



CRS Report for Congress

Canada's WTO Case Against U.S. Agricultural Support: A Brief Overview

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Summary

On June 7, 2007, the Canadian government requested the establishment of a World Trade Organization (WTO) dispute settlement panel to consider two charges against U.S. farm programs — first, that the United States has exceeded its annual commitment levels for total Aggregate Measurement of Support (AMS) in each of the years 1999, 2000, 2001, 2002, 2004, and 2005, and second, that the U.S. export credit guarantee program operates as a WTO-illegal export subsidy. Both charges stem from a previous negative ruling against U.S. farm programs in a case brought by Brazil against the U.S. cotton program.

The United States blocked Canada's request from proceeding at the June 21, 2007, meeting of the WTO's Dispute Settlement Body (DSB). According to WTO rules, a panel can only be blocked once, implying that a second request by Canada would have to be honored at a subsequent DSB meeting. However, Canada has since refrained from pursuing its panel request at subsequent biweekly DSB meetings. Canadian officials appear to be deliberating the merits of further action, particularly in light of a similar case against U.S. AMS limits being pursued by Brazil. Should any eventual changes in U.S. farm policy be needed to comply with a WTO ruling in Canada's favor, it would likely involve action by Congress to produce new legislation. For a detailed discussion of the U.S.-Canada WTO dispute settlement AMS case, see CRS Report RL33853, *Canada's WTO Case Against U.S. Agricultural Support*, by Randy Schnepf. This report will be updated as events warrant.

Introduction

The United States and Canada conduct the world's largest bilateral trade relationship, with total merchandise trade (exports and imports) reaching \$533.7 billion in 2006

(including \$25.4 billion in agricultural trade).¹ However, this economic trade success story is not without its disagreements.² In 2005, after several years of wrangling over wheat trade issues, the two countries extended their agricultural disagreement to the corn sector when Canadian corn producers sought legal action for alleged unfair subsidization and dumping of U.S. corn in Canadian markets.³ Canada's International Trade Tribunal (CITT) ultimately ruled on the 2005 AD/CV duty case in favor of the United States. However, Canadian corn producers continued to press their concerns upon the Canadian government about perceived unfair subsidization of U.S. corn.

Canadian Request for WTO Consultations

On January 8, 2007, Canada requested WTO consultations with the United States concerning three separate allegations involving U.S. commodity programs.⁴ This action by Canada represented the first step in instituting a WTO dispute settlement case with the United States — the assigning of an official dispute settlement case number (DS357) — thus setting in motion the explicit rules and timetables of the WTO DSU process.⁵ In making its charges, Canada clearly sought to build on Brazil's successful WTO challenge of the U.S. cotton program (WTO case DS267).⁶ Another potential motivating factor was domestic political concerns emanating from a weak coalition government responding to pressure from corn-producing interests following the unfavorable CITT AD/CV corn duty ruling. In addition, Canada has a general interest in influencing the 2007 U.S. farm bill debate in favor of lower amber-box-type support.⁷ A news report suggested that two additional factors motivating Canada's case included the suspension of Doha Round negotiations (July 24, 2006), which indefinitely postponed the possibility of U.S. farm program reforms under multilateral trade negotiations, and the settlement of a softwood lumber dispute between Canada and the United States, which freed up Canadian government trade attorneys to refocus on the WTO litigation against U.S. farm programs.⁸

¹ For more information, see CRS Report RL33087, *United States-Canada Trade and Economic Relationship: Prospects and Challenges*, by Ian F. Fergusson.

² For a discussion of U.S.-Canada trade issues, see CRS Report 96-397, *Canada-U.S. Relations*, Carl Ek, Coordinator.

³ The details of Canada's charges against the U.S. corn sector are provided in CRS Report RL33853, *Canada's WTO Case Against U.S. Agricultural Support*.

⁴ Request for Consultations by Canada, *United States — Subsidies and Other Domestic Support for Corn and Other Agricultural Products*, WT/DS357/1 (January 11, 2007).

⁵ For more information, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization: An Overview*, by Jeanne Grimmett.

⁶ For more information, see CRS Report RS22187, *Brazil's WTO Case Against the U.S. Cotton Program: A Brief Overview*, and CRS Report RL32571, *Brazil's WTO Case Against the U.S. Cotton Program*.

