreement (NAFTA) signed
1993	Uruguay Round Negotiations concluded
1994	North American Free Trade Agreement (NAFTA) entered into force Free Trade Area of the Americas (FTAA) launched at Summit of the Americas in Miami United States and Canada signed Memorandum of Understanding (MOU) on grain trade
1995	World Trade Organization (WTO) , including Agreement on Agriculture (AoA) , Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) , and Agreement on Technical Barriers to Trade (TBT) , entered into force MOU on grain trade between United States and Canada expired Federal-provincial Memorandum of Understanding (MOU)
1998	Record of Understanding Between the Governments of Canada and the United States of America Regarding Areas of Agricultural Trade (ROU) signed
2001	Free Trade Area of the Americas (FTAA): Third Summit in Quebec confirms timetable

Source: Authors, based in part on Hart (2000)

² Details of the coverage of agricultural trade is found in the footnote to Table 1.2.

Table 1.2: Relative importance of agricultural trade in bilateral and total trade of goods (Million US Dollars)

	Imports	Exports	Total Trade (Imports + Exports)
	Bilateral agricultural¹ trade (A)		
Canada	10,103	21,803 ²	31,906
United States	21,803	10,103	31,906
	Total agricultural trade (B)		
Canada	15,551	33,574	49,124
United States	68,400	70,017	138,417
	Total bilateral trade (C)		
Canada	140,870	226,587	367,457
United States	220,104	163,721	383,825
	Total Merchandise trade (D)		
Canada	221,346	259,903	481,248
United States	1,180,154	730,803	1,910,957
	Share of agricultural trade that is bilateral (A/B)		
Canada	65.0%	64.9%	64.9%
United States	31.9%	14.4%	23.1%
	Share of bilateral trade that is agricultural (A/C)		
Canada	7.2%	9.6%	8.7%
United States	9.9%	6.2%	8.3%
	Share of total merchandise trade that is bilateral (C/D)		
Canada	63.6%	87.2%	76.4%
United States	18.7%	22.4%	20.1%

Source: WTO data from 2001: http://www.wto.org/english/res_e/statis_e/statis_e.htm

Notes:

¹Agricultural products are defined as food: food and live animals; beverages and tobacco; animal and vegetable oils, fats and waxes; oilseeds and oleaginous fruit (SITC sections 0, 1, 4 and division 22). Raw materials: hides, skins and furskins, raw; crude rubber (including synthetic and reclaimed); cork and wood; pulp and waste-paper; textile fibers and their wastes; crude animal and vegetable materials, n.e.s. (SITC divisions 21, 23, 24, 25, 26, 29).

²The export figures for “Bilateral Agricultural Trade” are deducted from the import figures for the two countries.

Cohn (1990) noted that the importance of agriculture in the bilateral relationship stems from the central role that the United States and Canada play in the global food system,

their importance as exporters of many temperate-zone products onto world markets and the high level of interdependence among the two economies. The extent of the bilateral trade flows is likely to underestimate the significance of the total economic and political relationship in the area of food and agricultural products in part because agriculture is important in the global trade politics of both countries. This argument has been strengthened in the years since the Uruguay Round, as the management of agricultural and food trade has shifted increasingly to the WTO and as further negotiations on the reduction of support and protection levels have progressed. The extent to which the United States and Canada share similar objectives in these multilateral arenas is an important part of the trade relationship.

Trade policy in agriculture, as in other areas, reflects two competing pressures: to expand trade by reducing costs of movement of goods between nations and to protect domestic investment and jobs. The balance between the two forces is influenced by foreign policy as well as domestic political considerations. The trade relationship itself reflects developments on the international stage, within the region or in the wider global economy. In addition, agricultural trade relations reflect the politics of domestic farm programs. These influences on the bilateral agricultural relationship are discussed in more detail below.

In spite of sharing an early history and a long commercial border the history and policy tradition of trade has differed in certain important respects between Canada and the United States. Canada's relationship with the British Commonwealth, had a profound effect on agricultural trade patterns, perhaps even more than in other areas of trade. This diverted interest from the development of trade in agricultural goods within North America until the 1980s. A major change began with the accession of the UK to the EC in 1973. Canada's traditional market in the UK was drastically reduced as imports of wheat, meat, fruit and dairy products from continental Europe began to replace supplies from the Commonwealth. Though agricultural products were not high on the agenda in the CUSTA discussions, the decision to include them at all signalled a beginning of a more integrated North American market for farm and food products.³

The inclusion of agriculture in CUSTA, although not extending to the sensitive sectors (for Canada) of dairy and poultry products, did signal a new era for bilateral agricultural trade. Importantly, it included a trigger for opening up trade in cereals: if one partner's support level were higher than that of the other then import restrictions had to be withdrawn. Within a period of three years this condition, essentially precluding the use of trade barriers to maintain higher levels of protection, had secured close to free trade in cereals across the border.⁴ NAFTA in essence grand-fathered the CUSTA agricultural

³ Canadian negotiators at the CUSTA talks told to prevent agriculture from holding up the negotiations. The main problems from the Canadian agricultural side were the operations of the Provincially-based supply-control agencies which relied on quantitative control of intra-provincial as well as international trade (see below).

⁴ The trigger was based on the Producer Subsidy Equivalent (PSE), a measure of transfers under farm policies developed by Josling and popularized by the OECD. This represented the first time such an "objective" trigger had been used in trade negotiations, though its use in the Uruguay Round was under

arrangements into the new trilateral, and therefore had a more direct impact on US-Mexico trade.⁵ Other aspects of the NAFTA chapter on agriculture, on export subsidies and domestic support were relatively weak, in effect suggesting common positions to be taken in the GATT talks and foreshadowing some of their eventual provisions.

The Uruguay Round Agreement on Agriculture provided by far the most comprehensive framework for the bilateral agricultural trade relationship. It provided for the conversion of quantitative import restrictions into tariffs, thus eliminating the import quotas used by Canada's supply control system for dairy and poultry. The multilateral agreement also effectively obliged Canada to remove subsidies on the movement of grain to the eastern livestock producers and to the western ports. The United States had to abandon its own import quota policies (mandated under Section 22 of the Agricultural Adjustment Act) and curb its export subsidy policies. The adoption of an agreement on health and safety standards, the Agreement on Sanitary and Phytosanitary Standards (SPS), improved on the rather weaker provisions in NAFTA for preventing border conflicts over such measures.⁶ Finally, the strengthening of the dispute settlement process in the Uruguay Round provided a useful counterpart to the bilateral dispute resolution procedures in CUSTA and NAFTA. The discussion in this paper emphasizes the significance of these multiple provisions for settling trade disputes in defining the bilateral trade relationship in agriculture.

Trade disputes in agriculture, as in other areas of trade, can reflect either friction due to an increase in trade or the existence of impediments to such an increase. Frictional disputes, reflecting rapid increases in trade in sensitive products, show up primarily as anti-dumping and countervailing duty cases brought by industries in the importing country. Impediment cases, reflecting the absence of trade or the additional costs imposed on exporters, show up as market access cases and relate to tariffs, quotas and import standards such as SPS and Technical Barriers to Trade (TBT) measures.⁷ Trade disputes involving market access are brought by the exporter, though these might be in response to actions by the importer seeking to slow or impede the growth of trade. Thus a description of the trade disputes mirrors both expansion and repression of trade.

For the purposes of putting agricultural trade relations between the United States and Canada in perspective, it is convenient to compare the incidence of bilateral trade disputes with the magnitude of bilateral trade flows. Table 1.3 shows the profile of anti-dumping and countervailing duty complaints heard by the national authorities in the

consideration at about the same time. Obviously, the measure itself came under scrutiny from those who opposed market opening, and led to discussion about the way particular programs were counted.

⁵ Agricultural trade between Mexico and Canada was not a major issue, though Canada insisted that the protection of the "milk and feathers" sectors was included in that bilateral part of the NAFTA.

⁶ NAFTA did include some mutual recognition and equivalence provisions for meat inspection, but these have not always been implemented in the manner envisaged.

⁷ In agricultural trade, the realm of health and safety regulations are referred to as Sanitary or Phytosanitary (SPS) Regulations and those not relating to health issues are usually called Technical Barriers to Trade. This distinction is now embedded in the WTO Agreements.

United States (by the USITC) and in Canada (by the CITT) since 1988.⁸ The incidence of bilateral trade remedy cases was equally distributed: of these 104 cases, 51 were considered by the CITT and 53 by the USITC. The preponderance of the Canadian cases (47) were anti-dumping as were the majority of the US cases (35). Of the Canadian cases, fifteen involved agricultural commodities (29 percent), while twelve of the US cases (23 percent) were agricultural. This compares with agricultural trade shares of bilateral flows of 8.3 percent for the United States and 8.7 percent for Canada (Table 1.2). Thus there is little doubt that trade conflicts, as measured by complaints to the domestic authorities, are disproportionately high in agriculture.⁹

The same imbalance is not evident within the agricultural sector. Fifty percent of the Canadian agricultural cases involved the United States and 26 percent of the US cases involved trade with Canada. These proportions mirror the significance of bilateral agricultural trade flows, with 65 percent of Canadian agricultural trade being bilateral and 23 percent of US agricultural trade crossing the northern border. So, while agriculture is a fertile source of trade disputes, bilateral trade is no more contentious than trade with third countries.

⁸ A brief explanation of the two trade remedy systems is included in Annex B.

⁹ There are many ways to consider these proportions and it may be that if a few large and relatively dispute free areas (such as automobiles and automobile parts) are removed the agricultural shares differ little from other areas of trade. Furthermore, product definitions are relatively fine in agricultural trade creating the opportunity for many relatively small scale disputes.

Table 1.3: Relative importance of agricultural border disputes between Canada and the U.S. in bilateral and all trade disputes.

	Antidumping	Countervailing	Total ¹
	Bilateral agricultural trade(A)		
Canada (CITT)	12	3	15
United States (USITC)	7	5	12
	All agricultural cases (B)		
Canada (CITT)	24	6	30
United States (USITC)	34	13	47
	All bilateral cases (C)		
Canada (CITT)	47	4	51
United States (USITC)	35	18	53
	Proportion of agricultural cases that are bilateral (A/B)		
Canada (CITT)	50%	50%	50%
United States (USITC)	21%	38%	26%
	Proportion of bilateral cases that are agricultural (A/C)		
Canada (CITT)	26%	75%	29%
United States (USITC)	20%	28%	23%

Source: CITT and USITC websites.

¹ Multi-country cases have been counted as a case for every country involved: the totals shown here therefore exceed the number of separate cases.

Agricultural cases exclude Fish, Seafood and Timber products as well as highly processed or industrial products such as Butter cookies, Baby Food and Saccharin.

All cases after 1988 are included. Cases prior to 1988 are only included if the ruling was affirmative and orders were in place after the beginning of 1988.

One aspect of the improved global framework for agricultural trade has been the strengthened dispute settlement process, as a result of the Dispute Settlement Understanding (DSU) of the WTO. Canada and the United States have each made full use of the DSU, and have been involved in seventeen cases in the WTO on agricultural issues. Of these seventeen, the United States has been the requesting (complaining) country in eight cases and Canada in four. Canada has been the respondent in two such cases and the United States in six of them. In a number of other cases, the United States or Canada have joined the requests for consultation and the setting up of a panel: Canada has joined in eleven requests and the United States in four. On nine of the seventeen cases, the United States and Canada have found themselves to be on the “same side.” Canada has been the respondent to only one case where the United States has been the requesting country, and one case where the United States joined the request, whereas the United States has had to respond to three requests from Canada and another three where Canada joined the request.

2. Comparison of Agricultural and Trade Policies

Trade relations in agriculture are inevitably linked with domestic farm policies. Without these policies it would be much easier to manage the trade relationship. This section discusses the similarities and differences between Canada and the United States in the types of agricultural policies employed and in the political and administrative environment.

US Policy Developments

Since the 1930s, the United States has periodically renewed and adapted its domestic farm subsidy programs. For example, Farm Security and Rural Investment Act of 2002, which is scheduled to last until 2007, replaced the Food and Agriculture Improvement and Reform (FAIR) Act of 1996, which covered years 1996 to 2002.¹⁰ The FAIR Act was supplemented by ad hoc legislation providing additional subsidies starting in 1998, when farm prices fell. Earlier the Farm, Agriculture, Conservation and Trade (FACT) Act of 1990 (together with the farm spending portions of the Omnibus Budget Reauthorization Act of 1990) replaced the Food Security Act of 1985. Each of these laws took the legal form of temporary amendments of the so-called “permanent” authorizing legislation of 1949. The 1949 Act itself was just one of the periodic laws that have governed the production and marketing of selected farm commodities in the United States since the mid 1930s (HSUS, forthcoming). In addition to these laws, specialized legislation, dealing with specific commodities or specific issues, has become more important. For example, subsidized crop insurance programs have expanded over the past decade as a result to special “reform” legislation. Although U.S. agriculture is large and diverse, about 80 percent of all farm program payments, which are the traditional focus of farm bill debates, are provided to a small range of crops—grains, oilseeds (now including peanuts) and cotton that produce about 40 percent of farm cash receipts. Several minor or specialty commodities such as honey and wool also receive substantial payments relative to the size of the industries. Dairy is supported by a complex set of marketing regulations that allows price discrimination within the United States, by trade barriers, by a small export subsidy program, and more recently by direct payments accounting for about 10 percent of the total payments to US agriculture. A few other commodities, notably beef, sugar, peanuts and frozen concentrated orange juice have significant trade barriers. But, despite crop insurance subsidies, disaster aids, marketing regulations and occasional ad hoc programs, government subsidy or protection for most of the rest of U.S. agriculture is quite low. In particular, the meats, fruits and tree nuts, vegetables and melons, ornamental crops and hay crops receive almost no program payments and, even including import barriers (with a few exceptions, such as frozen concentrated orange juice), have little

¹⁰ The USDA Economic Research Service describes US farm programs in summary and in detail. The farm policy “Briefing Room” is an excellent source of description and analysis. See www.ers.usda.gov/Briefing/FarmPolicy/.

support compared to the program crops and sugar. The average producer support equivalent for these commodities, which comprise more than half of U.S. agriculture, is less than 10 percent of total revenue, and this figure includes broad support such as research and extension (Sumner and Brunke, 2004). In discussing U.S. commodity programs we should not lose sight of which commodities are left out.

OECD Producer Support Estimates (PSEs) for US agriculture provide calculations for the main subsidized crops and the main livestock industries. However, these estimates are not provided for the horticultural industry, which is largely unsubsidized and so the sector-wide averages are misleading. These estimates also vary from year to year inversely with farm prices. Furthermore, PSEs are not designed to reflect production or trade distortion elements of policies. Therefore, they must be interpreted with care as a summary of policy impacts or even policy changes. With those caveats, we note that the overall PSE for US agriculture report was 25 percent for the 1986 through 88 period and 23 percent for the 1999 through 2001 period.

The main subsidy programs for grains, cotton and oilseeds provide three forms of payments and each subsidizes production and thereby distorts trade flows to some degree. "Direct payments" have the least impact on production because they are tied to historical production bases, allow alternative land uses without affecting payments and do not vary with current market prices. However, the 2002 Act allowed updating of "historical" bases and the some crops and all non-farm land uses are prohibited on land receiving payments. The "counter-cyclical" payments are similar to direct payments except that they vary inversely with the US average market price of each supported crop and thus provide an additional element of risk protection. Finally, the marketing loan program provides payments on current production whenever the market price falls below a "loan rate". This program encourages production by promising additional revenue to offset low prices directly.

The United States has eliminated annual land set aside programs that used to be tied to price supports. However, a major long-term land retirement scheme, the Conservation Reserve Program, pays cropland owners to idle approximately 37 million acres of land, much of which would otherwise be used for grains, oilseeds, cotton or hay.

Dairy policy in the United States long had three major components: (i) border measures that create import barriers for most dairy products and export subsidies for a few manufactured dairy products; (ii) federal and state marketing orders that regulate raw milk prices; and (iii) government purchases of manufactured dairy products to support the farm price of milk. Periodically there have been ad hoc supply control measures and starting in 2002 a major new direct payment program was created that has distributed funds equivalent to between 5 percent and 10 percent of milk revenue each year because prices fell below trigger levels for at least part of the year.

The most important feature of US dairy policy is the tariff rate quota policy which limits imports to only a few percentage of domestic consumption and allows dairy product prices in the United States to exceed prices trade in world markets by about 30 percent on average. This still leaves US dairy prices well below those in Canada however. The direct production and export subsidy elements of US dairy policy are small compared to the trade barriers and the marketing order system mainly limits trade within the United States

and reduces consumption of fluid milk while slightly subsidizing the price of cheese, butter and dry milk powder. The final element of the policy, the price support, also has a relatively small impact but has kept the price of no-fat dry milk above a minimum during periods of extremely low prices.

