

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-845, A-122-847]

Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Final Determinations of Antidumping Duty Investigations

SUMMARY: On May 8, 2003, the Department of Commerce published the preliminary determinations in the antidumping duty investigations of durum wheat and hard red spring wheat from Canada. We gave interested parties an opportunity to comment on the preliminary determinations. Based upon the results of verification and our analysis of the comments received, we have made certain changes to the margin calculations presented in the final determinations of these investigations. We continue to find that durum wheat and hard red spring wheat from Canada ~~were sold~~ in the United States below normal value during the period of investigation. The final weighted-average dumping margins are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4194 or (202) 482-1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2003, the Department of Commerce (“the Department”) published in the Federal Register the preliminary determinations in its investigations of durum wheat and hard red spring wheat from Canada (Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada, 68 FR 24707 (May 8, 2003) (“Preliminary Determinations”)).

Since the Preliminary Determinations, the following events have occurred:

In May and June 2003, we conducted verifications of the sales and cost of production (“COP”) questionnaire responses submitted by the Canadian Wheat Board (“CWB”) and Canadian hard red spring (“HRS”) wheat farmers at the CWB’s headquarters, at the offices Meyers Norris Penny LLP and at certain farm locations. We issued verification reports in July 2003. We received case briefs from the petitioners¹ and the CWB on July 30, 2003. We received rebuttal briefs from the petitioners and the CWB on August 5, 2003.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

¹ The petitioners are the North Dakota Wheat Commission (“NDWC”) (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat).

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Scope Comments

We have received several requests for exclusions from and clarifications of the scope of these

investigations. On April 24, 2003, Montana Flour & Grains and Kamut International requested that the Department exclude Khorasan wheat from the scope of these investigations. The Government of Canada (“GOC”) made the same request on July 31, 2003. On June 27, 2003, the Organic Trade Association requested that the Department exclude organically produced wheat from the scope of these investigations. On July 29, 2003, Cargill, Incorporated (“Cargill”) requested that the Department clarify the scope of these investigations and specifically exclude from the scope Canadian Eastern Soft Red Winter Wheat and Canadian Eastern Hard Red Winter Wheat. On July 30, 2003, the petitioners submitted comments on all but the Cargill submission and also raised an additional issue concerning Canadian feed wheat. We have considered these requests and the comments from interested parties. We have determined that organically grown wheat is covered by the scope of these investigations and that the scope of the hard red spring investigation should be clarified by adding the following language to the scope: “This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat.” For a complete discussion of these scope issues, see the August 28, 2003, Scope Exclusion and Clarification Requests: Khorasan Wheat, Organic Wheat, Canadian Eastern Soft Red Winter Wheat, Canadian Eastern Hard Red Winter Wheat, and Canadian Feed Wheat memorandum, which is on file in the Central Records Unit, Room B-099 of the Department (“CRU”).

Period of Investigation

The period of investigation (“POI”) is July 1, 2001, through June 30, 2002.

Use of Facts Available

As explained in the Preliminary Determinations, we based the COP in part on the use of facts

otherwise available, in accordance with section 776 of the Tariff Act of 1930, as amended effective January 1, 1995 (“the Act”), by the Uruguay Round Agreements Act (“URAA”).

Of the twenty-seven producers selected, one producer (i.e., cost respondent 2)² chose not to respond to the Department’s questionnaire, and two other producers (i.e., cost respondents 10 and 27) did not respond based on extenuating circumstances discussed below. Therefore, as described in detail below, because these producers have not provided the necessary information on the record to calculate the simple-average COP within their respective stratum, the use of facts otherwise available is warranted.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.³ Section 776(b) of the Act

² Due to the proprietary nature of the name of each producer, we have assigned a number to each farmer (“cost respondent”) that will be used throughout this notice when referring to that specific farmer. A list or code key identifying the name associated with each cost respondent number can be found in the Cost of Production and Constructed Value Adjustments for the Preliminary Determination dated May 1, 2003 at Attachment 1, which is on file in the CRU.

³ Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and

further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

With respect to cost respondent 2, this producer chose not to respond to the Department's questionnaire. As a result, use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. In accordance with section 776(b) of the Act, if the Department finds that "an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information," an adverse inference may be used in determining the facts otherwise available. In the instant case, cost respondent 2 did not cooperate to the best of its ability by failing to provide any of the information requested in the section D cost questionnaire with no rationale for why it could not provide such information when other producers could. Therefore, as adverse facts available for the final determination on HRS wheat for this cost respondent, we have continued to use the higher of the COP from the petition for the same province and soil type or the highest reported cost of other cost respondents within the same stratum. Based on our comparison of the amounts, we found that the reported cost of one of the other cost respondents within the same stratum was higher. As a result, we used the other respondent's COP within the same stratum as the surrogate cost for cost respondent 2.

Both cost respondents 10 and 27 did not respond to the Department's cost questionnaire

subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

based on extenuating circumstances. With respect to cost respondent 10, the CWB explained that this farmer had deliveries of HRS wheat to the CWB during the POI, but did not produce HRS wheat during the 2001 growing season. However, cost respondent 10 did have an affiliated party that produced HRS wheat during the cost reporting period. Therefore, as a surrogate, cost respondent 10 reported its affiliate's COP for the cost reporting period. We note that this affiliate was not considered a cost respondent in the sample selection and, as such, we determined it would not be appropriate to include the affiliate's COP in our overall calculation of COP.

Similar to cost respondent 10, cost respondent 27 did not provide cost data for the 2001 growing season because the information was not available. Specifically, cost respondent 27 sold its farming operations and ceased farming. Because neither cost respondent 10 nor 27 had information available that would enable them to respond to the Department's cost questionnaire and – in the case of cost respondent 10 – they attempted to provide some cost information, we applied neutral facts available for the HRS wheat preliminary determination pursuant to sections 776(a)(2)(A) and (B) of the Act. As neutral facts available, we have relied on the cost data submitted by the other cost respondents within the same stratum. Therefore, we have not included an amount for these cost respondents in the simple average calculation within their respective strata.

Fair Value Comparisons

We calculated export price and normal value based on the same methodology used in the Preliminary Determinations with the following exceptions:

- We based our calculations on the CWB's updated and verified sales data. We used the revised sales data submitted by the CWB on **June 20, 2003**, and the revisions stated in the

CWB's July 9, 2003, submission.

- We revised the level of trade ("LOT") classification to include only producer direct sales in LOTH/U2.
- We corrected a clerical error in the calculation of the LOT adjustment.
- **We** revised the cost of production calculation for HRS wheat to include certain changes noted in the August 28, 2003 Cost of Production and Constructed Value Adjustments for the Final Determinations – Canadian Wheat Board Cost Respondents Memorandum ("Final Determination Cost Calculation Memorandum")

For a complete discussion of these changes, see the August 28, 2003, Issues and Decision Memorandum for the Final Determinations of the Antidumping Duty Investigations of Certain Durum Wheat and Hard Red Spring Wheat from Canada ("Decision Memorandum"), Durum Wheat Final Determination Calculation Memorandum for the Canadian Wheat Board, Hard Red Spring Wheat Final Determination Calculation Memorandum for the Canadian Wheat Board, and the Final Determination Cost Calculation Memorandum.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the preliminary determinations.

Verifications

As provided in section 782(i)(1) of the Act, we verified the information submitted by the CWB and selected farmers during May and June 2003. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents

provided by the CWB and certain individual cost respondents (i.e., farmers).

Analysis of Comments Received

All issues raised in the petitioners' and the CWB's case briefs are addressed in the Decision Memorandum which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which the petitioners and the CWB have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in these investigations and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/fm/summary/list.htm>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("BCBP") to continue to suspend liquidation of all imports of subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after May 8, 2003, the date of publication of the Preliminary Determinations in the Federal Register. The BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Durum Wheat

<u>Exporter/Manufacturer</u>	<u>Weighted-Average Margin Percentage</u>
Canadian Wheat Board	8.26
All Others	8.26

Hard Red Spring Wheat

<u>Exporter/Manufacturer</u>	<u>Weighted-Average Margin Percentage</u>
Canadian Wheat Board	8.87
All Others	8.87

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our determinations. As our final determinations are affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue antidumping duty orders.

This notice also serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These determinations are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

James J. Jochum
Assistant Secretary
for Import Administration

(Date)

APPENDIX

List of Comments in the Issues and Decision Memorandum

Sales Issues

- Comment 1: Particular Market Situation
- Comment 2: Inclusion of Certain Product Characteristics in Model Match Criteria
- Comment 3: Date of Sale
- Comment 4: Exclusion of Channel 6 Sales from LOTH 1
- Comment 5: Treatment of Sales Made Above Normal Value
- Comment 6: Clerical Error in the Calculation of the LOT Adjustment

Common Cost Issues

- Comment 7: Farmer Estimates and Representations
- Comment 8: Representative COPs
- Comment 9: Eliminate Outliers in Calculating the Average COP
- Comment 10: Collapsing
- Comment 11: Seed Costs
- Comment 12: Imputed Labor Costs
- Comment 13: Personal Expenses
- Comment 14: Overhead Allocation Basis
- Comment 15: Financial Statement Depreciation
- Comment 16: Affiliated Party Transactions Received Methodology
- Comment 17: Costs of Services Provided to Outside Parties
- Comment 18: Land Use
- Comment 19: Crop Insurance Proceeds
- Comment 20: Straw By-Product Offset
- Comment 21: G&A and Interest Expense Denominators
- Comment 22: Value of Bookkeeping Services

Farmer Specific Issues

Farmer 1

- Comment 23: Production Quantities
- Comment 24: Well Expenses
- Comment 25: Over-Excluded Livestock Costs

Farmer 3

- Comment 26: Imputed Seed Costs
- Comment 27: Actual Labor Costs
- Comment 28: Chemical Costs
- Comment 29: Revenue from Green Barley
- Comment 30: Country Elevator Charges

Farmer 4

- Comment 31: Imputed Interest Expense
- Comment 32: Short-Term Interest Income
- Comment 33: Overhead Expenses Allocation Between Crops
- Comment 34: Custom Work Costs
- Comment 35: Land Use Cost
- Comment 36: Machinery Repair Expenses

Farmer 5

- Comment 37: Depreciation Expense of the Omitted Asset
- Comment 38: Labor Cost for Non-Crop Activity

Farmer 6

- Comment 39: Trucking Expense

Farmer 7

- Comment 40: Unsupported Corrections to Normal Records
- Comment 41: Reallocate Fertilizer Costs
- Comment 42: Interest Expense Offset
- Comment 43: Capitalization of Costs

Farmer 8

- Comment 44: Imputed Seed
- Comment 45: Production Quantity
- Comment 46: Offset to Fertilizer Costs

Farmer 9

- Comment 47: Depreciation Expense

Farmer 11

- Comment 48: Fixed Assets
- Comment 49: Land Use Costs

Farmer 12

Comment 50: Seed Cleaning Costs
Comment 51: Production Quantity
Comment 52: Custom Work Costs
Comment 53: Interest Charge on a Trade Payable Account

Farmer 14

Comment 54: Overstatement of Other Crop Costs
Comment 55: Understatement of Fertilizer Costs
Comment 56: Overhead Adjustment
Comment 57: Interest Expense
Comment 58: G&A Expense

Farmer 15

Comment 59: Tax Return Errors
Comment 60: Omitted Expenses
Comment 61: Livestock Costs

Farmer 16

Comment 62: Input Values for Seed, Fertilizer, and Chemicals
Comment 63: Cost Allocation Basis

Farmer 17

Comment 64: Omitted Actual Labor Cost

Farmer 19

Comment 65: Imputed Seed Costs
Comment 66: Depreciation Should be Included in Fixed Overhead
Comment 67: Revised Cash Ticket Analysis is Correctly Reported
Comment 68: Crop Insurance Profit Factor and Recoveries Should be Recalculated

Farmer 21

Comment 69: Fertilizer and Chemical Costs
Comment 70: Capitalization of Costs
Comment 71: Costs Not Associated With the Farmers' Livestock Operations

Farmer 22

Comment 72: Overhead Allocations, New Factual Information

Farmer 23

Comment 73: G&A Expenses
Comment 74: Production Quantities

Farmer 26

Comment 75: Exclusion of the 2000 Seed from the 2001 Production Quantity

Comment 76: Improper Allocation of the Cost of Chemicals