Legislative Summary **LS-505E**

BILL C-40: AN ACT TO AMEND THE CANADA GRAIN ACT AND THE CANADA TRANSPORTATION ACT

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LEGISLATIVE HISTORY OF BILL C-40

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	11 March 2005	First Reading:	12 May 2005
Second Reading:	19 April 2005	Second Reading:	16 May 2005
Committee Report:	12 May 2005	Committee Report:	18 May 2005
Report Stage:	12 May 2005	Report Stage:	
Third Reading:	12 May 2005	Third Reading:	19 May 2005

Royal Assent: 19 May 2005

Statutes of Canada 2005, c.24

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-40: AN ACT TO AMEND THE CANADA GRAIN ACT AND THE CANADA TRANSPORTATION ACT*(1)

BACKGROUND

On 11 March 2005, Bill C-40, An Act to amend the Canada Grain Act and the Canada Transportation Act, was introduced in the House of Commons by the Hon. Andy Mitchell, Minister of Agriculture and Agri-Food. The proposed legislation is intended to implement a decision of the Dispute Settlement Body of the World Trade Organization relating to the handling and transportation of foreign grain and grain products in Canada. The bill was given second reading and referred to the Committee on Agriculture and Agri-Food on 19 April 2005.

Since 1990, the United States has initiated 11 examinations of Canadian wheat trade policies and practices. Charges against Canada have included subsidization, dumping, and price discrimination (charging higher prices in some markets and using the proceeds to offset lower prices elsewhere). In each of the first 9 cases, no evidence of the above-mentioned activities was found. The 2 most recent cases against Canadian wheat trading practices are described below.

A. The Case That Resulted in Bill C-40

The first of these cases dates back to late 2002, when the North Dakota Wheat Commission (NDWC) initiated a challenge against the Canadian Wheat Board (CWB) alleging that special monopoly rights and privileges granted to the CWB gave it competitive advantages

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) This Legislative Summary was prepared using files provided by Peter Berg and Michael Holden, Analysts, Economics Division, Parliamentary Information and Research Service.

over U.S. wheat farmers. When negotiations between Canada and the United States failed to resolve the issue,[2] the U.S. Trade Representative (USTR) launched a World Trade Organization (WTO) review of the CWB.

The United States asked the WTO to rule in two distinct areas:

1. the legality of the Canadian Wheat Board's exporting regime; and
2. alleged discriminatory practices regarding the treatment of foreign grain imported into Canada.

On 6 April 2004, the WTO dispute settlement panel released its final ruling, entitled *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain: Reports of the Panel*.[3] On the major issue of Canadian wheat exports, the panel ruled in favour of Canada. It found that the CWB is a legal trading entity that does, in fact, operate under commercial considerations. It dismissed allegations that the CWB had acted contrary to Canada's international trade obligations. The United States contested this decision, but lost its appeal when, on 30 August 2004, the WTO Appellate Body dismissed the U.S. claims.

Regarding the issue of discriminatory treatment of foreign grain, the United States had alleged that Canada violated national treatment in two general ways:

- through the process by which it segregated and restricted the mixing of like Canadian and foreign grains; and
- by its rules regarding the transportation of foreign and Canadian grains within Canada.

The WTO panel found in favour of the United States on the two issues of grain segregation and grain mixing; but at the same time, it observed that Canada could conform with the panel decision with relatively little impact. As for the transportation of grain, the WTO found in favour of Canada on one charge (Canadian grain producers can apply for a rail car to transport their goods; the United States had maintained that this amounted to discriminatory

(2) In order to request a WTO panel to settle a dispute, parties must first attempt to reach a negotiated settlement. If after 30 days no agreement is reached, then the aggrieved party can pursue the WTO settlement option.

(3) Available at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

treatment), and for the United States on the other – the issue of the "rail revenue cap." The rail revenue cap essentially sets a limit on how much total revenue railway companies can earn in the transportation of grain in any given year.(4) The United States argued that this could result in an implicit subsidy for Canadian producers. The WTO panel agreed, although it was noted that the cap had never been breached and was so high that it would likely never be met. The basis of the WTO finding against Canada was that there exist scenarios under which Canadian grain might be subject to lower rail transportation costs compared to foreign grain. Since the cap is unlikely ever to be met, the impact on the Canadian industry is essentially zero.

Canada did not appeal the discriminatory treatment rulings. On 12 November 2004, Canada and the United States reached an Agreement on a 10-month timeframe (from the time of the WTO Dispute Settlement Body adoption) to implement the Panel's findings.(5)

B. The Case on Durum Wheat and Hard Red Spring Wheat

The second U.S. case against Canadian wheat is in the area of trade remedies. In response to petitions filed by the North Dakota Wheat Commission and the U.S. Durum Growers Association, the U.S. Department of Commerce (DOC) initiated antidumping and countervailing duty investigations in October 2002 on imports of durum and hard red spring wheat from Canada. On 4 March 2003, the DOC made a preliminary ruling on countervail, imposing interim duties of 3.94% on both durum and hard red spring wheat. On 2 May 2003, it issued its preliminary ruling on dumping and introduced additional duties of 8.15% on durum wheat and 6.12% on hard red spring wheat.

In August 2003, the DOC issued its final determination, raising the countervailing duty rate to 5.29% for both wheat varieties and imposing final anti-dumping rates of 8.26% for durum and 8.87% for hard red spring wheat. Two months later, however, the International Trade Commission (ITC) concluded that durum wheat imports were not injurious to U.S. producers, but that those of hard red spring wheat were. Accordingly, all import duties were removed from durum wheat, but those on hard red spring wheat were maintained.

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(4) Companies are free to determine their own shipping rates, subject to competition with other carriers. The cap simply places an upper limit on the total revenue they can earn.

(5) For a complete chronology of events please consult Appendix A.

On 3 October 2003, Canada initiated a North American Free Trade Agreement (NAFTA) panel review of the countervail decision on hard red spring wheat, and on 24 November 2003, the CWB challenged the ITC's determination of injury. On 10 March 2005, the NAFTA panel ruled in favour of the CWB on hard red spring wheat duties. The panel gave the DOC 90 days to come up with a new determination on countervailing duties related to CWB financial guarantees. Those duties now account for 4.94% of the overall 14.15% tariff on imports of Canadian hard red spring wheat to the United States. The panel, however, reaffirmed the DOC decision to assess a 0.35% duty resulting from government provision of railcars, a decision that has been appealed by the federal, Saskatchewan and Alberta governments. The DOC's determination is due on 8 June 2005. The ITC's final decision on determination of injury is due on 7 June 2005.

DESCRIPTION AND ANALYSIS

Clause 1 of Bill C-40 repeals paragraph 57(c) of the *Canada Grain Act*. The current practice under that Act requires that the Canadian Grain Commission (CGC) grant permission before foreign grain enters a licensed grain elevator. A new regulation will be added to require licensed operating elevators to report to the CGC the origin of all grain.

Clause 2 repeals paragraph 72(1)(a) and subsections 72(2) and (3) of the same Act. That paragraph and subsections currently prevent the mixing of grain of any grade with other grain in a terminal or transfer elevator, although the CGC may authorize grain to be mixed in order to facilitate its sale in world or domestic markets, to conserve storage space, or to enable grain to be dried or treated (subsection 72(2)). Again, a new regulation will be created requiring licensed elevators to report to the CGC if they mix Canadian and foreign grain and to identify that grain as mixed. The new reporting and identification regulations will allow the CGC to monitor that foreign grain, or Canadian grain mixed with foreign grain, is not identified as Canadian grain. Regulations pursuant to subsection 116(1) of the *Canada Grain Act* will be enacted to ensure that grain is not misrepresented as to its origin while in the grain handling system.

Section 56 of the *Canada Grain Act Regulations* will also be repealed. That section provides an exception that permits transfer elevators to mix any grade of eastern grain

with any other grade of eastern grain, and terminal elevators to mix any grade of grain with another grade of grain other than CWRS #1 and #2.

Clause 3 amends section 147 of the *Canada Transportation Act* by changing the definition of "grain" to include eligible foreign grain and eligible processed products legally imported into Canada under the revenue cap provisions. This amendment is required to bring the revenue cap into compliance with Article III of the 1994 General Agreement on Tariffs and Trade (GATT), which is also referred to as the national treatment obligation. Foreign grain and products would therefore not receive less favourable treatment than domestic grain and products.