The meat industry in the United States is relatively unsubsidized. The TRQ for beef specifies a tariff of about 25 percent for beef entering above the quota quantities, but the quota has not been filled in recent years and the US is a major unsubsidized beef exporter. The pork and poultry industries are minimally protected or subsidized. The most important and controversial programs for the meat industries in recent years have been SPS regulations. The US has dealt with a series of outbreaks of poultry diseases that have been eradicated or controlled with government aid. In December 2003, a finding of one cow with Bovine Spongiform Encephalopathy (BSE) (after a similar event in Canada in May 2003) caused major disruption and a series of government measures to reassure consumers and attempt to reopen international markets. The similar positions of the United States and Canada in attempting to deal with the BSE findings may allow some common responses and perhaps even additional cooperation.

Crop insurance programs comprise the most important subsidy for the rest of US agriculture and is also important for grains, cotton and oilseeds. The subsidy element in crop insurance policies often exceeds 50 percent and the budget costs of premium subsidy plus additional losses has been about \$2 billion per year in recent years. Most of this goes to the major program crops but the subsidy to fruits and vegetables is significant in some cases. Nonetheless, the overall subsidy rates for horticultural crops in the United States averages about 5 percent.

Evolution of U.S. Commodity Policy towards Compatibility with an Open Border with Canada

The evolution of US farm programs has been uneven, but over the past 20 years has moved to become more compatible with open international trade. High internal price supports have been replaced with payments and most payments have less production subsidy elements than they had in the past. In addition, the United States no longer idles productive land to attempt to prop up domestic prices and no longer stores large quantities of grains and cotton.

The explicit export subsidies that the United States had used periodically are most eliminated or reduced to insignificance. Remaining export programs for promotion and food aid have some subsidy element, but much less than the direct payments to exporters. The United States government does provide export credit guarantees for less credit-worthy buyers and the subsidy element in that program has been an element of contention, especially as the United States has called for elimination of direct export subsidies and additional disciplines on state trading enterprises such as the Canadian Wheat Board.

Despite gradual reforms, US farm programs are by no means free of trade distortion. Perhaps surprisingly, however, the subsidy elements of the main US subsidies have not been the main source of agricultural trade conflicts between the United States and Canada.

Canada's Agricultural Policies

The decade of the 1990s marked a significant shift in agricultural policies in Canada. Specifically, the sector moved to a substantially less subsidized position and a somewhat more open trade environment. The OECD monitors government support to farmers with a measure termed the Producer Subsidy Equivalent (PSE) that is an estimate of the value of all financial support and border protection from policies that support agriculture, or the transfers farmers receive from taxpayers and consumers due to those policies.

By this measure, most countries have reduced their support to agriculture from a benchmark period, 1986-88, to 1999-2001. However, few countries have reduced their support as significantly as has Canada. As a percentage of total farm receipts, the PSE for Canada has fallen from about 34 percent to 18 percent over this thirteen-year period, a decline in support of almost one-half (Dewbre and Short). Most of this decline was due to cuts in government subsidy support. The major component of *border* protection, the higher domestic prices due to quota and tariff protection in the dairy and poultry sectors, has not been changed significantly. Other elements of border protection, outside supply management, have declined and in most cases have been removed altogether.

What has come about from this policy change since the mid-late 1980s is a dichotomous policy framework. Eighty percent of agriculture by sales receives modest government budget support and little or no border protection. The result is that the bulk of the sector faces world prices for their products, with a moderately low slung safety net to protect farmers when world prices fall or vary. The remaining part of the sector, dairy and poultry production, has remained heavily protected through commodity marketing boards with the power to control aggregate supply through domestic and import quotas. The actual level of protection in this sector has hardly diminished even since the Uruguay Round Agreement, mostly due to the prohibitively high over-Tariff Rate Quota (TRQ) tariffs and small TRQ levels.

Canadian agricultural policy has also moved away from traditional support prices and from commodity-specific policy in general. This shift was only strengthened by the very substantial mid-1990s reduction in budgetary support of the sector noted above. I Canada has no general commodity subsidy, no direct payments, and no government commodity purchases. To illustrate the importance of these program cuts, the federal government in 1995/96 removed the grain freight rate subsidy on grain exports from the Prairies region to grain terminals such as Vancouver, a cut of about \$800 million (Canadian) per year. It is now the case there are no significant export subsidies in Canada, aside from loan guarantees on export credit. In addition, a direct subsidy on milk production was removed over the period from 1995 to 2002 that reduced budgetary support by \$300 million.

In the place of a commodity focus, federal government expenditure policy has moved clearly to the goal of stabilization. This has taken the form of a pattern of cross-commodity, insurance-style schemes that focus on aggregate net farm income and crop yield stability with a moderate degree of subsidy. These programs are still evolving as a response to a late-1990s combination of low world prices and domestic production shortfalls, introducing a greater capacity to cover such farm income "disasters." As the

program scope has widened (and renamed as the Canadian Agricultural Income Stabilization (CAIS) program) to cover “disaster” situations, so has the potential expenditure. The federal government cost of this “risk management” support has risen to an expected \$1 billion for 2004, about double the nominal level in the early 1990s.

This modified stabilization policy is one element of a new policy framework that has recently been adopted, the Agricultural Policy Framework or APF, which is based on five main pillars: (a) food safety and quality, (b) the environment, (c) science and innovation, (d) sectoral renewal, and (e) business risk management (AAFC 2002). Only in the latter category do you have some continuity with earlier emphases on commodity markets. This framework is rather different from the previous strategy, entitled *Growing Together* (1989) as is described in Rude and Meilke (2003, p.417): “Trade, regulatory barriers and cost structures are seldom mentioned in the APF. The focus is more on niche markets, branding a unique Canadian product and controlling attributes throughout the food chain, rather than on commodity markets... Only in the area of business risk management is there some overlap with ... commodity markets.” Under that category this strategy emphasizes “adaptation and innovation, encouraging producers to proactively manage the risks facing their farms, whole farm programs, national, stable, predictable, comprehensive government programs, and financial sustainability” (p. 416).

This does not cover the budget situation for all government programs. There is still research funding where expenditures have been maintained in real terms, largely through federal government programs. There are also a wide variety of environmental programs with components such as protecting water supplies, providing environmental amenities like wetlands and areas of biodiversity, and programs to reduce waste water run-off, but total budget support is modest. There are no conservation reserves as still practiced in the United States or land set-aside policies tied in with price supports as was found in the United States. Against this, extension support under provincial government support has fallen substantially. Input subsidies and programs to invest in rural infrastructure have also become rare and modest in funding level.

So agricultural policy in terms of budgetary support has changed quite considerably over the last 15 years since CUSTA was adopted. What remains is much less distortionary in terms of effects on agricultural input and output markets, and remaining funding is much more decoupled.

However, not all Canadian agricultural policy has been reformed. There remains the supply management policy that covers the dairy and poultry sectors (20 percent of total revenue for the agricultural sector). This policy regime relies upon high levels of border protection and farm-level marketing quotas to generate farm-level prices that are well above border levels. The border protection involves a series of tariff rate quotas (TRQs) usually at levels of 5-10 percent of domestic consumption, coupled with very high over-quota tariffs. These tariffs are in the range of 100-250 percent, but there is much “water” in these tariffs. The result is that these industries are heavily insulated from the operation of world markets. The marketing quotas restrict farm production to a level that roughly equals domestic consumption. This regime now involves little budget support. But it does rely on an extensive network of regulations and controls to enforce the operation of the system in addition to the marketing quotas. These apply mostly at the farm level but

include restrictions on the inter-provincial movement of many raw and processed dairy and poultry products. In terms of its fundamentals, this system has not changed since the mid-1970s.

The supply management system generates very high economic rents. The value of farm level quotas for the dairy industry alone is in the range of \$16-22 billion (Canadian), which works out to about \$1 million per farm, or \$20,000 per cow. Although the poultry sector is smaller in aggregate, the per farm quota values are as high as in the dairy sector, or higher. With these values at stake, or in view of the annual income flows that must exist to generate these quota values, there are very strong and effective lobbies within this sector, defending it against trade policy changes or any changes in its operation. To say this sector is resistant to policy reform is to understate the case. In terms of its fundamentals, this sector has not changed since its inception in the early to mid 1970s. It has weathered all three trade agreements noted, many changes of government, widespread public debate, and numerous legal challenges by farmers and others inside and outside the system.

The other element of Canadian agricultural policy that is a significant part of agricultural policy and has not changed fundamentally for some years is another marketing board, the Canadian Wheat Board. There is no supply control involved here and no significant ongoing government subsidy, but the marketing system involves the operation of the Board as a state trading enterprise. This does not directly generate the kind of rents seen in the supply management sector, and the wheat industry is competitive on world markets, but there is little transparency in the Wheat Board's operations. This fuels domestic and international debate about its practices and their effects. It has both an export monopoly as well as a monopsony over purchase of wheat and most types of barley. These powers have increasingly come under domestic debate and controversy, particularly from certain groups of farmers affected by the regime. But like the supply management sector, this institution is also quite resistant to reform, whether from domestic or international pressure.

These policy changes have resulted in a divergence in agricultural policy between Canada and the U.S. The U.S. policy framework remains substantially affected by government support programs of various types that provide U.S. farmers with some insulation from world price variability. On the other hand, there is no large scale counterpart in the U.S. to Canada's supply management system.

Table 2.1: Milestones in Recent Canadian and US Agricultural Domestic and Trade Policies

Year	Canadian Policy	US Policy
1983	<i>Western Grain Transportation Act (WGTA)</i> passed	
1985		Enactment of <i>Food Security Act</i> Beginning of the <i>Export enhancement program</i>
1986	Creation of the <i>National Tripartite Stabilization Program (NTSP)</i>	Implementation of the <i>Conservation Reserve Program (CRP)</i> and other provisions of the <i>FSA of 1985</i>
1990		<i>Food, Agriculture, Conservation, and Trade Act (US Farm Bill)</i>
1991	Establishment of <i>Gross Revenue Insurance Program (GRIP)</i> Initiation of the <i>Net Income Stabilization Account (NISA)</i>	
1993	Termination of the <i>National Tripartite Stabilization Program (NTSP)</i> for red meats	
1994		<i>Crop Insurance Reform Act</i>
1995	Replacement of quantitative import restrictions with tariff rate quotas as border protection Elimination of the <i>Western Grain Transportation Act (WGTA)</i> Cancellation of the <i>Feed Freight Assistance program</i> Initiation of the <i>Canadian Adaptation and Rural Development (CARD) Fund</i> Introduction of the <i>Matching Investment Initiative Program (MII)</i>	
1996	Termination of the <i>Gross Revenue Insurance Program (GRIP)</i>	<i>US Federal Agricultural Improvement and Reform Act (US Farm Bill)</i> Introduction of the <i>Environmental Quality Incentives Program (EQIP)</i>
1997	Termination of the entire <i>National Tripartite Stabilization Program (NTSP)</i> Establishment of the Canadian Food Inspection Agency	<i>Taxpayer Relief Act of 1997</i>
1998		<i>Tax and Trade Relief Extension Act</i> <i>Ad hoc Market Loss Assistance Program</i>
1999	Canadian <i>Agricultural Income Disaster Assistance (AIDA)</i> program implemented <i>Canadian Adaptation and Rural Development (CARD) Fund</i> became a continuous program	<i>Ad hoc Market Loss Assistance Program</i> Implementation of milk marketing order reforms 2000 crop insurance reform act <i>Ad hoc Market Loss Assistance Program</i>
2001		<i>Ad hoc Market Loss Assistance Program</i>
2002	Canadian <i>Federal Dairy Subsidy</i> to be phased out by January 31; Supply management remains in place	<i>Farm Security and Rural Investment Act (US Farm Bill)</i>

Sources: Gellner and Rattray, in Loyns et.al. (2001); Young, Nelson, Dixit, and Conklin, in Loyns et.al. (2001); Hart, (2000); USDA farm policy website at <http://www.usda.gov/farmbill/>

3. Bilateral Agricultural Trade Flows

This section gives a brief view of bilateral agricultural trade flows, as a prelude to the discussion of the specific disputes that have occurred in recent years. Disputes often reflect changes in trade flows, both when trade increases rapidly and when markets are lost. Commodity trade developments therefore give a reasonable view of the likely locus of the most significant trade disputes. Before turning to individual commodity trade flows we examine the aggregate trade flows, both for their patterns over time and the composition of trade.

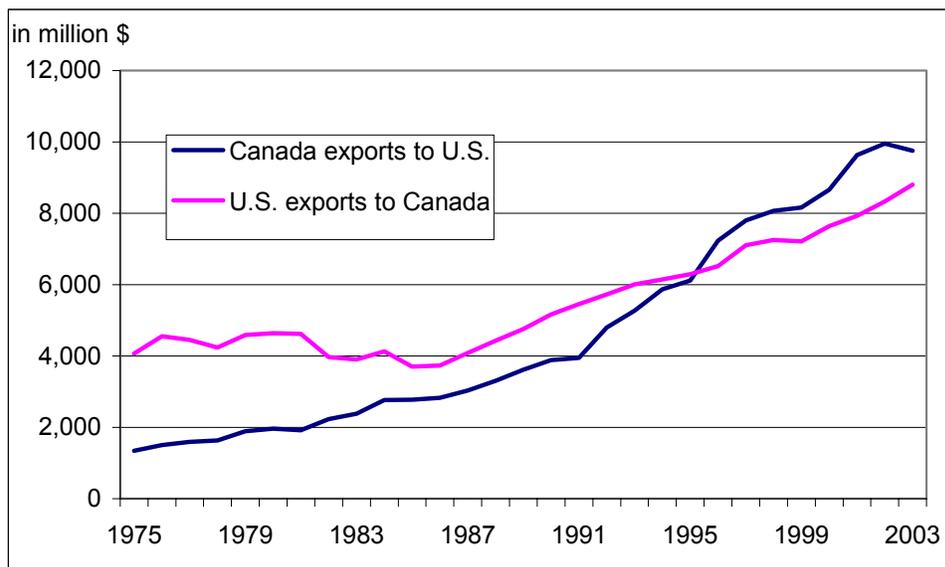
The real (net of inflation) aggregate agricultural trade flows are significant in terms of their increase, shown in Figure 3.1. Over the twenty-eight year period from 1975 to 2003, total trade, measured as the sum of each country's exports, grew at a compound rate of 4.5 percent per year or increased by 3.4 times. But as is clear in Figure 3.1 below, Canadian exports grew much more quickly. While U.S. exports grew at a rate of 2.8 percent annually, Canada's exports grew at 7.3 percent. By itself, this might be taken as an indicator that Canada would experience a larger number of disputes on those export commodities, at least of the trade remedy variety.

A question of some interest is, has there been an impact on these aggregate trade flows, and then possibly on disputes, from the opening up of the border with the Canada-U.S. Free Trade Agreement. The CUSTA was implemented in 1989, so we can divide the period into a pre-CUSTA period from 1975 to 1988, and the post-CUSTA period from 1988 to 2003 and compare trade growth rates. The post-CUSTA period will also reveal the influence of further border opening due to the Uruguay Round Agreement. Although this is a casual test of the influence of these trade agreements, the results are still worth noting. In the first period, total real agricultural trade was growing at 2.8 percent per year. Following 1988, trade grew much more rapidly, at 6.0 percent annually.¹¹

Decomposing trade by country, we find that although exports from Canada were growing more quickly than exports from the U.S., most of the post-1988 *increase* in trade growth rates occurred from U.S. exports. Real Canadian agricultural exports grew at 7.0 percent per year up to 1988, and then grew at 8.0 percent in the latter period. U.S. exports grew at 0.7 percent annually up to 1988 and at 4.7 percent since 1988. These results would appear to suggest that the opening up of the *Canadian* border post-CUSTA was more significant to agricultural trade in that it was followed by a much larger increase in U.S. exports moving north than occurred with Canadian exports flowing south. Although Canadian exports were growing at a faster rate than U.S. exports after 1988, they were also growing much more rapidly prior to 1988. These results may appear to conflict with news reports of dramatic increases in Canadian agricultural exports in the 1990s. However, it should be remembered that these data are in U.S., not Canadian, dollars. So they do not reflect that part of the increased exports measured in Canadian dollars that is due to the depreciation of the Canadian dollar that occurred since 1990.

¹¹ A strong case can be made that this result is substantially due to the opening up of the border through these trade agreements. Any exchange rate effects will tend to cancel each other out because the gain in exports from one country's currency depreciation will be offset by the loss in exports from the other currency's appreciation.