⁷ The amber box includes those policies that result in market-distorting support. For a discussion of proposed reductions in WTO domestic support commitments, see CRS Report RL33144, *WTO Doha Round: The Agricultural Negotiations*, by Charles Hanrahan and Randy Schnepf.

⁸ *Inside U.S. Trade*, "Johanns Says U.S. Will Defend Farm Programs from Canadian Challenge," January 12, 2007.

Following Canada's request for consultations, several other WTO members — Argentina, Australia, Brazil, the European Communities, Guatemala, Nicaragua, Thailand, and Uruguay — officially requested to join the consultations as interested third parties.⁹

In its official request for consultations, Canada raised three explicit charges against U.S. farm programs. Each of these is discussed below.

First Allegation: U.S. Corn Subsidies Cause Serious Prejudice. Canada contended that the subsidies and domestic support provided to the U.S. corn sector have caused adverse effects to Canadian corn producers in the form of serious prejudice and the threat of serious prejudice to the interests of Canada during the 1996 to 2006 period in violation of Articles 5(c) and 6.3(c) of the WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement).¹⁰

Second Allegation: U.S. Export Credit Guarantees Act as Illegal Export Subsidies. Canada argued that the U.S. export credit guarantee program operates as a WTO-illegal export subsidy. In the U.S.-Brazil cotton case (DS267), a WTO panel had previously found that U.S. export credit guarantees effectively function as export subsidies because the financial benefits returned by these programs failed to cover their long-run operating costs.¹¹ Furthermore, the panel found that this applies not just to cotton, but to all commodities that benefit from U.S. commodity support programs and receive export credit guarantees. As a result, export credit guarantees for any recipient commodity are subject to previously scheduled WTO spending limits.

Third Allegation: U.S. Total Domestic Support Exceeds Its WTO Limit. Canada contended that the United States has provided support to its agricultural sector in excess of its scheduled WTO commitment levels. For the United States, its total spending limit for "amber box" programs (i.e., programs that are trade- and market-distorting) was \$19.9 billion in 1999 and \$19.1 billion in all subsequent years. According to U.S. farm program spending notifications to the WTO, U.S. domestic support outlays have remained well within U.S. WTO spending commitments. Canada's claim that the United States has exceeded its total spending limits hinges largely on a previous ruling from the U.S.-Brazil cotton case where the panel found that U.S. payments made under the Production Flexibility Contract (PFC) and Direct Payment (DP) programs do not qualify for the WTO's green box category of domestic spending, because of their prohibition on planting

⁹ Official WTO documents are Australia, WT/DS357/2 (Jan. 22, 2007); Guatemala, WT/DS357/3 (Jan. 23, 2007); and Brazil, WT/DS357/4 (Jan. 23, 2007); Argentina, WT/DS357/5 (Jan. 24, 2007); the EC, WT/DS357/6 (Jan. 24, 2007); Uruguay, WT/DS357/7 (Jan. 24, 2007); Nicaragua, WT/DS357/8 (Jan. 24, 2007); and Thailand, WT/DS357/9 (Jan. 24, 2007).

¹⁰ For a description and interpretation of Articles 5(c) and 6.3(c) of the SCM Agreement, see CRS Report RL33697, *Potential Challenges to U.S. Farm Subsidies in the WTO*, by Randy Schnepf and Jasper Womach.

¹¹ For more detail, see CRS Report RL32571, *Background on the U.S.-Brazil WTO Cotton Subsidy Dispute*, by Randy Schnepf.

fruits, vegetables, and wild rice on covered program acreage.¹² However, the panel did not make the extension that PFC and DP payments should therefore be counted as amber box programs, but instead was mute on this point. In its WTO notifications, the United States has notified its PFC payments as fully decoupled and green box compliant.¹³ This is an important distinction because the green box contains only non-distorting program payments and is not subject to any limit.

