when those duties are disbursed. That double remedy amounts to a "double penalty" on Canadian exports subject to U.S. trade remedy action. Moreover, this law encourages U.S. industry to file AD and CVD petitions, to the detriment of Canadian export interests. Accordingly, Canada, along with 10 other WTO members (Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Mexico, South Korea and Thailand), successfully challenged the Byrd Amendment before the WTO.

The United States was given 11 months (until December 27, 2003) to bring its measure into compliance but failed to comply with the deadline. In order to protect their WTO retaliation rights, on January 26, 2004, Canada and seven other WTO members (Brazil, Chile, the European Union, India, Japan, Mexico and South Korea) requested authorization to retaliate. The United States challenged the request, prompting a seven-month arbitration process. On August 31, 2004, the WTO Arbitrator ruled that complaining WTO members could retaliate at a level up to 72% of disbursement of duties collected on their respective exports. This percentage is based on an economic model developed by the WTO to measure the trade effect of the Byrd Amendment on U.S. trading partners. Finally, on November 26, the WTO granted Canada final retaliation authorization against the United States for its continued failure to repeal the Byrd Amendment. The other WTO members involved in the arbitration also received final retaliation authorization.

In response to the continued U.S. failure to repeal the Byrd Amendment, on November 23 the Government of Canada launched public consultations on Canada's retaliatory options. These consultations, which generated responses from a wide range of interests, concluded on December 20. The government is currently assessing all the comments and will take a decision on the matter as quickly as possible. Further information on the Byrd Amendment can be found on the department's Web site (*www.international.gc.ca/tna-nac/disp/byrd-main-en.asp*).

U.S. Trade Remedy Investigations on Canadian Goods

Wheat

In 2003, countervailing and anti-dumping duties totalling 14.15% were implemented with respect to U.S. imports of hard red spring wheat from Canada. Taking issue with the countervailing of certain government programs, the Government of Canada and other Canadian parties challenged the U.S. Department of Commerce's countervail determination under NAFTA. As well, the Canadian Wheat Board launched a NAFTA challenge of the International Trade Commission's injury decision with respect to hard red spring wheat. In both cases, Canadian parties have submitted written briefs to the panels and have presented Canadian arguments at panel hearings. The report of the NAFTA panel reviewing the countervail determination, due in late January 2005, has been delayed. The NAFTA panel decision in the injury case is due in June 2005.

Magnesium

The Government of Canada continues to monitor developments surrounding the long-standing U.S. countervailing duties on Canadian magnesium, and it participates in the U.S. Department of Commerce's annual administrative reviews of these countervailing duties. In this context, it must be noted that the government continues to monitor the NAFTA challenges that were brought against the U.S. decision in 2000 to extend the application of the duties. To this end, Canada was actively engaged in the unsuccessful NAFTA extraordinary challenge filed by the United States on September 24, 2003, contesting a NAFTA Chapter 19 panel decision instructing the U.S. DOC to sunset the anti-dumping duties on Canadian exports of pure magnesium.

Live Swine

On April 8, 2004, the U.S. Department of Commerce initiated countervailing duty and anti-dumping investigations on imports of live swine from Canada, in response to a petition filed by the U.S. National Pork Producers Council (NPPC). The NPPC alleges that the Canadian hog industry is benefiting from countervailable subsidy programs