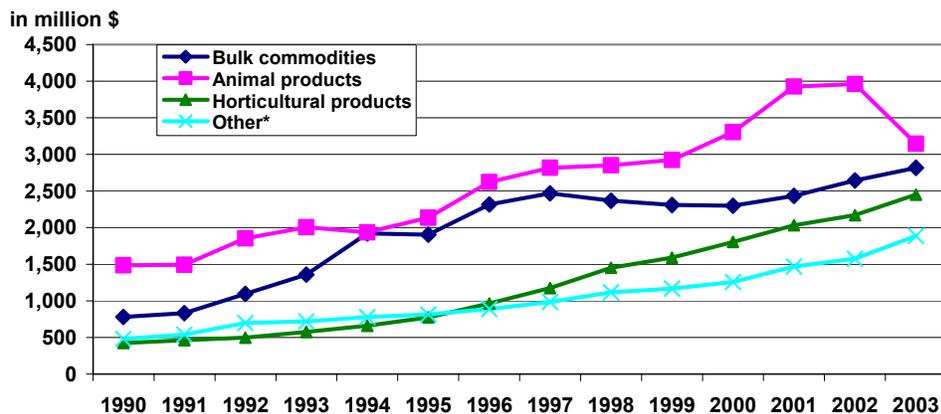
Figure 3.1: Total Real Bilateral Agricultural Trade, U.S. and Canada, 1975-2003



Source: ERS historical trade data, USDA Fatus database, Bureau of Economic Analysis (GDP deflator), figures given are in real 2000 U.S. dollar terms.

The composition of Canadian agricultural exports to the United States is shown in Figure 3.2. The rapid expansion of agricultural trade in bulk commodities and animal products is striking. Exports of animal products from Canada to the United States reached nearly \$4 billion in 2002 (before falling to just over \$3.1 billion in 2003 as a consequence of the occurrence of the first case of Bovine Spongiform Encephalopathy (BSE) in Canada), up from \$1.5 billion in 1990. Canadian shipments of bulk commodities to the United States increased from nearly \$800 million in 1990 to over \$2.8 billion in 2003. Canada has also increasingly become an exporter of horticultural goods. Canadian exports of such goods increased from around \$500 million in 1990 to nearly \$2 billion in 2003 while processed intermediate goods peaked at about \$2.5 billion in 1996. The rise in exports seems to have corresponded to the freer trade with the United States following the introduction of CUSTA and NAFTA, though obviously there could have been many other causes.

Figure 3.2: Composition of Canadian Agricultural Exports to the United States by Category, 1990-03 (in millions of US dollars)

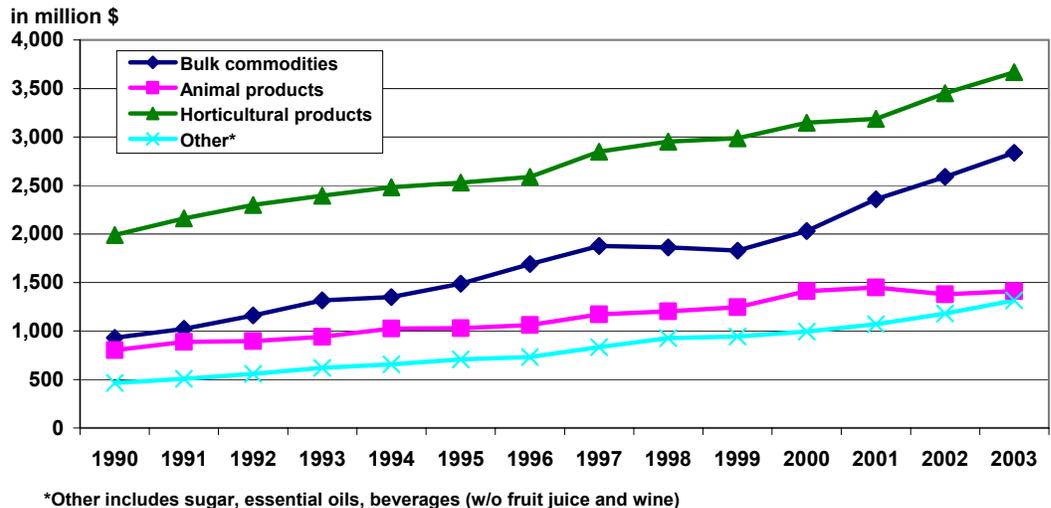


*Other includes sugar, beverages (w/o fruit juice and wine), and nearly \$900 million of noncompetitive imports, such as cocoa, coffee and tea

Source: USDA, Fatus database.

The pattern of U.S. exports to Canada shows some strong similarities (see Figure 3.3). Especially bulk commodities and high-value horticultural products have accounted for the major part of the expansion of agricultural products exported by the United States, with horticultural products reaching nearly \$3.6 billion by 2003, up from \$2 billion in 1990, and bulk commodities increasing from \$930 million in 1990 to \$2.8 billion in 2003. However, exports of animal products have also been growing and rose from \$800 million in 1990 to \$1.4 billion in 2003.

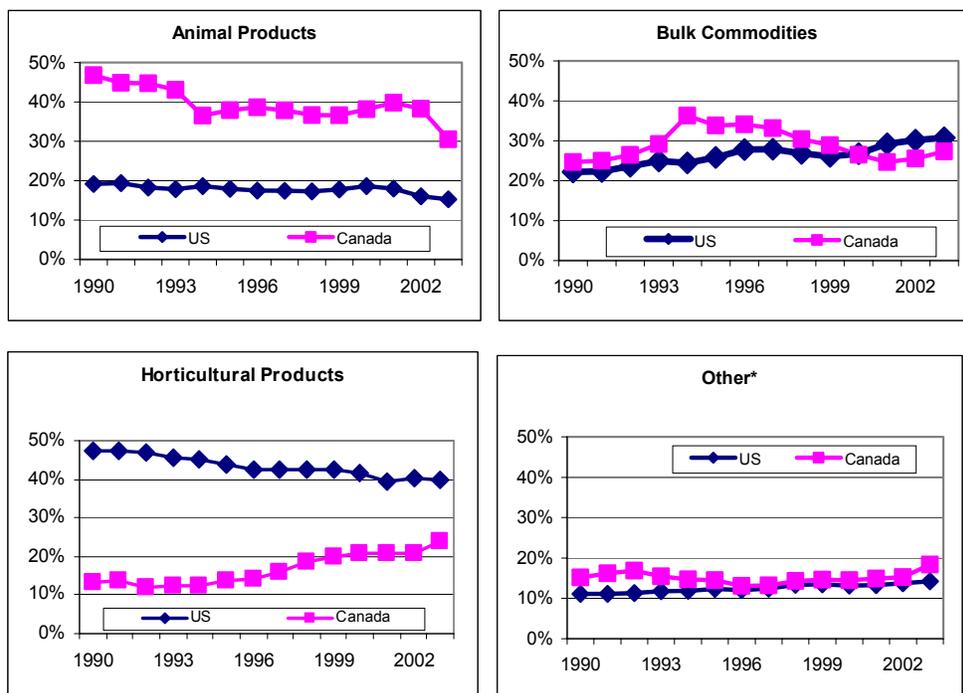
Figure 3.3: Composition of US Agricultural Exports to Canada by Category, 1990-2003



Source: USDA, Fatus Database

Figure 3.4 presents the changes in the shares over time of these four categories of agricultural goods. Both Canada and the United States shipped bulk commodities worth about 30 percent of their total agricultural exports, up slightly from the early 1990s. Canada's share of animal products in total agricultural trade has decreased from 47 percent in 1990 to 38 percent in 2002 and then to 30 percent after BSE in 2003. The U.S. share of animal products in total agricultural exports has decreased slightly from 19 percent in 1990 to 15 percent in 2003. Horticultural products made up 14 percent of all agricultural exports from Canada to the United States, but by 2003 that share had increased to 24 percent. Horticultural products made up nearly half of all agricultural exports in the early 1990s, but by 2003 that share had fallen to around 40 percent. The share of other agricultural commodities was relatively unchanged in both Canada and the United States over the last 14 years. The U.S. share increased slightly from 11 percent in 1990 to 14 percent in 2003 and Canada's share increased from 15 percent to 18 percent.

Figure 3.4: Composition of Canadian and United States Bilateral Agricultural Exports by Category, 1990-03 (in percent)



Note: With regard to U.S. imports, Other contains sugar, beverages (w/o fruit juice and wine), and nearly \$900 million of noncompetitive imports, such as cocoa, coffee and tea. On the U.S. exports side, other includes sugar, essential oils, beverages (w/o fruit juice and wine)

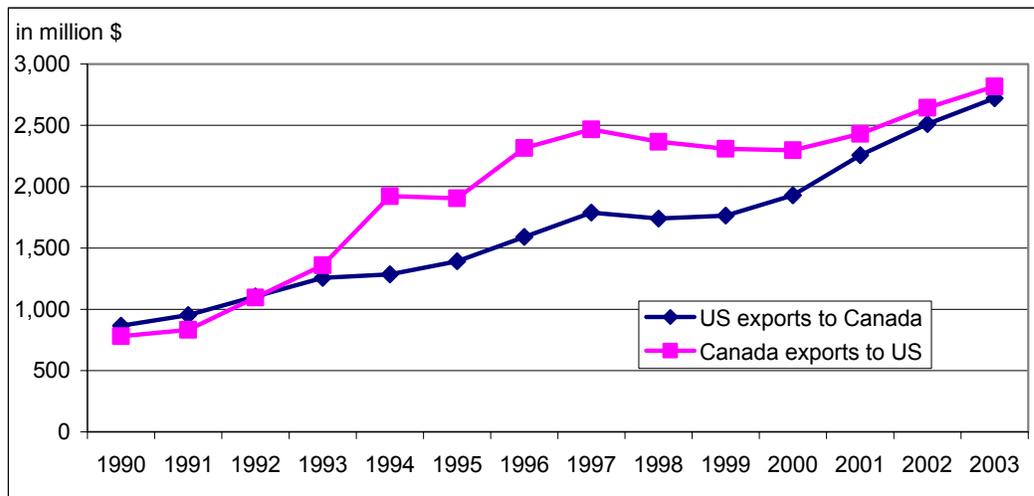
Source: based on tables 3.2 and 3.3

Commodity trade patterns are a function both of policy differences and natural cost advantages. They also give rise to trade tensions in a much more direct and recognizable way than the more aggregated figures discussed above. Figure 3.5 shows the recent development in the bilateral trade in grains and oilseeds.¹² Among the most dramatic increases in trade patterns among the unprocessed goods has been the rise in Canadian exports to the United States in grains and oilseeds, much of it in cereals. Over the fourteen years period 1990-2003 the value of such trade increased from \$782 million to

¹² Discussion of the commodity trade flows focuses on the last decade, to correspond to the period of trade relations discussed in the next section. Data is from the USDA's Foreign Agricultural Trade of the United States Database

over \$2.8 billion. Canadian shipments to the United States had already reached nearly \$2.5 billion in 1997, but slowed down a little in the late 1990s, just to increase to the 2003 level in recent years. Grains and oilseeds have also moved north, and the increase in value of U.S. exports to Canada is similar to the trade in the other direction. U.S. grain and oilseed exports to Canada increased from \$866 million in 1990 to \$2.7 billion in 2003. It is difficult to avoid the conclusion that grain and oilseed trade within North America has responded significantly to the opening up of trade stemming from CUSTA, when the support-level trigger brought down trade barriers on bilateral grain sales.

Figure 3.5: Value of Bilateral Grain and Oilseed Trade, 1990-2003



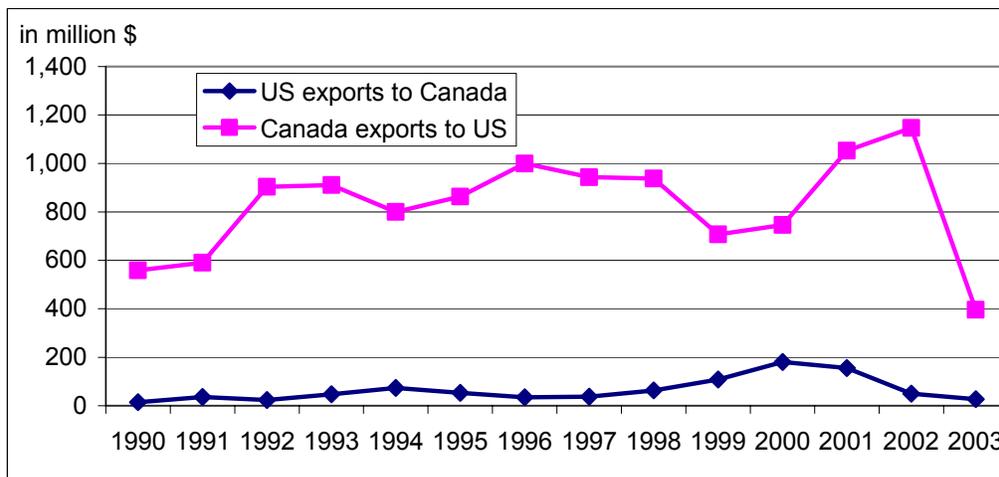
Source: USDA, Fatus Database

Trade in live cattle show some interesting trends over the past decade (Figures 3.6). Canada has been the beneficiary of easier entry into the U.S. market in addition to being aided by a cheaper Canadian dollar. Sales of live cattle coming south doubled from 1990 to 2002, when the value of Canadian exports totaled over \$1.1 billion. Canadian beef exports to the United States grew rapidly after 1991 and increased again from 1999 to 2002. However, the value of live cattle exports from Canada to the United States decreased dramatically in 2003 as a response to the discovery of BSE in Canada. Exports fell from the high in 2002 to just under \$400 million in 2003. Exports of live cattle from the United States have been negligible, relative to the trade in the other direction.

The bilateral beef trade between the two countries (Figure 3.7) was very similar in the 1993-1995 period when both countries' exports were valued at about \$360 million. However, since then, U.S. exports have changed little in value but Canadian exports to

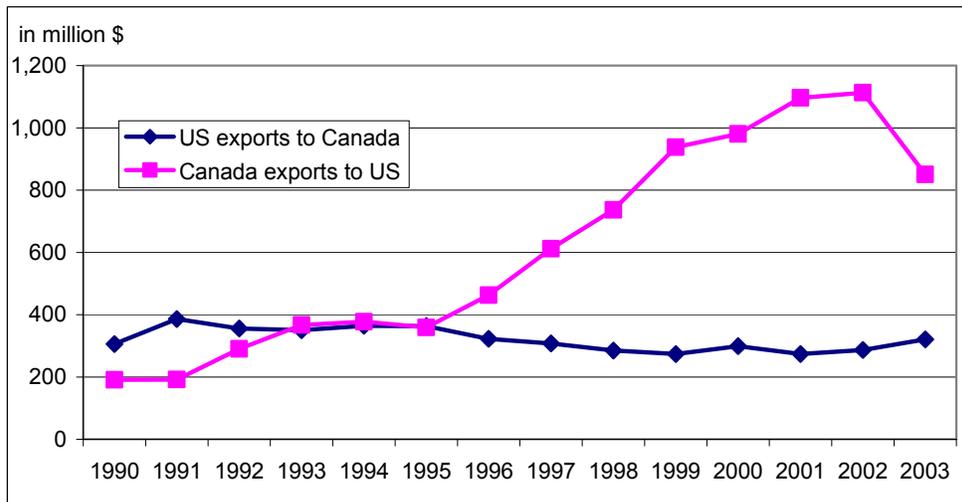
the U.S. have tripled to over \$1.1 billion in 2002. They fell back in 2003 to less than \$900 million following the BSE discovery in Canada.