However, Canada argues that, because of the previous ruling that PFC and DP payments do not conform with WTO green-box rules, they should be included with U.S. amber box payments. Furthermore, Canada argues that several other U.S. program payments were incorrectly notified as either green box (e.g., several types of disaster assistance payments) or as non-product-specific AMS (crop market loss assistance payments), where they easily qualified for exclusion from amber box limits under the non-product-specific de minimis exemption. In addition, Canada argued that the as-yet-to-be-notified CCP payments (made under the 2002 Farm Act) should similarly be counted against the U.S. amber box spending limit of \$19.1 billion. In contrast, the United States, as part of its Doha policy reform proposal, recommends that CCP payments be eligible for the blue box, where they would be subject to a different limit than the amber box.¹⁴

Since the United States has only notified its farm program spending through 2001, no spending under the 2002 farm act — including both the DP and CCP programs — has yet been notified. However, Canada charges that, when PFC, DP, and CCP payments for all covered crops — wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds — are included in the U.S.’s amber box, then the total outlays would exceed the spending commitment in each of 1999, 2000, 2001, 2002, 2004, and 2005. CRS calculations based on available USDA data suggest that inclusion of the otherwise excluded direct payments in the U.S. AMS total exceeds the spending limit in four of the years indicated (**Figure 1**). However, Canada did not provide the specific details on its year-by-year determinations, so direct comparisons are not possible.

In response to Canada’s recent request for consultations on U.S. subsidies, U.S. Secretary of Agriculture Mike Johanns declared that the United States would vigorously defend U.S. farm programs against any possible WTO challenge by Canada.¹⁵ A spokesman for the U.S. Trade Representative (USTR) was critical of Canada’s action, particularly in light of the significant increase in international corn prices since September 2006. The USTR spokesman said, “Given the dramatic improvement in the market over

¹² For more information on these restrictions see USDA, Farm Service Agency, Fact Sheet, *Direct and Counter-Cyclical Payment Program Wild Rice, Fruit, and Vegetable Provisions*, February 2003, at [<http://www.fsa.usda.gov/pas/publications/facts/html/fav03.htm>].

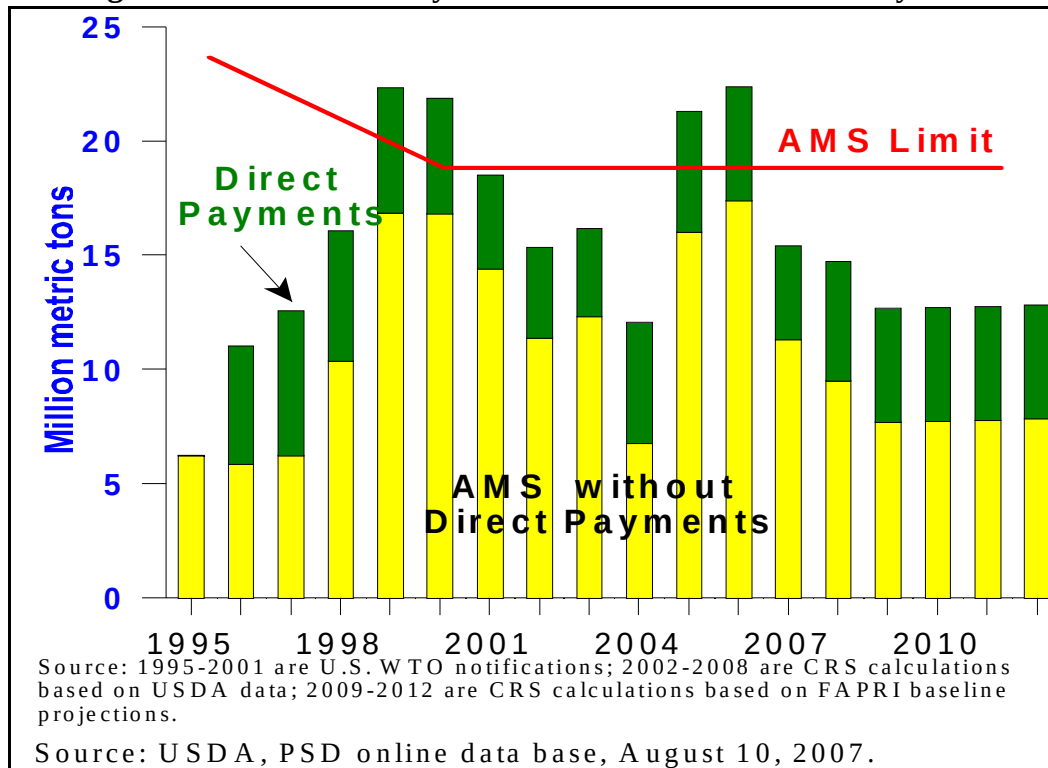
¹³ Decoupled means it has no influence on producer’s decision-making process; green box compliant means it adheres to the terms and conditions of Annex 2 of the Agreement on Agriculture.