The Canadian Transportation Agency (CTA) determines caps annually for revenues that CP and CN, respectively, derive from the movement of western grain. The policy, which was implemented on 1 August 2000, replaces the previous policy of rate regulation; it provides for a cap on total railway revenue for western grain movements to offshore export points, and to Thunder Bay/Armstrong for eastern Canadian domestic markets. The caps are derived using a formula set out in section 151 of the *Canada Transportation Act.* Each year, the CTA is required to determine the caps and grain revenues by 31 December for the crop year that ended on 31 July of that year.

Finally, clause 4 stipulates that the provisions of the bill come into force on a day to be fixed on by order of the Governor in Council.

COMMENTARY

During the debate in second reading on 18 April 2005, a member of the Official Opposition stated that the Conservative Party intended to propose an amendment to the bill that would require the government to initiate a mandatory, comprehensive review of the *Canada Grain Act.* The review would have to be completed within one year of the bill's coming into force. It would take into consideration the concerns of various stakeholders in the grain industry, and would pave the way for a reform of the Canadian Grain Commission.

The deadline for implementing the WTO decision, through the legislative process, appears to be an issue. As mentioned in the "Background" section of this summary, Canada and the United States agreed on 12 November 2004 to a 10-month timeframe. The government maintains that "if Canada doesn't implement these changes by August 1, 2005 Canada would

risk the imposition of retaliatory measures by the U.S. This retaliation would likely take the form of punitive tariffs on Canadian exports to the U.S., although it's difficult to say what value of trade would be affected."

Although this statement is perfectly accurate, it is worth noting that the history of Canada-U.S. trade relations has demonstrated that the "risk" of retaliatory trade measures imposed by the United States is almost a constant hazard. For instance, the CWB alone has faced 13 investigations or studies by various arms of the U.S. government. Perhaps more importantly, it appears that the incidence of non-compliance with similar WTO decisions is rising over time. The European Union ambassador to the WTO, Mr. Carlo Trojan, has observed that "the United States has a quite depressing record when it comes to obeying WTO rulings." According to the Washington-based CATO Institute, "this mounting record of non-compliance, or at least footdragging, calls into question the commitment of the United States to the rules-based trading system." Should Canada not comply with the WTO decision within the prescribed timeframe, particularly if the legislative process encounters normal hurdles, it will therefore not be alone in the league of non-complying countries.

APPPENDIX

Source: Agriculture and Agri-Food Canada

WTO Wheat Panel: Chronology of Events

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March 31, 2003
U.S. officially requests WTO Panel to examine U.S. allegations respecting the WTO consistency of: (I) the activities of the CWB in relation to the disciplines on State Trading Enterprises (STEs) set out in GATT Article XVII); (ii) certain policies affecting the importation of grain (rail revenue cap, rail car allocation, grain entry authorization and grain mixing).

September 2003
WTO Panel holds hearing in Geneva to examine U.S. allegations, with both sides arguing their positions before the Panel.

December 2003
WTO Panel releases interim decision. Its findings are a clear victory for Canada on the CWB issue. On the grain sector policies, the Panel ruled in favour of Canada on the rail car allocation and against Canada on the rail revenue cap, grain entry authorization and grain mixing.

February 10, 2004
WTO Panel releases its final decision on the case which confirms the earlier interim ruling. The final decision is only released to the parties in the case, pending translation of the document.

April 6, 2004
WTO releases a fully translated version of the final decision to the public.

May 2004
The U.S. notifies its intent to appeal the Panel's decision related to the CWB. Canada does not appeal the grain sector policy issues on which it lost.

July 2004
The WTO Appellate Body holds a one-day hearing in Geneva.

August 30, 2004
The Appellate Body releases its ruling. It essentially endorses the original Panel ruling in favour of Canada.

September 27, 2004
The WTO Dispute Settlement Body (DSB) formally adopts the Panel and Appellate Reports on the dispute.

November 12, 2004
Agreement is reached between Canada and the U.S. on 10 months (from the time of the WTO DSB adoption) to implement the Panel's findings on the grain sector policy issues.

August 1, 2005
Deadline for Canada to bring itself into compliance with the WTO ruling.