Figure 3.6 Value of Bilateral Trade in Live Cattle, 1990-2003



Source: USDA, Fatus Database

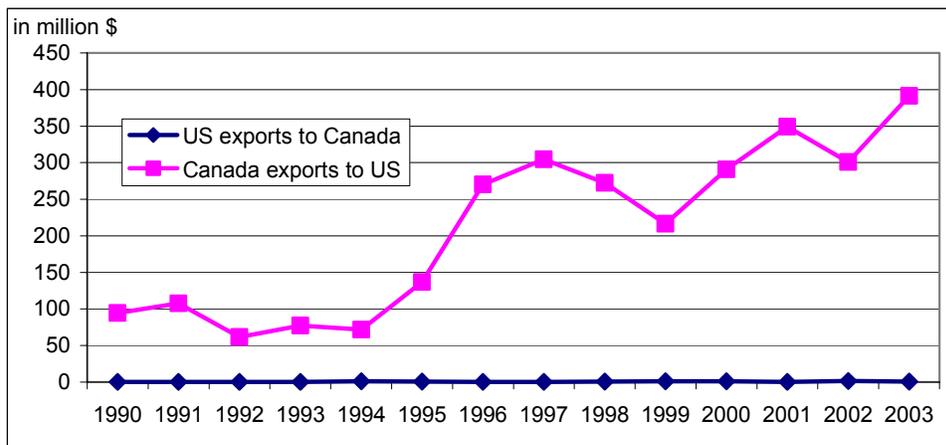
Figure 3.7: Value of Bilateral Beef Trade, 1990-2003



Source: USDA, Fatus Database

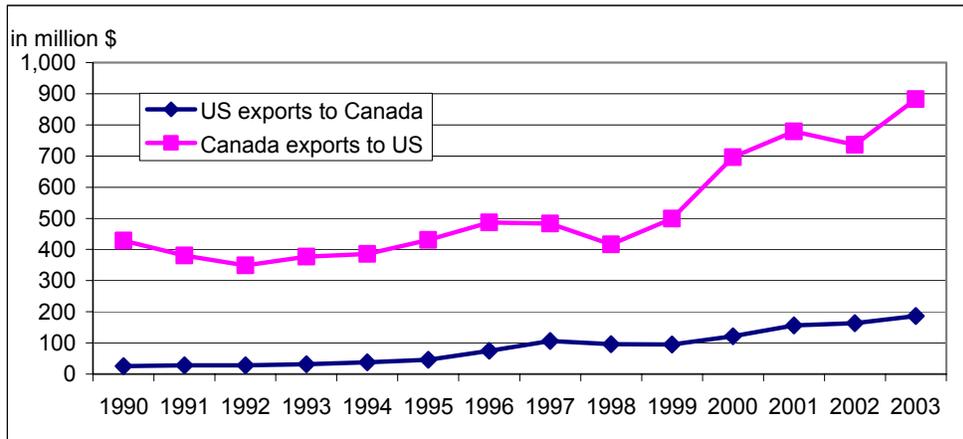
The trend in bilateral trade has been somewhat similar in the case of live hogs (swine) and pork (see Figures 3.8 and 3.9). Canada increased its sales of hogs to the United States rapidly in the period after 1994, with the value of that trade reaching US\$400 million by 2003. US sales to Canada have been less than \$1.5 million over the period. Pork trade has shown rapid growth as well, with Canada's exports more than doubling from \$430 million in 1990 to \$882 million in 2003. US exports to Canada have shown some growth since the mid-1990s and reached almost \$190 million in 2003, up from \$47 million in 1995. The balance of pork trade remains heavily in favor of Canada. Trade tensions surfaced in the 1980s, continued into the 1990s, and recurred in early 2004, but the reality is of increasing integration and cross-border trade both in the animals and the products from the pig sector.

Figure 3.8: Hog Trade Flows, 1990-2003



Source: USDA, Fatus Database

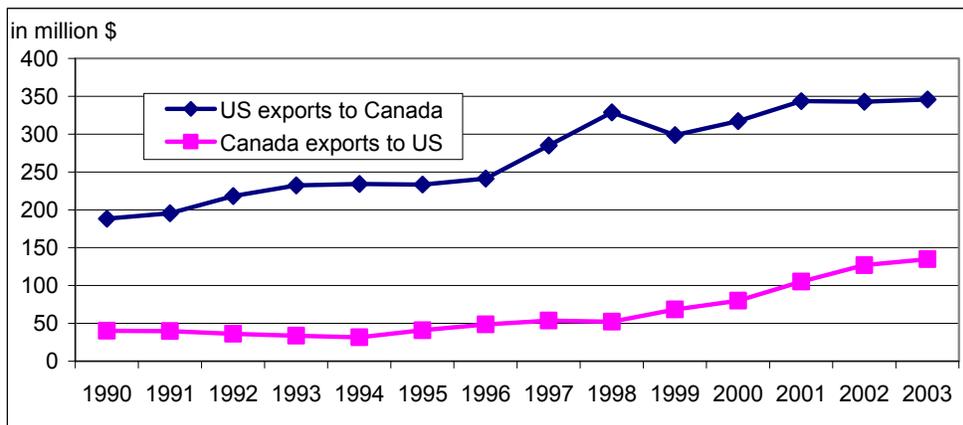
Figure 3.9: Pork Trade Flows, 1990-2003



Source: USDA, Fatus Database

In marked contrast to the situation in beef and pork, poultry trade is heavily from south to north, in spite of (or perhaps because of) the strict market controls of the Provincial poultry marketing boards. Since 1990, the value of poultry and eggs exported from the United States to Canada has nearly doubled to \$350 million in 2003. Small volumes of trade flow the other way, but they have increased noticeably in recent years. Exports from Canadian poultry producers to the United States totaled \$140 million in 2003, up from \$40 million in 1990 and \$52 million in 1998.

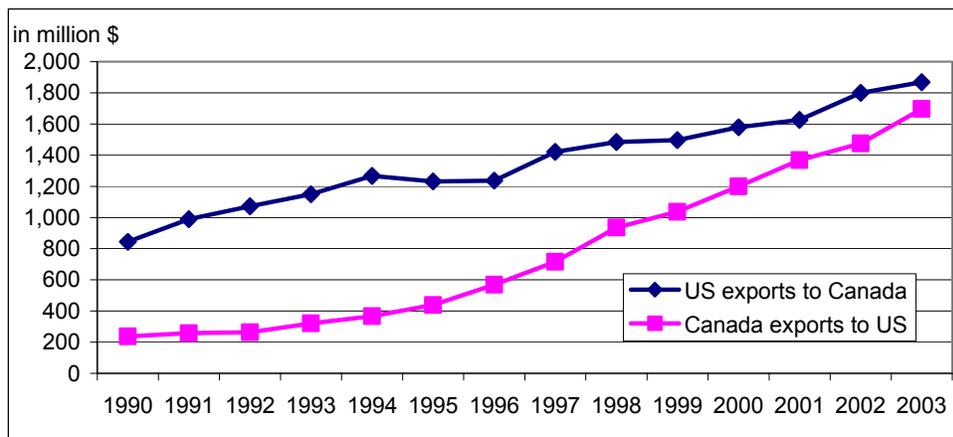
Figure 3.10: Poultry and Egg Trade Flows, 1990-2003



Source: USDA, Fatus Database

The value of the bilateral vegetable trade between the United States and Canada has increased substantially during the period from 1990 to 2003. U.S. exports rose steadily from around \$800 million in 1990 to over \$1.8 billion in 2003 (Figure 3.11). Canadian sales of vegetables into the United States increased even more sharply, from \$225 million in 1990 to nearly \$1.7 billion in 2003.

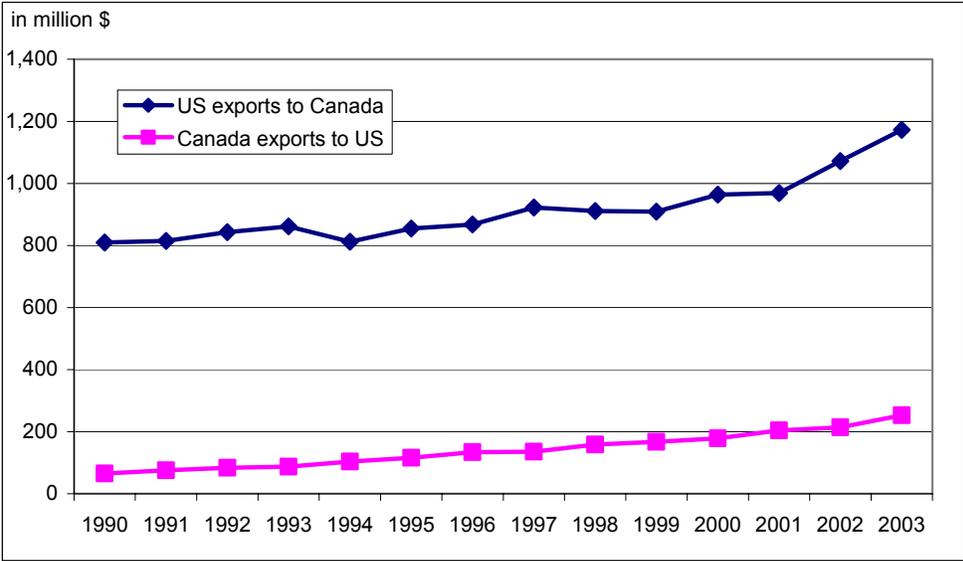
Figure 3.11: Value of Bilateral Vegetable Trade, 1990-2003



Source: USDA, Fatus Database

Along with the increase in vegetable trade between Canada and the United States, bilateral fruit and tree nut trade has also increased during the period from 1990 to 2003 (Figure 3.12). The value of 2003 U.S. shipments to Canada was at nearly \$1.2 billion more than four times higher than shipment in the opposite direction and up 50 percent from \$800 million in 1990. Canadian fruit and tree nut shipments to its southern neighbor increased four-fold from \$62 million in 1990 to nearly \$255 million in 2003.

Figure 3.12: Value of Bilateral Fruit/Tree Nut Trade, 1990-2003



Source: USDA, Fatus Database

4. Bilateral Disputes in Agricultural Trade

A listing of the trade disputes from the period 1986 to date (i.e. the period of application of the CUSTA/NAFTA as well as the period from the start of the Uruguay Round negotiations) reveals 30 separable cases (see Table 4.1).¹³ The most significant individual disputes are discussed below, following an overview of their nature.

We suggested above that agricultural trade disputes arise from both “normal” commercial frictions stemming from the rapid increase in trade in a particular commodity, and from complaints about market access impediments that reflect slower trade growth than would otherwise be the case. The former are brought by the importing country on behalf of domestic firms that feel threatened; the latter by the exporting country, usually on behalf of firms that would like to expand trade.¹⁴

In addition, trade disputes can result from a transition period as regulations and trade policies adjust to a new trade agreement – even in the absence of any change in trade flows. Certainly this has been a feature of US-Canada disputes, as producers in both countries have had to come to terms with the implications of new trade policy arrangements, both bilateral and multilateral. These can either come from the suspicion of a trading partner (or firms within that country) that the terms have been breached or with the normal problems of adjusting to changes in the policy environment. These trade disputes are distinguished from those relating to normal trade changes by the fact that they are essentially government-to-government disputes initiated by trade policy administrations with incidental participation by firms and sector representatives. Several such issues have arisen in the context of the implementation of CUSTA, NAFTA and the URAA.

Another type of trade conflict is less easy to categorize and resolve. These “systemic” problems arise from concerns about policies for regulating and marketing farm products. In this category falls those disputes that have centred on the role of the Canadian Wheat Board in the grains market and to a lesser the Provincial boards that control supply in milk and feather industries. These basic policy conflicts seem less tractable, but progress in improving trade relations at the least requires mechanisms for greater transparency and mutual understanding, and a gradual increase in the compatibility over time.¹⁵

¹³ Full details are to be found in the Annex. Each case can be manifest in separate stages, from the initial complaint through the review and appeal to bi-national, tri-national or multinational panels. For convenience, the numbers in the table (e.g. case 11) refer to the separable cases and the individual stages are given decimal notation (e.g. 11.1, 11.2, etc.)

¹⁴ For convenience, we classify conflicts where both countries are exporters of a particular product as being similar to those where one exporter complains that market access is denied in the other’s market.

¹⁵ It is at times unclear whether the conflicts are really over the core policy differences or if these mask more basic interests in simply protecting domestic markets from imports. We explore this more fully below in the context of the wheat disputes.

Table 4.1: Timeline of Canadian/US Trade Disputes

#	Year initiated	Commodity	Type of Case	Original Complainant	Institution	Outcome/Ruling	Status
1	1979	Sugar and Syrups	Antidumping	US producers	USITC	Violation found	Closed
2.1	1984	Red Raspberries	Antidumping & Countervailing	US producers	USITC	No Violation	Closed
2.2	1989	Red Raspberries	Dumping Review	Canadian exporters	CUSTA	Inconclusive	Closed
3.1	1984	Swine (live)	Countervailing	US producers	USITC	Violation found	Closed
3.2	1991	Swine (live)	Countervailing Review	Canadian federal and provincial governments, Canadian producers	CUSTA	Inconclusive	Closed
3.3	1991	Swine (live)	Countervailing Review	Canadian federal and provincial governments, Canadian producers	CUSTA	Inconclusive	Closed
3.4	1993	Swine (live)	Extraordinary challenge	United States/USTR	CUSTA	Violation found	Closed
3.5	1994	Swine (live)	Countervailing duty review	Canadian producers	NAFTA	Violation found	Closed
4	1985	Whole Potatoes	Antidumping	Canadian producers	CITT	Violation found	Closed
5	1986	Grain Corn	Antidumping	Canadian producers	CITT	Violation found	Closed
6	1986	Yellow Onions	Antidumping	Canadian producers	CITT	Violation found	Closed
7	1988	Ice Cream and Yoghurt	Market Access, Like Products	United States	GATT	Violation found	Closed
8	1988	Sour Cherries	Antidumping	Canadian producers	CITT	Violation found	Closed
9.1	1988	Apples	Antidumping	Canadian producers	CITT	Violation found	Closed
9.2	1994	Apples	Antidumping, Injury review	Canadian producers	NAFTA	Terminated	Closed
10	1989	Pork	Countervailing	US producers	USITC	Violation found	Closed
10	1989	Pork	Countervailing review	Canadian producers, Canadian federal and provincial governments	CUSTA	No Violation	Closed
10	1989	Pork	Countervailing, injury review	Canadian producers	CUSTA	No Violation	Closed
10	1991	Pork	Extraordinary challenge	United States/USTR	CUSTA	Inconclusive	Closed
11	1991	Beer	Antidumping	Canadian producers	CITT	Violation found	Closed
11	1991	Beer	Dumping, Like goods, normal value	US producers	CUSTA	Violation found	Closed
11	1991	Beer	Dumping, Material Injury	US producers	CUSTA	Violation found	Closed
12	1992	Wheat	Export subsidies	United States	CUSTA	No Violation	Closed
13	1992	Iceberg Lettuce	Antidumping	Canadian producers	CITT	Violation found	Closed
14	1992	Cauliflower	Antidumping	Canadian producers	CITT	No Violation	Closed
15	1992	Tomato Paste	Antidumping	Canadian producers	CITT	No Violation	Closed
15	1993	Tomato Paste	Dumping Review	US producers	CUSTA	Terminated	Closed
16	1994	Wheat	Market Access	United States	USITC	Violation found	Closed

Table 4.1: Timeline of Canadian/US Trade Disputes (contd.)

#	Year initiated	Commodity	Type of Case	Original Complainant	Insitution	Outcome/Ruling	Status
17	1994	Apples	Antidumping	Canadian producers	CITT	Violation found	Closed
17	1995	Apples	Dumping	US exporters	NAFTA	Terminated	Closed
18	1995	Malt beverages	Regional industry, Injury finding	Canadian producers	NAFTA	Violation found	Closed
19	1995	Poultry, dairy, eggs, margarine, and barley	Tariffs breaking NAFTA obligations	United States	NAFTA	No Violation	Closed
20	1995	Sugar	Antidumping	Canadian producers	CITT	Violation found	Closed
	1995	Sugar	Dumping	US exporters	NAFTA	Violation found	Closed
21	1997	Milk	Export subsidies	United States (and New Zealand)	WTO	Violation found	ongoing
22	1997	Prepared Baby Foods	Antidumping	United States (Deputy Minister of National Revenue)	CITT	Violation found	Closed
22	1998	Prepared Baby Foods	Antidumping	Canadian producers	NAFTA	Violation found	Closed
23	1998	Cattle, Grain, Swine	Import measures	Canada	WTO	Pending	ongoing
24	1998	Cattle (R-CALF)	Antidumping	United States	USITC	No Violation	Closed
24	1998	Cattle (R-CALF)	Countervailing	United States	USITC	No Violation	Closed
24	1999	Live cattle	Injury finding	Canadian producers	NAFTA	Terminated	Closed
24	1999	Live cattle	Countervailing	Canada	NAFTA	Terminated	Closed
25	1999	Cattle	Countervailing duty investigation	Canada	WTO	Pending	ongoing
25	1999	Sugar syrups	Reclassification	Canada	WTO	Pending	ongoing
26	2000	Corn	Antidumping	Canadian producers	CITT	No Violation	Closed
26	2000	Corn	Countervailing	Canadian producers	CITT	No Violation	Closed
27	2001	Tomatoes (greenhouse)	Antidumping	US producers	USITC	No Violation	Closed
27	2002	Tomatoes (greenhouse)	Sales at less than fair value	Canadian producers	NAFTA	Terminated	Closed
27	2002	Tomatoes (greenhouse)	Sales at less than fair value	Canadian producers	NAFTA	Terminated	Closed
28	2001	Tomatoes (Fresh)	Antidumping	Canadian producers	CITT	No Violation	Closed
29	2002	Wheat	Non-discrimination	United States	WTO	Pending	ongoing
30	2002	Wheat	Countervailing	US producers	USITC	Pending	ongoing
30	2002	Wheat	Antidumping	US producers	USITC	Pending	ongoing

The climate for trade relations can also influence the severity of conflicts. If the market is expanding, these frictions can be small: competition for a growing market may sometimes lead to complaints, but trade remedies are usually not available in such cases and subsidies are less likely to be the reason for trade shifts. Much of the growth in bilateral trade mentioned above in high-value goods has taken place with little conflict at the government level. If the market is not growing, problems become more difficult to handle, as market shares can change rapidly. In these cases, although these changes in shares may represent the “normal” workings of the market, firms and industry groups will tend to look to trade remedies for relief.

The impact of the state of the commodity market suggests that one would expect to find trade disputes clustered in those sectors with rapid changes in trade patterns. Table 4.2 shows the commodity classification of 53 bilateral actions (corresponding to the 30 separate cases in Figure 4.1) by commodity involved. Twenty-eight percent of the cases involved fruits and vegetables, the great majority of these being brought by Canada, as US exports increased and threatened firms, particularly in British Columbia. Forty percent of all cases brought by Canada concerned trade in this sector. The pigs and poultry sector accounted for seventeen percent of all actions (and the same percentage of both Canadian and US cases) indicating the concerns on both sides of the border over changes in trade pattern in this area. Trade in grains has also been contentious, and this sector accounts for fifteen percent of all actions (ten percent of Canadian and 22 percent of US initiated actions). Importantly, three of the eight “unresolved” issues affect grain. Cattle and dairy disputes are numerically less significant, with cattle accounting for ten percent of Canadian disputes and dairy nine percent of those started by the United States.

Table 4.2. Classification of US-Canada bilateral trade disputes by commodities

Cases by commodity groups	Number of Cases	Brought by		Resolution (check these now!)	
		Canada	US	Closed	Ongoing
Fruits & Vegetables	15	12	3	15	
Other ¹	12	6	6	10	2
Pigs/Poultry	9	5	4	9	
Grains	8	3	5	5	3
Cattle	5	3	2	4	1
Dairy	2		2	1	1
Multi-commodity	2	1	1	1	1
Total	53	30	23	45	8

¹Other includes Beer, Sugar, Baby food. The listing of 53 cases, rather than the 30 in the previous table, reflects the fact that several disputes went through multiple stages. Issues of who initiated the case, whether it was resolved and what it entailed require the stages to be kept separate

If the reason for the conflict reflects market shares, this should show up in the type of dispute. Table 4.3 classifies the trade actions by whether they are anti-dumping or countervail cases (brought by importers) or complaints about subsidies and market access (brought by the exporter). Eighty-five percent of all bilateral agricultural trade actions are importer-initiated disputes charging dumping or claiming the right to countervail against subsidies in the exporting country. Ninety-three percent of all Canadian cases are of this nature. The US complaints also were predominantly import-related (74 percent) though

more complaints involved market access (13 percent) and export or import-displacing subsidies (9 percent). Thus the picture emerges of Canadian complaints about imports of products from the United States dominating any concerns about access into the US market or US behaviour in third markets, while US complaints included both objections to Canadian exports into the US market and into third markets as well as import restrictions and subsidies reducing access into the Canadian market.

Table 4.3: Classification of US-Canada Bilateral Trade disputes in Agriculture by Issue

Type of Case	Total	Brought by		Resolved (Check)	
		Canada	US	Closed	Ongoing
Anti-dumping, countervail	45	28	17	42	3
Export subsidies, subsidies	2		2	1	1
Market Access, tariffs and TRQs, SPS and TBT	5	2	3	3	2
State Trading and Supply Management	1		1		1
Total	53	30	23	46	7

Source: Annex B

Can one make any generalizations about the way in which disputes have been resolved and the institutional venue of such complaints? Table 4.4 classifies the 53 actions by the institution that ruled on the case (national, bilateral or trilateral, or multilateral) and the outcome of the action.¹⁶ Of the 45 anti-dumping and countervail cases, for which institutional level and outcome are most relevant, a trade rule violation was found in 44 percent of the actions, the “success rate” being slightly higher in those cases brought by the United States (47 percent) than in Canadian-initiated cases (43 percent). Trade violations were more readily found at the national level (the USITC and the CITT), where 54 percent of all actions favoured the complaining country. When these actions were referred to the CUSTA or NAFTA level (as appropriate) only 35 percent of the actions were upheld, though 55 percent of such referrals proved either inconclusive or were terminated by the complaining party before a decision was reached. In terms of absolute numbers, Canadian actions exposed twelve violations by the United States, and US actions discovered eight trade rule violations by Canada. Twenty-two such cases found either no violation, resulted in inconclusive judgments, or were withdrawn.

¹⁶ Only the 45 anti-dumping and countervail actions are included in this table.

Table 4.4: Breakdown of Antidumping and Countervailing cases by institutional level and dispute outcomes

Outcome of Cases	Total	Brought by		Institutional level		
		Canada	US	USITC/ CITT	CUSTA/ NAFTA	WTO/ GATT
Trade Violation: Found	22	13	9	15	7	
Trade Violation: Not Found	9	6	3	7	2	
Inconclusive/ Terminated early	11	8	3		11	
Pending	3	1	2	2		1
Total	45	28	17	24	20	1

Source: Annex B

Discussion of specific trade disputes.

Wheat

Prior to the implementation of the Canada-U.S. Free Trade Agreement in 1989 there were important non-tariff barriers in wheat that effectively prevented significant trade between the two countries in this commodity. However, the CUSTA introduced measures that resulted in a dropping of these barriers by the early 1990s. Since that point there has been a rapid expansion of trade, particularly in Canadian wheat exports to the U.S. From 1984 to 1990 Canadian wheat exports to the U.S. averaged 12 million bushels per year. From 1992-1999 these exports averaged 56 million per year, representing a compound growth rate of 21 percent per year from the first period to the second. With opening the border came a parade of trade disputes. These disputes arose early on from the growth in Canadian exports to the United States, but disputes seem to have stemmed also in part due to the distrust in the United States over the activities of the Canadian Wheat Board (CWB), which has a monopoly on wheat exports from the Canadian prairie. There has been persistent offensive action by the U.S. and a spirited defence by Canada and by the CWB in particular.

The first case was not directly related to the CWB. In 1989 the United States launched a claim against Canada under the CUSTA, arguing that Canada's freight subsidies under the Canadian Transportation Authority (the "Crow Rates") were an export subsidy for durum wheat exports to the United States. Resolution of the case required that Canada amend its freight subsidy so that it was not triggered by shipments destined for the U.S.

Three years later the U.S. filed another case under CUSTA against Canadian durum wheat exports, charging that with the help of subsidies they were being sold below cost. The CUSTA Panel found no compelling evidence that the Canadian Wheat Board was selling at prices below its acquisition cost.

A third case was brought by the U.S. to the USITC under Section 22 (of the U.S. Agricultural Adjustment Act of 1933) in 1994, focusing on all wheat imports. The argument was that imports into the U.S. were materially interfering with a US farm

support program, in this case the price support and deficiency payment program for wheat. The key issue was the magnitude of the US price impact of Canadian imports and thus the magnitude of additional outlay under the support programs of the time. Canada presented economic simulation model evidence that the shipments to the United States had only modest price effects because they comprised a small share of the US wheat market and, more fundamentally, with most of Canadian and US wheat exported out of North America, prices were determined in a global market. Since, Canadian wheat would still compete with US wheat in other markets if it were not shipped to the United States, the price impact of where the competition occurred must be small. The US countered by ignoring the global nature of wheat markets and arguing that in short run price response models even modest supply shocks were associated with large price changes. The six commissioners in the case were split, three arguing no interference, one arguing for a modest tariff and two arguing for relatively tight tariff-rate quotas. The outcome was that the two countries came to a negotiated settlement for the 1994/95 crop year with Canada agreeing to limit its wheat exports to the U.S.

In 2001, the United States Trade Representative (USTR) initiated a Section 301 investigation of the CWB. The USTR concluded that CWB practices violated various GATT articles on national treatment (Art.1) and denied trading partners adequate opportunity to compete for sales or purchases (Art 17). After this finding, the United States filed a WTO complaint and a dispute settlement proceeding was initiated early in 2003. In February 2004, a WTO dispute settlement panel ruled against the main claim that the CWB export behaviour was fundamentally in violation of the GATT. However, the panel also ruled that the Canada did discriminate against imports in its grain handling system. At this date neither party has stated whether they would appeal the rulings.

Finally, in 2002 the North Dakota Wheat Commission and the U.S. Durum Growers Association (also based in North Dakota) brought countervailing and anti-dumping petitions against the CWB for both durum and other spring wheat. The US Department of Commerce found support for dumping and subsidy (which it does in almost every case) but the USITC split in its determination of injury. The USITC found that subsidized Canadian imports injured the US hard red spring wheat industry but failed to injure the US durum wheat industry. The CWB and the government of Canada filed an appeal in November 2003 with a NAFTA panel disputing both the magnitude of the duties and the finding of injury for hard red spring wheat. The North Dakota Wheat Commission also stated that they planned to file an appeal. A decision by the NAFTA panel will be forthcoming in about 18 months from that date.

Underlying Issues

There appear to be a variety of underlying issues here. First there is the development of new trading relationships that only started after the North American market was opened under CUSTA. Second, in the early-mid 1990s the U.S. export subsidy program (EEP) opened up profitable opportunities for Canadian wheat to fill openings in U.S. markets. Third, with the removal of the Canadian wheat freight subsidy in 1996-1997, north-south trade was encouraged instead of all wheat exports moving west. At the same time there are the simple facts that in an open market it may make good business sense for

transportation, quality and other reasons to source grain from anywhere on the continent in the absence of trade barriers. The familiar conditions for a demand for increased protection arising during periods of low prices and import surges applies to Canada-US trade in wheat as it does for other commodities. However, what appears to run through these disputes in wheat more than periodic surges in imports and declines in prices is strongly-held suspicions in part of the US wheat industry, in particular in North Dakota, that the Canadian Wheat Board somehow provides unfair competition which hurts US interests.

What possible solutions are there to this long series of disputes? Obviously a unilateral retreat from a one-desk seller by Canada by allowing competing sellers to enter the market would at least change the focus of the disputes and the rhetoric. If, however, opening the export trade to less active management resulted in increased exports to the United States, we suspect that the North Dakota Wheat Commission would object just as strongly as they do now against the CWB. If the activities of the CWB were restricted by a multilateral agreement in WTO negotiations, this might remove the same elements that bother Northern wheat interests in the United States. Another solution could come from a clear and forceful ruling from a NAFTA panel or the WTO that the US cases were unfounded. In the short to intermediate term, however, none of these options appear likely, which is to say that further wheat disputes may be part of the trade landscape in agriculture between Canada and the U.S. for some time.

Corn

This case concerned a rather small market in Canada, the corn market in the Prairies, centred on Manitoba.¹⁷ Manitoba corn growers filed anti-dumping and countervailing duty actions against US corn imports in August 2000. The case shows how a neighbouring market can be affected by subsidies. It also shows what can happen when farmers in such a regional market try to deal with the price depressing effects of those subsidies using trade remedy procedures using “regional” rules of injury rather than the more usual national rules.

The case was precipitated by the subsidy granted to US corn growers that Canadian growers claimed depressed corn prices on the Canadian prairies. The two markets are highly integrated so that price transmission is rapid and price levels are approximately equal. The combined duty in the final determination was US\$1.30 per bushel when market prices at the time were approximately US\$1.80 per bushel. However, the injury test was concluded negatively in the final determination in March 2001. Part of the reason for this is that “regional” standards were applied which required not just that material injury was caused by US corn subsidies, but that injury was found “to all or almost all producers” in the prairie region, interpreted to mean 95 percent. This is relevant because a sizeable minority of corn-growing farmers were involved in a mixed livestock-wheat enterprise in which case lower corn prices would injure their whole-

¹⁷ This section draws heavily on a paper that deals with this case in some detail, R.M.A. Loyns, “Manitoba Corn Growers Association Inc. vs. U.S. Corn Exports,” in Loyns, Meilke, Knutson and Yunez-Naude, *Trade Remedy Laws and Canada-U.S. Trade Relations*, Winnipeg, MB: Friesen Press, 2003.

farm operations much less if at all. The other reason for the finding of no injury is that rigid legal or administrative definitions were used, notably ignoring opportunity costs, as is common in applications of trade remedy law.

The conclusions that arise from this case are first that the use of trade remedy law, such as countervails, to deal with high levels of domestic support in a trading partner where markets are relatively integrated, are difficult especially not in a regional setting. Further, the thresholds for judging injury in a regional, not national, setting, at least as interpreted in Canada, make it almost impossible to find injury. Third, trade remedy law as widely practiced does not apply economic logic and evidence as generally used by economists. This is not news to anyone reviewing the litany of trade disputes between Canada and the United States.

Dairy Border Disputes

The dairy industry has long been one of the most contentious areas of border relations in agriculture between the two countries. Contention goes back many years and was renewed with the Uruguay Round Agreement which was implemented in 1995. Prior to that time, there were fewer explicit disputes because dairy policy in each country was, by mutual agreement, left unchanged by the NAFTA and the prior CUSTA. And prior to the introduction of supply management in mid-1970s, there were relatively few border impediments and farm prices were comparable.

One exception to this pre-1995 peace at the border was the ice cream and yogurt case brought by the U.S. against Canada in 1988. At issue was Canada's unilateral decision to include ice cream and yogurt on Canada's import control list, making them subject to import quota restrictions instead of being regulated only by tariffs. The U.S. won this case. Canada could not unilaterally change import quotas into tariffs. However, Canada's response came only after the Uruguay Round Agriculture Agreement (URAA) was signed, by converting these quotas into tariffs, just as it did for all dairy products as part of the implementation of the URAA in 1995. This "reverse tariffication" was not done to previous the tariff levels but to considerably higher tariffs, following Canada's interpretation of the Uruguay Round tariffication procedures.

The second dispute, the first to follow NAFTA and the URAA, concerned this process of tariffication of import restrictions as part of the implementation of the URAA, brought by the U.S. against Canada in 1996. The issue was whether the NAFTA or the URAA had priority in the setting of tariffs. They were set as part of the URAA to replace quantitative import restrictions, but the NAFTA procedure was to reduce all tariffs to zero, following a ten-year implementation period. In addition, the new tariffs were higher than tariffs agreed to under the NAFTA provisions. The U.S. argued that the NAFTA required no increase in tariffs and conformity with the established time-period for tariff reductions, whereas Canada argued that the URAA had priority and that NAFTA provisions did not apply prospectively to any new tariff introductions. This dispute covered more than dairy products, but also a substitute for butter, margarine, as well as poultry products that are also part of the supply management regime. The ruling supported the Canadian position, that the URAA provision had priority over NAFTA procedures and requirements.

The third dispute arose from a complaint brought by the U.S., in 1998, and it dealt with the implementation by Canada of the tariff rate quota for fluid milk. Instead of specifying a quota level and giving some trading firm the right to import that quantity of fluid milk, Canada implicitly gave this right to individual consumers who were buying fluid milk in the U.S. and bringing it into Canada. The amount of milk actually imported depended on how much consumers would choose to bring back, and the quantity imported was calculated by consumer responses to a sample survey. The U.S. took issue with this unconventional procedure and brought this dispute to the WTO. However, the WTO decided in Canada's favour by accepting this procedure for managing the its TRQs.

In late 1997, the United States (with New Zealand joining in early 1998, brought a complaint against Canada for subsidizing its milk product exports. This case, through all its appeals was to run for five years and has only recently been settled. The United States and New Zealand argued that some of Canada's categories for pricing industrial milk (the "special milk classes") created following the Uruguay Round involved an export subsidy and that this violated Canada's commitments under the URAA. These different categories arise from the practice of price discrimination, setting different raw milk prices for different end uses, a practice that is also used in U.S. milk marketing orders, and most of this industrial milk is sold for domestic consumption. However, when these milk products are exported, as they increasingly were during the post-1995 period, such pricing practices raised the possibility of an implicit export subsidy. Existing export subsidies were not banned for agricultural goods in the Uruguay Round, but new ones were and Canada did not notify its trading partners that it had any export subsidies on milk products. The price of milk to be paid by processors for these special export classes was below the price of milk applied to products consumed domestically, and the United States and New Zealand claimed that this constituted the export subsidy.

Canada argued that this was not a direct subsidy, since it was neither funded nor paid directly by the Government of Canada. Therefore, the scheme was not subject to the export subsidy disciplines. The WTO Panel and Appellate Body both disagreed and decided in 1999 that it *was* a direct export subsidy and that Canada was in violation of its commitments. Canada's response was to reform its export pricing practices, introducing the Commercial Export Mechanism (CEM). Although the details varied by province, this regime involved individual producers contracting directly with processors and not subject to the intervention of the national supply management system. As such, it was expected to be WTO-legal.

However, New Zealand and the United States challenged this new policy in 2001 with a request for a compliance panel, arguing that Canada had maintained its export subsidy by virtue of a cross-subsidy from higher prices on the domestic market and that the government was still involved in orchestrating the scheme. The WTO Panel in July 2001 supported these contentions and ruled that Canada was still subsidizing milk product exports and therefore in violation of its commitments. Canada appealed once more but this time the Appellate Body was unable to make a finding because it ruled that the Compliance Panel had used an incorrect price standard to analyze whether there was a payment (export subsidy) or not.