¹⁴ Blue box payments are defined as “production-limiting” types of payments. For more information see CRS Report RL33144, *WTO Doha Round: The Agricultural Negotiations*, by Charles Hanrahan and Randy Schnepf.

¹⁵ *Inside U.S. Trade*, “Johanns Says U.S. Will Defend Farm Programs from Canadian Challenge,” January 12, 2007.

the past year, we're surprised that Canada believes that our corn programs are now causing harm in breach of WTO rules.”¹⁶ However, current market conditions are unlikely to influence any WTO investigation (should the case reach that point) since Canada is specifically challenging U.S. subsidies for the period 1996 through 2006, when corn prices were substantially lower, and government outlays were significantly higher.

Figure 1. U.S. AMS Outlays — With and Without Direct Payments



Canada Requests a WTO Panel to Review Case

On February 7, 2007, Canada and the United States held consultations concerning the three charges raised by Canada. Under WTO rules, for subsidy complaints alleging adverse effects, a minimum 60-day consultation period is required before a country can ask the WTO to establish a dispute settlement panel.¹⁷ Although the consultations failed to resolve the dispute, the Canadian International Trade Minister, David Emerson, announced on May 2, 2007, that the Canadian government would temporarily hold off on taking any further action in its WTO dispute settlement proceeding (DS357) against U.S. corn subsidies until at least the end of the year, pending the outcome of current Doha Round trade negotiations.¹⁸ However, on June 7, 2007, Canada requested the establishment of a WTO dispute settlement panel to consider two of the three initial

¹⁶ *International Herald Tribune*, “Argentina, Brazil Join WTO Complaint Against U.S. Corn Subsidies,” January 22, 2007.

¹⁷ Article 7.4, SCM Agreement.

¹⁸ “Holding Up on the US Corn WTO Case,” *Washington Trade Daily*, Vol. 16, No. 88, May 3, 2007.

charges against U.S. farm programs. The specific charge against U.S. corn subsidies was dropped. The United States blocked Canada's request at the June 21, 2007, meeting of the WTO's Dispute Settlement Body (DSB). According to WTO rules, a panel can be blocked only once, implying that a second request by Canada, if made at one of the subsequent biweekly DSB meetings, would have to be honored. However, to date Canada has refrained from pursuing its panel request. Canadian officials appear to be deliberating the merits of further action, particularly in light of a similar case against U.S. AMS limits and the export credit program being pursued by Brazil.

Potential Implications and Role of Congress

Many market analysts and news media suggest that the U.S.-Canada AMS dispute is a harbinger of future foreign challenges against U.S. commodity programs. If Canada were ultimately to move forward with a WTO panel and were to successfully litigate its case, it could affect most U.S. program commodities, since the charges against the U.S. export credit guarantee program and AMS limit extend to all major program crops. Should any eventual changes in U.S. farm policy be needed to comply with a WTO ruling in Canada's favor, it would likely involve action by Congress to produce new legislation including adjustment, if not full removal, of the planting restriction on fruits, vegetables, and wild rice on acres receiving direct payments.

Congress is presently revisiting omnibus farm legislation (which expires this year) and could potentially address some of the issues raised by Canada's WTO challenge. For example, the House-passed version of new farm legislation (H.R. 2419) includes a provision that would bring the export credit program into compliance with WTO rules, but does not address the planting restriction on program base acres (as relates to the charge of excessive U.S. AMS outlays). The Senate Agriculture Committee has yet to mark up farm legislation, thus leaving open the possibility that some type of additional reform may be included concerning the base-acre planting restrictions linked to direct payments.

Given the importance of agricultural trade in the U.S. agricultural economy, Congress will likely be monitoring developments in the WTO AMS dispute. The House and Senate Agriculture Committees regularly hold hearings on agricultural trade negotiations. If the ongoing Doha Round of WTO trade negotiations were to successfully conclude with a text for further multilateral trade reform, there is the possibility that the 110th Congress would hold hearings and be in consultation with the Administration concerning the possible renewal of fast-track, or Trade Promotion Authority (TPA), legislation, which expired on July 1, 2007.¹⁹ Any such hearings and consultations could be a major vehicle for Members to express their views on the U.S.-Canada AMS trade dispute, on the negotiating issues that it raises, and on the potential implications for U.S. farm policy.

¹⁹ For more information, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper.