

6.2.2 Pork Production Subsidies

Over the years various U.S. trade courts and tribunals have undertaken investigations of alleged subsidies to Canadian pork producers. In a number of instances the U.S. industry has contended that subsidies paid to upstream producers should also be assigned to downstream products and a countervailing duty (CVD) imposed.

In 1985 one U.S. trade court found that live hogs were subsidized and causing injury, and imposed a countervailing duty. In 1987 the U.S. pork producers petitioned for further relief, this time contending that Canadian pork producers were circumventing that CVD by decreasing exports of live hogs and increasing exports of fresh, chilled and frozen pork. In this case it was determined that there was no direct subsidy paid to pork processors, even if hog producers were subsidized.

Changes to U.S. trade law made by the *Omnibus Trade and Competitiveness Act* of 1988 now allows such a connection to be made. Section 1326 of this *Act* permits the U.S. International Trade Commission (ITC) to examine and emphasize the economic relationship between producers and processors and to conclude that the two constitute a single industry.

A complaint was brought under the new rules and, after a preliminary ruling in which the Commerce Department imposed a duty of \$.039 per kilogram based on the subsidy to hog producers, the ITC raised the countervailing tariff to \$.079 per kilogram in its final determination of injury caused by fresh and chilled Canadian pork exports.

Several Canadian meat packers had laid off workers on the basis of the lower initial tariff. Shortly after the higher final determination was made, even a relatively new slaughterhouse in Springhill, Manitoba, announced that the CVD made it uneconomic to continue its operation, and that it would wind up operations before the end of 1989, laying off its 180 employees. A number of other meat packers and pork producers are also experiencing difficulty.

This matter is being reviewed by no less than three panels: two Chapter 19 panels are examining the CVD and injury determinations, and one at the GATT is examining the compatibility of the U.S. process for calculating the pass through of subsidy with GATT rules. Canada requested the panels immediately after the decisions were made.

While Canadian pork producers are hoping that referral to an FTA panel may reverse the Commerce and ITC findings, the task of such panels is to determine whether national laws have been properly applied. Most observers consider that the *Omnibus Trade and Competitiveness Act* has been properly applied; consequently, the appeal is likely to result in a confirmation of the duty on Canadian pork and pork products.

Moreover, even if the duty were to be overturned on appeal, it could take up to a year for the process to be completed. While this may, indeed, be quicker than under previous U.S. procedures, the duty is being collected in the meantime. The level of the duty is sufficiently high that exports of these products to the United States are being severely affected.