In early 2002, the United States and New Zealand requested that the compliance panel re-hear the case using the more appropriate data. This time the compliance panel ruled in favour of the United States and New Zealand, that Canada was continuing to subsidize exports. Canada appealed and the final decision of the Appellate Body was made in December 2002 against Canada. The economics used to arrive at the of the WTO decision are interesting. The panel argued that to compare export prices to costs, one should examine industry-wide average costs, not only costs for exporting farmers. The panel argued that if costs for product exported are lower than the calculated production costs for the industry average, then the loss must have been made up with profits from elsewhere in the system, namely those earned on domestic sales. This constitutes a cross-subsidy and must be removed as an illegal export subsidy. This economic reasoning is odd on both counts, but is already being cited in other WTO cases. It seems to imply that any export sales at prices lower than average domestic prices may be subject to a charge of export subsidies. Nonetheless, the ruling is final and Canada must adjust its policies accordingly.

Summary

Few of the border disputes between the two countries are as deep-seated as is the case in dairy. One of the reasons for the extent and nature of these disputes is that Canada erected such obviously high barriers in the form of over-TRQ tariffs in excess of 300 percent when the URAA was initially implemented, inviting challenges. Then its milk product exports grew very rapidly in percentage terms, partly due to export subsidies through some kinds of revenue pooling. On the other side of the table, the United States (and New Zealand) are suspicious of the Canadian dairy policy regime which they believe to be open to manipulation in ways contrary to WTO disciplines, the common argument lodged against state trading enterprises. At least as important, the United States (and New Zealand) believes it has a more efficient dairy industry and that Canadian dairy import barriers are costing it large foregone export sales. Finally, the United States and New Zealand were persistent in the WTO export case because the Canadian example might have been used by the EU and that would have had much larger implications for world dairy and other commodity markets.

With all these factors at work, the United States has been persistent in bringing dairy complaints against Canada, and the Canadian response has been equally aggressive. Neither side appears ready to compromise. The U.S. is unlikely to accept the Canadian regime, until it is dismantled. It is equally unlikely that the Canadian reaction to these challenges will be anything but combative. It is unlikely that we have seen the end to disputes on dairy trade.

Possible Solutions

What possible resolutions could there be to this area of dispute? The most obvious path to resolution would be for Canada to relax key elements of its supply management policy. Two avenues could be followed. In fact, because these are the two critical border policy levers in this industry, an agreement would almost certainly require some degree of change in one or the other, or both.

First, Canada could lower its over-TRQ tariffs. At present, they are in the range of 200-300 percent, but there is a huge amount of “water” in those tariffs. They could probably be lowered to around 25-35 percent without resulting in any significant increase in imports. Even lower tariffs and a schedule of further reduction, which would allow imports to flow would be required to truly resolve the underlying concern that dairy (and a few other supply management commodity categories) were left out of CUSTA liberalization.

The second avenue would be to give the U.S. greater access to the Canadian market via an increase in Canada’s tariff rate quotas for dairy products. The level of access that would be necessary to obtain an agreement is unclear, but it would probably have to be significant and also include a schedule of future TRQ increases.

Both options would leave the supply management scheme in place in a mechanical sense, but they ultimately would remove most of its benefits. The tariff reduction route would lower domestic milk prices once the tariff reaches something like 25-30 percent. The level of the value of the Canadian dollar would be a critical factor in following this route. The increase in TRQ levels would not result in much change in Canadian prices initially if the domestic quota were reduced as imports increased but would involve an almost equivalent loss of marketing quotas to Canadian farmers. This would transfer economic benefits from the supply management system from Canadian quota owners to either importers or U.S. exporters. These changes in supply management would be resisted very strongly by the Canadian dairy lobby, and almost surely by the Canadian government. Of course, both tariff reductions and import quota expansion are likely to be a part of the current Doha Round of multilateral WTO negotiations. Whatever agreement is struck there will be critical to the negotiating options that would be available in any bilateral discussions to address these dispute areas.

Clearly, if some deal were to be worked out along these lines, it must involve some kind of added elements that would benefit Canada. These could be benefits to other sectors of Canadian agriculture. Another trade benefit might be some guarantee of access for the Canadian dairy industry to export into the U.S. market without harassment. A further element of such an agreement might be some direct compensation by the Canadian government to the Canadian dairy industry. This could be some kind of direct cash benefit on a per farm, per cow or per litre of milk production basis, or it could take the form of a government buyout of farmers’ marketing quotas. The Canadian dairy industry has already stated that if there is to be some dismantling of the supply management policy, there will also have to be some kind of compensation. There is ample precedent for such compensation measures, mostly recently with the removal of the Crow Rate subsidy of grain freight transportation costs to grain farmers in the Prairies, but also with grape growers who were hurt by the change in their effective border protection from the Canada-U.S. Free Trade Agreement (see below).

Fruits and Vegetables

The horticultural sector is one of the most active areas of trade between Canada and the U.S., accounting for the largest amount of agricultural imports into Canada from the United States. Canada also exports some horticultural commodities to the United States.

Competition has led to several disputes, most of which related to claims of unfair subsidization or dumping.

Red Delicious Apples

There is a long history of free trade in apples between the United States and Canada, but in 1989 Canada claimed that the U.S., specifically growers in Washington State, were dumping Red Delicious apples into Canada. For the season in question, there was bumper crop and apple prices in both countries fell substantially. Large quantities of apples were exported from Washington to Canada, and export prices were below normal production costs. This met one of the tests for dumping. In addition, these trade flows injured Canadian apple producers, given the large production in Washington State. As a result dumping duties were imposed despite the fact that Washington state producers were simply marketing a bumper crop following normal market procedures and treating the Canadian market no differently than they treated the market in the United States. A similar case in 1994 also resulted in an anti-dumping duty being levied until it was finally removed in 2000.

The apple anti-dumping duties lasted about a decade, but the case does not represent a permanent area of dispute. The Canadian industry used the situations of large bumper crops opportunistically for "temporary" relief from lower prices. There have been no further anti-dumping claims in apples since 1994. This case does illustrate the weakness of the economics of anti-dumping remedy in agricultural industries subject to uncontrollable production and price variation.

Greenhouse and Fresh Field Tomatoes

Recently resolved cases dealing with fresh market tomatoes occurred in 2001-2002. First the US industry and then the Canadian industry claimed dumping on the part of the industry on the other side of the border.

The U.S. case claimed that greenhouse tomatoes from Canada were dumped into the United States. In this case a critical issue concerned whether the "like product" was only greenhouse tomatoes or included all fresh tomatoes (field and greenhouse). Canadian exports had a significant share of the greenhouse tomato sales but a tiny share of all fresh tomatoes sold in the United States. As often occurs, Canadian exporters were found to have dumped their product on the U.S. market during the 2000 through 2001 period. However, USITC determined that all fresh tomatoes were the relevant like product and concluded that exports of Canadian greenhouse tomatoes had not injured U.S. greenhouse growers.

The Canadian case, lodged a few months after the US case was brought, was against fresh field tomato exports to Canada. Once again dumping was found but not material injury. This case then took an unexpected turn near its conclusion. The Canadian tomato industry complainants withdrew their complaint and requested that proceedings on this case be terminated. This occurred two months after the U.S. case had been decided against a dumping charge on Canadian greenhouse tomatoes. It is hard to interpret this result as anything other than indicating that the Canadian complaint against the U.S. was

a case of tit for tat. Both cases were closed by these decisions and the dispute apparently has ended.

Other horticultural cases

Most other horticultural cases over the last two decades involved anti-dumping, or countervail. An exception is the closing of the US border to PEI potatoes due to an SPS problem.

One of the earliest cases, filed in 1984, dealt with dumping and subsidy of raspberries from Canada A provincial subsidy program in British Columbia but the countervail case was suspended without a final determination. The anti-dumping case was decided with an affirmative ruling and dumping duties remained in force until 1999. A longer term impact was that many of these provincial subsidy programs were ended or modified so as not to trigger countervails.

Anti-dumping cases involving whole potatoes, yellow onions, sour cherries, and iceberg lettuce were brought by Canadian producers against the U.S. between 1984 and 1992, and all resulted in anti-dumping duties being levied for an average of ten years. Two other cases, concerning cauliflower and tomato paste were brought in the 1992-93 period, again by Canada, but denied on the basis of a negative injury determination.

Conclusion

The horticultural sector has seen a variety of mainly countervail and antidumping disputes over the past 20 years. Canada initiated the majority of the cases, in the mid-1980s to early 1990s. The timing of these cases suggests that the exchange rate has played a role. The number of Canada-initiated horticultural cases peaked at about the same time as did the value of the Canadian dollar. Only a few cases have been filed since the mid-1990s when the Canadian dollar depreciated in value. Some cases resulted in change in marketing practices or government policies to remove the offending actions. None of the cases developed into serious on-going conflicts, as has been the case in wheat and dairy.

Are there any lessons that can be learned to alleviate these conflicts? The most obvious issue is that prevailing anti-dumping legislation is pre-disposed to affirmative findings when applied to the agricultural sector. Some tightening up of anti-dumping provisions at least when applied to the agricultural sector would be appropriate; this may be a fruitful topic for bilateral (or trilateral) discussions in the context of NAFTA. With the wider use of countervail and antidumping in the last two decades, countries and industries are modifying policies and marketing strategies, to reduce these types of trade restrictions (and legal costs). These adjustments by themselves will lead to a lower incidence of these kinds of disputes, but are costly to consumers, producers and reduce gains from trade.

Live Cattle and Beef

Cattle and beef have flowed in both directions across the border between the United States and Canada. For many years the cattle trade was limited by animal health issues and disagreements between agencies on each side of the border. Expansion of seasonal

feeder cattle movements in the 1990s was joined by the shipments of slaughter cattle shipped south because the cattle production in Canada exceeded slaughter capacity and the rapid technical change and consolidation in the US beef processing industry encouraged shipments from Canada. This expanded trade led to a petition for antidumping and countervailing duty relief from a relatively small group of cattle producers, Ranchers-cattlemen Action Legal Fund (R-CALF), in 1998.

The R-CALF case did not get the support of the mainstream organization in the industry, the National Cattlemen's Beef Association, and was primarily driven by Western border state cattle interests. The R-CALF rhetoric was also directed as much against the large beef packers as the Canadian industry. Early in 1999, the case passed preliminary injury test. The DOC applied a dumping duty of about 5 percent but declined to apply a countervailing duty. With this small dumping duty and a market share in the United States of only three or four percent, the USITC found no injury in its final decision. A further factor in this case was that beef trade was not an issue and the market for beef remained open and duty free. Basic economics suggests that taxing trade in an input while trade in the final product is open can have only minimal effects on the price of the input and thus could be of only minimal benefit to the cattle ranchers. The reasoning is simply that with the beef market fully integrated, a tax on live cattle could only affect where the cattle are slaughtered and would not affect the supply of or demand for beef. An integrated beef market makes it impossible for US cattlemen to gain from blocking cattle trade. It is not clear that this economic point was influential in the USITC deliberations, but it added to the sense that the case was not a winner for the US industry.

Although the Canadian cattle industry was completely vindicated, the case cost the industry almost C\$5 million and the industry pledged to work for more reasonable rules on dumping in the NAFTA context.

No further dumping or countervail actions have occurred in the cattle industry, but trade was totally blocked in May 2003 by the finding of a lone case of Bovine Spongiform Encephalopathy (BSE) in Alberta. Then in December 2003 a case of BSE was found in Washington State that was subsequently traced back to a herd of origin also in Alberta. Both of the cases were identified in older cattle that had been exposed to feed prior to changes in feed content rules in Canada in 1997. Neither the United States nor Canada has settled on appropriate trade policy in these cases. Third countries, particularly Japan and Korea, which are major export markets for both the United States and Canada have blocked beef exports from both countries and regaining this access is considered especially important. The bilateral beef trade was also initially blocked, but it has recovered with the acceptance that there is no threat in meat from younger animals.

Hogs and Pork

Multiple conflicts concerning hogs and pork extend back to 1984 and primarily involve countervail claims by the United States. Two separate countervail petitions, in 1984 and 1989, covered live hogs and pork, led to multiple appeals, the first bi-national panels under CUSTA, two extraordinary challenges, a GATT dispute panel, twelve administrative reviews, and an amendment to the U.S. Tariff Act. The duties on fresh, chilled and frozen pork were revoked in 1991 and the countervailing duties on live hogs

ended on January 1, 2000 following a sunset review. In March 2004, the National Pork Producers filed yet another round of anti-dumping and subsidy claims and the case is proceeding through the US Department of Commerce and the USITC and will likely go through several stages during 2004 and perhaps early 2005. The triggering of these disputes follows a typical pattern. Hog prices were at a cyclical low in 1983 and 84 and the Canadian dollar had depreciated. As a result U.S. hog prices were low and Canadian exports were expanding substantially. In 1984 live hog imports were three times those of 1983, and pork imports were 36 percent higher than in 1983.

The Canadian export surge also reflected two sources, a rapid expansion of Canadian production and diversion of Canadian exports to the U.S. from third country markets. Danish exports to the Japanese market were returning after an earlier health problem, and Canadian exports to Japan were re-directed to the U.S. market. US pork producers also claimed that Canadian hog stabilization programs, federal and provincial, subsidized production in Canada.

Specific Disputes

Claims of subsidy and the request for countervailing duties by the US National Pork Producers Council were accepted by the US Commerce Department and duties were imposed. However, the USITC found no injury to the domestic hog and pork industry from pork imports and removed that CVD.¹⁸ This left the hog CVD in place, a duty of Cdn\$0.044/lb live weight on live swine. Pork exports from Canada subsequently increased, and in a follow-up case, twenty-two parties petitioned for a countervailing duty for pork in 1989. The Department of Commerce once again found that five Canadian pork subsidies were countervailable. This time the USITC voted in favour of U.S. producers, and duties remained in effect until the ruling was revoked on appeal.

Both the hog and pork rulings were appealed to a CUSTA panel in 1989. In the case of live hogs, the panel broadly affirmed the USITC findings of injury but questioned some of the procedures used to determine the impact of the subsidy. The United States challenged the procedure and requested an Extraordinary Challenge Committee (ECC) hearing. The ECC, however, found against the United States and dismissed the action. In the pork case, the review challenged the DOC's finding of subsidy with respect to several of the Canadian federal and provincial programs (10 out of 18 in the original DOC determination). The DOC had found that subsidies provided to swine producers confer benefits on pork processors, and had used a conversion factor that allocated all of the alleged subsidies to only a portion of the swine. The panels affirmed (in part) that the benefits constituted subsidies; but remanded (in part) the issue of the conversion factor and the inclusion of several of the programs. A further request was made for a CUSTA panel to consider the determination of injury to US pork producers. The panel decided that the USITC had depended on "questionable" statistics, and this had influenced its decision. The United States challenged the procedure and once again requested an Extraordinary Challenge Committee (ECC) hearing. The ECC, however, found against

¹⁸ The duty was revoked as a result of a Sunset review in 11/04/1999. The review argued that the revocation of this order would not be likely to lead to the continuation or recurrence of a countervailable subsidy. The revocation order became effective in 01/01/2000.

the United States and affirmed the decision of the CUSTA panel. This effectively ended the countervail action on pork in 1991.

The conflict over the import of live hogs into the United States was revived after the NAFTA came into effect. In 1994, Canada requested a NAFTA panel to examine the certain technical procedures of the USITC in coming to its injury decision on the extent of countervailing duties. The NAFTA panel provided a complex ruling that required the USITC to adjust some procedures specific to this case.¹⁹

Not all the action in the hog and pork markets was confined to countervail and anti-dumping actions. In 1985, five states banned hog imports from Canada in 1985 (Cohn, p.154) on grounds that a potentially harmful antibiotic (chloramphenicol) was being used. The ban was removed after discussions with the federal authorities. Canada maintained a ban on live hog imports from the United States on health grounds (contending that there was a risk of importing the disease pseudorabies). Moreover, the structure of the industry was changing rapidly, with consolidation of farm production and slaughter facilities on both sides of the border. The relative peace in the sector since the 1990s has probably reflected the benefits of this reorganization, as well as the disciplines afforded by the WTO Agreements on Sanitary and Phytosanitary Measures. However, the 2004 case may bring back the contentions of two decades earlier

Results

These disputes followed periods of import surges into the U.S. market in the presence of Canadian subsidy programs. In the case of the pork countervails, the USITC did rule that the Canadian policy actions were not injuring the U.S. industry. That this ruling did not extend to live hogs provoked considerable subsequent research, with the conclusion that injury was also unlikely in live hogs.²⁰ Given the small size of the Canadian exports relative to the size of the U.S. market, any injury would likely be small.

These disputes did not involve fundamental policy differences or system incompatibility. Rather they revolve around the ability to appeal to trade remedy law when prices decline and the competitor across the border increases shipments.

These cases did lead to changes, especially within Canada. First, hog prices were lower, more variable and more uncertain. This led to slower growth of the hog industry in Canada in the mid-1980s and early 1990s, compared to rapid growth in the 1970s and early 1980s. Over the period from 1985 to the early 1990s hog exports stagnated, in contrast to other agricultural exports over this period. Subsequently, after the successful challenge of the pork countervail and the reductions in the hog countervailing duty rate, exports resumed and grew quickly. From 1988 to 1998, agricultural exports in total grew by 275 percent (Rattray, 2001). Over that period, hog exports increased by 334 percent, mostly during the 1990s. However, pork exports grew by only 30 percent. There is some

¹⁹ Further details of these cases are included in Annex A.

²⁰ H. Bruce Huff, Hog and Pork Countervail: Lessons, Implications, and Future Strategies. A report prepared for the Canadian Pork Council. July 2001. Karl D. Meilke and Giancarlo Moschini, A Chronicle of Canadian Hog Stabilization Programs and U.S. Countervailing Duties on Hogs and Pork. Center for Agricultural and Rural Development, Iowa State University, GATT Research Paper 91-GATT5, 1992.

evidence that competitiveness of hog processing in Canada with the U.S. declined with less investment due to uncertainty over the countervailing and anti-dumping duties. However after the successful resolution of the disputes, processing investment increased rapidly.

These hog and pork cases also affected Canadian policy. First, Canadian stabilization programs were modified over the late 1980s and 1990s, specifically to reduce the risk of countervail. The program for hogs, the National Tripartite Stabilization Program, was eliminated in 1994, and replaced by the Net Income Stabilization Account (NISA) program. The countervailing duties were, in effect, taxing away all the benefits of these stabilization programs anyway (Cluff et al). In fact, these actions were not only disruptive of trade flows but also very costly to all participants in the Canadian industry in terms of direct legal costs, lost export opportunities, and greatly increased uncertainty. Therefore, avoiding future countervails was most important, with the result that stabilization programs in Canada (e.g., the NISA program) have become cross-commodity, insurance-type programs designed to be categorized as “generally available,” “not countervailable” and belonging in the “green box.” Another result was a series of studies to examine how much these programs could have affected the U.S. price, hence injury to U.S. producers. The consensus of these studies was that the increased Canadian production due to the stabilization programs would have had an insignificant effect on U.S. hog prices, even if all the production increase were exported to the U.S. (Schmitz et al, 2003). If injury to U.S. producers from Canada was minimal, the real explanation for declines in U.S. hog prices lay elsewhere.

The 2004 case ended the hope that hog and pork border disputes were over. The situation seems to repeat much of the 1984 and 1989 scenarios, with the new anti-dumping charge being the only change. Canadian live hog exports to the U.S. market accounted for about 7 percent of U.S. production in 2003, but this represents an increase of 35 percent in the last two years, from an export market share of about 5 percent in 2001. This small export market share would seem unlikely to result in any significant price effects in the large U.S. market, hence little injury, but the results of these investigations are not always as expected. Further, this case will be a test of whether the revamped Canadian stabilization program is really “non-countervailable,” notwithstanding the substantial efforts to make it so. The dumping charges are harder to predict, given that “selling below cost” is a test that is often not difficult to meet in the agricultural sector.

Sugar

Of the other agricultural commodities that have experienced trade conflicts, sugar deserves specific mention. Sugar is governed by very different policies on each side of the border. Canada has almost no domestic sugar production, in contrast to the widespread cultivation of both beet and cane sugar in the United States. The United States has for decades maintained a restrictive import policy for sugar. Canada has kept its sugar market open, importing most of its sugar demand from the Caribbean. As a result, sugar prices are lower north of the border. Of course, sugar is processed into a variety of forms and incorporated in food products. Shipment of these sugar derivatives (such as molasses and syrups) and high-sugar foods creates problems the US sugar

protection regime Thus the tensions in the sugar market reflect the attempts by the United States to prevent sugar from entering through Canada in various guises..

The first complaint in the modern era came in 1971, when the United States complained about the importation of sugar and syrups from Canada. The USITC investigated and found trade violations. Countervailing duties were assessed, and remained in effect until December 2000. Sugar featured again in the CUSTA, when products containing less than 10 percent by weight of sugar were exempted from US import quotas. NAFTA preserved the split in the sugar market by excluding US-Canada (and Canada-Mexico) trade from the “single market.” But the peace was shattered by the surge in sugar-containing products in the late 1990s, leading to a reclassification by the United States of certain products. Canada protested this decision, and took the dispute to the WTO.

A somewhat different sugar dispute erupted in 1995, when Canadian sugar refiners (represented by the Canadian Sugar Institute) complained that refined sugar was being dumped by the United States (as well as other countries) on the domestic market. The CITT investigated and confirmed the alleged dumping, finding that there was the threat of material injury to the industry. The decision was reviewed in 2000, and was confirmed at that time. Meanwhile, the United States exporters asked for a NAFTA panel to consider the action, but the panel broadly affirmed the CITT decision.

Wine

The initial wine dispute arose in the 1980s from the practice in Canada of provincial liquor boards charging a higher wholesale/retail mark-up for imported wines. This apparent violation of the national treatment article of the GATT constituted the basis for the dispute and was also a concern of the European Union.

However, this was handled within the negotiations of the Canada-U.S. Free Trade Agreement when Canada agreed to end the practice. The domestic wine-grape industry was widely publicized as a casualty of the Free Trade Agreement. This potential political problem within Canada was dealt with by compensation. Grape growers who removed old (low quality) grape varieties and replaced them with higher quality new plantings received a substantial subsidy payment per acre replanted, roughly Cdn\$8,000 per acre or approximately equal to the price wine-grape land. It was a popular program and effectively removed any criticism from grape growing areas about negative impacts of the Free Trade Agreement. This indicates how governments can deal with the political downside of dealing with a dispute that imposes costs on domestic producers.

Trends in Disputes

Have bilateral agricultural trade conflicts between the United States and Canada gotten worse over time? This depends on whether one counts the number of disputes initiated or those that are active. The date of initiation of the disputes can tell us how often trade conflicts are occurring. We look at the number of cases being initiated over each 5-year period, from 1980 to date. Second, we know how many disputes are “active” each year, when “active” is defined as those years between the initiation of the dispute and the year the dispute measures were ended. This gives us an indication, however imperfect, of the

severity of trade disputes, the longevity of those cases initiated but not yet resolved or where some measures are still being taken, like anti-dumping duties still being applied.

Using the first measure, there is no trend in the number of cases initiated after 1985. Prior to 1985 there are two cases, but in the 1985-1989 and 1990-1994 periods 7 cases were initiated in each period. Eight cases were initiated during 1995-1999, and in the early 2000 period the number of cases, prorated over the whole five year period, is also 7. In other words, there appears to be no trend in cases initiated since 1985.

Table 4.5: Time Pattern of Agricultural Trade Disputes

Time Period	Number of Cases Initiated	Number of Active Cases (per year)
1980-1984	2	1.4
1985-1989	7	6.6
1990-1994	7	11.2
1995-1999	8	9.8
2000-2002	7	7.7

Looking at the number of disputes remaining active, we find a pattern of a small number of disputes in the early 1980s but this number then grows substantially in the early 1990s, and declines by a quarter in the period since 2000. The number of active disputes takes a jump in 1988 (from 1 to 4 active cases from 1980 to 1986, to 9 in 1988). Then, over the period from 1988 to 1999 there were 10.3 active disputes per year. Over the last 3 years, 2000 to 2002, the number of disputes declines by one-fifth to 7.7 disputes per year. Cast in terms of the five year periods as was done for the number of cases initiated, the numbers of active cases shows a small decline since the mid-1990s.

The data in Table 4.5 do not indicate the impact of a dispute on an industry or on agricultural trade. For that we would need to normalize by the amount of trade affected as value or volume or the size of the industry. During this whole period, from the 1980s to date, there has been a substantial increase in the volume and value of agricultural trade. The real value of agricultural trade increased by 2.4 times from 1988 to 2003. So by either of these absolute measures described above, the number of disputes per dollar of trade has declined at least by half. So there is no indication that disputes have become more disruptive over time; indeed, relative to the value of agricultural trade disputes have become substantially less disruptive over the past decade.

5. Broader Trade Agenda Issues

An important part of the agricultural trade relationship between Canada and the United States is the extent to which they reinforce or conflict with each other in matters relating to global and regional agricultural policies. Similarities and differences in relation to

agriculture are noticeable between the United States and Canada in such fora as the WTO, APEC and FTAA. Disagreements weaken the position of each country and add to the tensions surrounding bilateral trade relations. In broad terms, the two countries share many common goals for the trade system in general and agricultural trade in particular. These are clearest when compared to the heavily protected agricultures of East Asia and Europe. Both share an interest in open trade relations with developing countries, and see world markets as a firm basis for their development. Of increasing significance is their common attachment to the scientific basis for health and safety regulations and they are two of the relatively few countries that have moved rapidly to adopt biotech crops. Within the WTO, the APEC, or the FTAA, Canada and the United States have generally been supportive of each other's position, even if they differ in detail and sometimes tactics.

The differences, though relatively small compared to the agreements, do however have a corrosive impact on trade relations. First, Canada is a member of the Cairns Group. Though the Cairns Group and the United States share some of the same general aims, it is difficult to escape the fact that the Group had its genesis in making sure that the United States and the EU could not avoid dealing with the issue of agricultural trade rules in the Uruguay Round of GATT negotiations, as they had in the two previous rounds. The Cairns Group orchestrated the failure of the Montreal mid-term ministerial during the Round (December 1988) and again disrupted the ministerial that was supposed to end the round, in December 1990. On both occasions the action was to prevent agriculture being "swept under the rug" by a deal between the EU and the United States, though in the 1990 event the United States was aware of and strongly supportive of the Cairns group plan. Canada has not been always in step with the other Cairns Group members (and indeed often presents its own negotiating proposals separate from those of the Group) and those positions represent divergence from both the common Cairns position and that of the United States. In the current WTO negotiations under the Doha development agenda, the Cairns Group has been less of a force with its developing country members joining with others to confront the EU and United States. This has tended to further marginalize the rich country Cairns group members.

The tensions over the negotiating stance have their roots in real differences. The status of the Canadian Wheat Board, as was discussed above, has always been problematic for some influential groups in US agriculture. The Canadian supply control system and the high border barriers upon which it rests poses problems as well. The dairy and poultry sectors, in particular, are protected by high tariffs in Canada and hamper that country's ability to lead toward freer trade. In turn, the United States has a protected sugar market that to Canada seems to undermine some of the arguments about more liberal trade. If a commodity so widely grown in developing countries is to be traded though restrictive quotas to protect high cost producers in the rich countries then the credibility of the call for developing countries to open up their markets is weakened. These obviously political trade policy constraints not only undermine the strength of US and Canadian positions in trade talks, but weaken the cohesion of any tentative North American trade strategy in agricultural products.

The position of Canada and the United States in the current WTO agricultural talks shows up some of these underlying tensions. Canada has staked out a position that would reduce

domestic subsidies, including those that are deemed to be minimally trade-distorting, on the principle that all farmers should share in subsidy cuts and that the United States has been giving its own farmers generous direct payments beyond the more modest reach of Canadian fiscal resources. By contrast the US position has been to press more for reduction of border measures while agreeing to cuts in the clearly trade distorting internal subsidies. The United States has argued to preserve the category of less trade distorting subsidies without imposing reductions and even to add complex subsidy categories designed to allow US internal supports to continue. These differences have significant implications for trade negotiations and for farm policy development in the two countries.

Equally contentious is the position on tariff reductions. The proposal of the United States, to reduce high tariffs more than the lower ones, would directly target Canada and the tariffs on dairy products and poultry. Canada has strongly resisted significant cuts in protection to politically sensitive sectors. Though superficially in agreement on the need to phase out export subsidies, the United States has targeted state trading exporters (single desk sellers) for additional disciplines within the WTO. Canada would have difficulty living with such restrictions and has made it clear that the choice of marketing system is in the prerogative of each WTO member and that single-desk sellers do not violate any rule of the WTO. No doubt these differences can be reconciled in a “bargain” at the end of the round, but the obvious disagreements among the NAFTA partners at the least makes the task of countries (such as Japan, Korea and the EU) that are reluctant to move too fast in the direction of more liberal trade considerably easier.

Differences on agriculture in the FTAA talks that are proceeding in parallel to those in the WTO have also been problematic, although the differences between the United States and Canada have played a minor role relative to the arguments with Brazil and other South American participants.²¹ Canada would like to see more market opening in the Americas, and has been out ahead of the United States in negotiating bilateral trade pacts. The main tension in this area is between the United States and Brazil, a country that would like to expand its access to the North American market for a number of agricultural products, including citrus, sugar, oilseeds and poultry, but also use the FTAA to get a handle on internal subsidies. The United States has expressed willingness to include all commodities in the FTAA for border measures but that domestic policies in particular should be left to the WTO discussions. It seems clear that the FTAA will not be able to achieve internal subsidy commitments separate from the WTO, so WTO progress may be a precondition for strong border measure provisions (as well as strong measures outside of agriculture) in the FTAA. Some naturally question the US position that it will truly open markets for citrus juice and sugar as a part of an FTAA, but rapid tariff reductions are probably even more troublesome in Canada, given the importance of the supply management regimes to the wealth of many farmers. Thus, slowdowns of the WTO process may imply a slowdown in or considerable weakening of the negotiations for an FTAA. The tension between high commodity subsidy payments in the United

²¹ APEC discussions on agriculture are essentially on hold for the next couple of years while members take part on the WTO round. Though Canada and the US have taken similar stances in the APEC, in the direction of an open food system, no hard choices have yet had to be faced.

States and high protection for supply management commodities in Canada once again are at the core of the contention.

Table 5.1: Canadian & US Institutions Relevant to Agricultural Trade²²

Bilateral
Canada-US Consultative Committee on Agriculture (CCA)
Provincial-State Advisory Group (PSAG)
Canada-United States Free Trade Agreement (CUSTA/FTA) Bi-national Secretariat: Canadian and US Sections
Trilateral
North American Free Trade Agreement (NAFTA) Secretariat: Canadian, Mexican, and US Sections
North American Free Trade Agreement (NAFTA) Commission
North American Free Trade Agreement (NAFTA) Committee on Agricultural Trade
North American Free Trade Agreement (NAFTA) Committee on Sanitary and Phytosanitary Measures
Multilateral
World Trade Organization (WTO) Agricultural Committee
World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Committee
World Trade Organization (WTO) Technical Barriers to Trade (TBT) Committee
‘Quad’ Group (Canada, European Union, Japan, United States)
‘Quint’ Group (Australia, Canada, European Union, Japan, United States)
National: Canada
Canadian Department of Foreign Affairs and International Trade
Canadian International Trade Tribunal (CITT)
Canada Customs and Revenue Agency (CCRA)
Agriculture and Agri-Food Canada (AAFC)
Canadian Grain Commission (CGC)
Canadian Food Inspection Agency (CFIA)
National Farm Products Council (NFPC)
Canadian Dairy Commission (CDC)
National: United States
United States Trade Representative (USTR)
United States International Trade Commission (USITC)
United States Department of Agriculture (USDA)
United States Department of Agriculture (USDA) Foreign Agricultural Service (FAS)
United States Department of Agriculture (USDA) Food Safety Inspection Service (FSIS)

Source: Authors

²² For more detailed information on the role of these institutions, see annex.

Conclusion

Agricultural trade between Canada and the United States comprises billions of dollars across a wide variety for products. Canada is an important source of product for many US industries and final consumers and Canadian customers benefit hugely from access to products from the United States. That said, standard commercial interests cause firms and industries to use the cross-border nature of this trade to raise the costs of trade and differences in policy systems provide scope for conflict as well.

Casual observation may suggest there have been an abnormally large number of disputes originating in the food and agriculture industries, and that the situation is getting worse, not better. As a result, some might argue that the Government of Canada ought to *do* something to remove these irritants to smooth international relations. For example, continuing disputes might be an added motive to reform agricultural trade policy in Canada and or to initiate broad negotiations with the United States to alleviate and prevent a continuation of these disputes.²³

There are many agricultural disputes relative to the size of the agricultural markets compared to other sectors of the economy.²⁴ However, this is not unique to the bilateral relationship and agriculture disputes are no more common in North America than they are with third countries.

Furthermore, the evidence does not support the notion that agricultural trade conflicts have gotten *worse* between the two countries. The number of disputes initiated by year has been stable over the 1990s and the 2000-2002 period. If one looks at the number of disputes that are still running or active, they peaked in the first half of the 1990s and have declined slightly since then. Since trade has more than doubled over the period, when either of these measures of disputes are cast in terms of the number of disputes relative to the amount of trade, that measure of the importance of disputes is declining.²⁵

²³ Trade disputes provide a means of resolving differences of trade practices or policies deemed by one side to be contrary to agreed rules. However, often trade disputes arise from an effort by one industry to gain some private advantage over legitimate competition and prevent the working out of comparative advantage that lies elsewhere. There is a presumption in this paper that the costs of these disputes exceed their benefits, taken across all disputes. That is why many countries have introduced to more recent trade agreements improved provisions to resolve disputes more readily. The challenge is to reform rules to remove incentives for disputes advanced by an industry simply to protect it from competition from an industry in another country.

²⁴ This raises the question of what is unique within the agricultural sector that makes it so prone to trade disputes. One hypothesis is that the disputes are numerous because there are many small separate interests so counting the numbers of disputes is misleading and the share of trade affected by disputes is still small. A second hypothesis is that agricultural interests are used to special attentions from governments and see trade remedy as a continuation of subsidy and protection that they have come to expect. A third hypothesis is that, because farm subsidies are common, it is natural that countervail cases would be applied in agriculture.

²⁵ There are other measures that may be better indicators of the intensity or impact of trade disputes. One example of the latter would be the real value of trade that is involved in each dispute.

When we look more closely at the disputes that have occurred bilaterally, there are several observations that stand out. First, most of the disputes are the outcome of what one might call ordinary competition for markets between the two countries. The overwhelming share of *these* disputes arises from increases in exports and the frictions that ensue from that in the importing country, with the importing country initiating the dispute. In a small number of cases, disputes arise from import impediments in the importing country, with the exporter initiating the dispute. When exports trigger the dispute (i.e., when the importer is the claimant) the dispute arises mostly in the form of trade remedy measures, primarily anti-dumping but with some countervail complaints. These disputes are mostly short term in nature in that they do not recur often. Furthermore, the anti-dumping complaints appear to show a tie with exchange rate changes, occurring more often when the importing country's currency value appreciates.

The other observation that arises from a review of specific bilateral agricultural disputes is that there are a small number of disputes that arise from major policy or institutional differences between Canada and the U.S. It may not be that the two policy frameworks are inherently incompatible but that the policy differences allow industry groups or companies in one jurisdiction to take advantage of those differences to impose costs on their competitors in the other country. These disputes are persistent, and may be triggered by an increase in exports *or* imports, but the underlying cause of the dispute is the difference in policies and institutions in the two countries. The two notable sectors are dairy and wheat, but the same problem arises periodically in sugar. In the disputes in these areas, positions are entrenched, and there is little evidence of willingness to compromise or change policies or institutions. In contrast to the many other dispute areas, dairy and wheat disputes seem far from a long term resolution, at least on a bilateral basis.

Is there something that can be done in terms of Canadian policy or international (WTO) policy rules to reduce the prevalence of these disputes, assuming the disputes are undesirable? Solutions to the first class of disputes, those arising from ordinary competition plus an export/import surge, must involve reforms to the application of anti-dumping rules, particularly the definition of dumping. The kind of change that is needed is to require some evidence of predatory behaviour on the part of exporters so that normal market circumstances in the agricultural sector would not readily trigger dumping investigations. In that sense, rules within a NAFTA could be based on domestic competition rules, where there are not provisions for dumping per se, but rather rules dealing with exercise of market power and predatory pricing. Lacking such multilateral institutional or rule changes, the only other avenue for reducing these disputes would seem to be for exporters to take some responsibility in limiting export surges into specific markets. This unilateral managed trade may be rational for individual exporting firms or industry groups, but it implies losses in the gains from trade that underlay free trade agreements. Given the existing trade remedy laws and their high probability of application to agricultural sector cases, plus the heavy transactions costs, legal and otherwise, of dealing with countervail and dumping cases, giving up these gains may represent an improvement for most exporters participants, but this outcome represents a major loss for the economies as a whole.

On the wheat and dairy cases, one form of resolution would be a clear cut decision by trade remedy tribunals to forcefully reject cases that have no basis in economic logic and are more clearly attempts to simply protect an industry from competition. Given that these cases have reappeared regularly for decades, such outcomes seem unlikely without a change in the rules underlying dumping, countervail or safeguards.

The other path to long-term resolution is greater policy harmonization. In the case of wheat, more details on acceptable behaviour for state trading enterprises is likely to be needed, as well as some limitation or removal of the domestic buying monopoly for wheat and barley. In the supply management area, the two primary areas of change would almost certainly have to be an expansion of tariff rate quota amounts, and/or a significant reduction in over-TRQ tariff levels so that they reduce but do not prohibit imports.

These changes are most likely to occur only on a multilateral basis, such as in WTO negotiations. One should also anticipate that any significant changes in current institutions like those just mentioned would likely have to be worked out with the sector involved, and involve some demands for compensation. Finally, none of these changes are likely to occur easily or soon, given that the bulk of them require multilateral action and that progress generally comes about slowly in WTO negotiations.

Despite the emphasis on trade disputes, the fact remains that most agricultural trade between Canada and the United States is unimpeded and clearly benefits people on both sides of the border. Farms and other firms are becoming progressively more North American in their operations and more and more expect to be able to do business with relatively little interference.

The bottom line is that agricultural trade relations are strong, but could improve with a relatively few, but politically difficult reforms.

Annex A

Table A.1: Detailed Table of Canadian/US Agricultural Trade Disputes

This table (six landscape pages) is in Excel file “annex table revised 3-19-04.xls”

Annex B. Legal Basis for Trade Remedy Cases

This annex provides background material on two aspects of the bilateral relationship that may be helpful to elaborate on the institutional discussion above. These two aspects are the legal and institutional basis for anti-dumping and countervailing duties in Canada and the United States, and the set of administrative links that have been set up to improve the trade relationship.

The legal and regulatory basis for CVD and AD trade remedy cases

In both the United States and Canada the industries may raise concerns that unfair trade practices cause imports to enter and that they cause problems for affected domestic industries. Such cases proceed through elaborate legal channels following well-established procedures. Rules in the United States and Canada are remarkably similar and the following is a rough sketch of the practices and rules in both countries.

Anti-Dumping (AD) duties applied to counter sales below cost or sales below home market (or the exporter) prices (or a third market if home market data are not available or biased). Countervailing duties (CVD) applied to counter subsidies provided by the exporter government.

In both types of cases two parallel issues must be considered. These are elaborate legal processes. In contested cases, both the domestic industry and the export industries are represented by legal counsel, economic consultants and other resources to help argue their cases at each step in the proceedings. In the CVD proceedings the exporter governments are also participants. In major contested cases it is not unusual for costs of the proceedings to run to millions of dollars for each side.

Are there more than a *de minimis* amounts of dumping margin or subsidy applied to the exported products? If the finding is affirmative for dumping, then a dumping duty of countervailing duty is set equal to the difference between the actual export price and a hypothetical “fair value” export price that would obtain without dumping or subsidy. These calculations are the responsibility of a specified government agency, the Department of Commerce in the United States and the CFGC in Canada. The agency follows a set of definitions and rules to measure export prices and domestic prices, costs of production and subsidy rates. There is controversy about those rules and most economists would argue that the measurement process is fraught with difficulties and is prone to find affirmative dumping margins and subsidy.

Has there been injury (or threat of injury) to the domestic industry producing a “like product” that competes with the imports? The injury determination is undertaken by a separate government agency, the International Trade Commission in the United States (USITC) and the International Trade Tribunal in Canada (CITT). These agencies determine if there is sufficient evidence to find that the domestic industry has been injured or in threatened with injury by reason of the “less than fair value” imports.

Annex C: Canadian and US Institutions

Table C1: Role of Canadian & US Institutions Relevant to Agricultural Trade

Bilateral	
Canada-US Consultative Committee on Agriculture (CCA)	<p>The purpose of the CCA is:</p> <ol style="list-style-type: none"> 1. To provide a high-level forum to strengthen bilateral agriculture trade relations between Canada and the United States through cooperation and coordination; 2. To facilitate discussion and cooperation on matters related to agriculture between the two countries including, but not limited to: <ol style="list-style-type: none"> a. Agricultural trade and market access; b. Sanitary and phytosanitary (SPS) issues; c. Cooperation in areas of mutual interest in agriculture.
Provincial-State Advisory Group (PSAG)	<p>The purpose of the PSAG is to provide a forum where producers and exporters, through their provincial and state governments, can raise bilateral agricultural trade issues.</p>
Canada – United States Free Trade Agreement (CUSTA/FTA) Binational Secretariat: Canadian and US Sections	<p>An administrative body similar to the NAFTA Secretariat that was integrated into the institutional structure of NAFTA. The Canadian and US national Sections became the NAFTA Canadian and United States national Sections.</p>
Trilateral	
North American Free Trade Agreement (NAFTA) Secretariat	<p>The NAFTA Secretariat is comprised of three national sections representing the NAFTA signatory countries: the Canadian, Mexican, and US Sections.</p> <p>The NAFTA Secretariat administers the NAFTA dispute resolution processes under Chapters 14, 19 and 20 of the NAFTA and has certain responsibilities related to Chapter 11 dispute settlement provisions.</p>
North American Free Trade Agreement (NAFTA) Commission	<p>The NAFTA Commission is a ministerial-level body that meets annually and is charged with supervising NAFTA's implementation and ensuring its further development.</p>
North American Free Trade Agreement (NAFTA) Committee on Agricultural Trade	<p>The Committee's functions include:</p> <ol style="list-style-type: none"> a) monitoring and promoting cooperation on the implementation and administration of Article 19; b) providing a forum for the Parties to consult on issues related to this Section at least semi-annually and as the Parties may otherwise agree; and c) reporting annually to the Commission on the implementation of this Section. <p>The Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprises persons with expertise or experience in the resolution of private commercial disputes in agricultural trade. The Advisory Committee reports and provides recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods.</p>
North American Free Trade Agreement (NAFTA) Committee	<p>The Committee facilitates:</p> <ol style="list-style-type: none"> (a) enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;

on Sanitary and Phytosanitary Measures	(b) activities of the Parties pursuant to Articles 713 and 714; (c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and (d) consultations on specific matters relating to sanitary or phytosanitary measures.
Multilateral	
World Trade Organization (WTO) Agricultural Committee	The Committee monitors implementation of the commitments in country schedules. The review process is based on notifications by Members, the details of which will be determined by the Committee. The Committee receives detailed notification of any new support measure for which green category status is being claimed, and of any modification to a green program. General WTO dispute settlement provisions apply to disputes arising under the Agriculture Agreement
World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Committee	The SPS Committee: <ul style="list-style-type: none"> • Operates under the WTO SPS Agreement. • Provides a regular forum for consultations within the WTO on all SPS issues. • Facilitates the enhancement of food safety and sanitary conditions internationally, promote the harmonization and equivalence of SPS measures, and facilitate technical cooperation and consultations, including consultations regarding disputes involving SPS measures (Article 12) The provisions of GATT 1994 Articles XXII and XXIII as elaborated in the WTO Understanding on Dispute Settlement apply to consultations and the settlement of disputes. In a dispute under the SPS Agreement, a panel seeks advice from experts chosen by the panel in consultation with the parties to the dispute (Article 11).
World Trade Organization (WTO) Technical Barriers to Trade (TBT) Committee	Operates under the WTO TBT Agreement. Exists within the World Trade Organization (WTO) as a forum for consultations on all technical barrier to trade issues. Provides an opportunity to consult on any matter related to the operation of the Agreement or the furtherance of its objectives (Article 13). Any disagreements with respect to the operation of the Agreement take place under the WTO Dispute Settlement Body and follow the provisions of GATT 1994 Articles XXII and XXIII as elaborated by the Understanding on Rules and Procedures Governing the Settlement of Disputes. A dispute settlement panel may, either on its own initiative or at the request of a disputing party, establish and receive advice from technical experts (Article 14 and Annex 2).
'Quad' Group	Quad Group Members: Canada, US, EU, Japan; the most prominent of the developed countries in the WTO. Quad Forum, a quarterly informal meeting of the Trade Ministers of Europe, Japan, Canada, and the United States.
'Quint' Group	Quint Group Members: Australia, Canada, US, EU, Japan. The 'Quint' was formed in 1987 and met periodically during the Uruguay Round, but fell into disuse after the end of that Round in 1993. It was revived in the late 1990s.
National: Canada	
Canadian Department of Foreign Affairs and International Trade	The Canadian Department of Foreign Affairs and International Trade negotiates and administers Canadian trade agreements and rules.
Canadian International	CITT conducts inquiries into:

Trade Tribunal (CITT)	<ul style="list-style-type: none"> • whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry. • complaints by potential suppliers concerning procurement by the federal government that is covered by the North American Free Trade Agreement, the Agreement on Internal Trade and the World Trade Organization Agreement on Government Procurement.
Canada Customs and Revenue Agency (CCRA) Customs Branch	<p>CCRA promotes compliance with Canada's tax, trade, and border legislation, and regulations.</p> <p>The Customs and Trade Administration Branch is responsible for border services including the full range of facilitation, inspection, detention, collection, and enforcement activities at all ports of entry; trade policy administration including multilateral and regional trade policy agreements, other trade policy instruments, and duties relief programs.</p>
Agriculture and Agri-Food Canada (AAFC)	<p>AAFC is the Canadian agricultural ministry. It oversees four agencies and two crown corporations: the Canadian Food Inspection Agency, the Canadian Grain Commission, The National Farm Products Council, the Review Tribunal, the Canadian Dairy Commission, and Farm Credit Canada.</p>
Canadian Grain Commission	<p>CGC is the Canadian federal department responsible for regulating Canadian grain quality standards.</p>
Canadian Food Inspection Agency (CFIA)	<p>The creation of the Canadian Food Inspection Agency (CFIA), in April 1997, brought together inspection and related services previously provided through the activities of four federal government departments – Agriculture and Agri-Food Canada, Fisheries and Oceans Canada, Health Canada and Industry Canada. The establishment of the CFIA consolidated the delivery of all federal food, animal and plant health inspection programs.</p> <p>The CFIA delivers 14 inspection programs related to foods, plants and animals in 18 regions across Canada. Their role is to enforce the food safety and nutritional quality standards established by Health Canada and, for animal health and plant protection, to set standards and carry out enforcement and inspection.</p> <p>Activities range from the inspection of federally-registered meat processing facilities to border inspections for foreign pests and diseases, to the enforcement of practices related to fraudulent labeling. They verify the humane transportation of animals, conduct food investigations and recalls, perform laboratory testing and environmental assessments of seeds, plants, feeds and fertilizers.</p>
National Farm Products Council (NFPC)	<p>Under the Farm Products Agencies Act, the <i>NFPC</i> reviews the operations of (1) national agencies that run orderly marketing systems for poultry and eggs, and (2) promotion-research agencies.</p> <p>Under the Agricultural Products Marketing Act, the <i>NFPC</i> dovetails federal and provincial/territorial authority over farm product marketing granted to provincial commodity boards and commissions.</p>
Canadian Dairy Commission (CDC)	<p>CDC is a Crown corporation that plays a central facilitating role in the Canadian dairy industry.</p>
National: United States	
United States Trade Representative (USTR)	<p>USTR develops and implements US trade policies.</p>
United States International Trade	<p>USITC: determines whether the United States industry is materially injured by reason of the dumped or subsidized imports after a determination by the Commerce Department on whether the alleged subsidies or dumping are actually</p>

Commission (USITC)	<p>occurring and, if so, at what levels.</p> <p>USITC makes determinations in investigations involving unfair practices in import trade. If it finds a violation of the law, the USITC may order the exclusion of the imported product from the United States.</p>
United States Department of Agriculture (USDA)	<p>USDA is the US agricultural ministry. It oversees numerous agencies including the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Food Safety Inspection Service.</p>
Foreign Agricultural Service (FAS)	<p>FAS bears the primary responsibility for USDA's overseas activities -- market development, international trade agreements and negotiations, and the collection and analysis of statistics and market information. It also administers USDA's export credit guarantee and food aid programs.</p>
Food Safety Inspection Service (FSIS)	<p>FSIS:</p> <ul style="list-style-type: none"> • inspects all meat, poultry, and egg products sold in interstate commerce and re-inspects imported products, to confirm that they meet US food safety standards under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. • sets requirements for meat and poultry labels and for certain slaughter and processing activities, such as plant sanitation and thermal processing. • tests for microbiological, chemical, and other types of contamination and conducts epidemiological investigations in cooperation with the Centers for Disease Control and Prevention (CDC). • conducts enforcement activities to address situations where unsafe, unwholesome, or inaccurately labeled products have been produced or marketed. • maintains a comprehensive system of import inspection and controls. • annually reviews inspection systems in all foreign countries eligible to export meat and poultry to the United States to ensure that they are equivalent to those under US laws.

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