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March 12, 2010

Re: Small and Medium-Sized Enterprises: U.S. and EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms

I wanted to thank the International Trade Commission for allowing our industry to share views on trade policy and how it affects our community. Potato trade in general can be viewed as a one way street when negotiations occur at a multilateral level, and it is has been our position to work with US federal agencies and educate those about our position so that we can have a proactive stance to build the rest of the road to export our product in an unencumbered environment.

For our export markets we continually look at ways to stay competitive with our counterparts in the European Union, China, Canada, New Zealand and Australia. To stay competitive we look to the World Trade Organization as a means to "level the playing field" with regard to competitive trade with these countries in foreign markets. We also see value in our government negotiating on a bilateral basis with our trading partners for tariff relief as this allows for a sometimes quicker mode of action.

Currently, Washington State is the largest potato export state in the country. Approximately nine out of every ten Washington potatoes are marketed outside of our state, with a significant portion of our production going to overseas markets.

Potatoes represent Washington State's third largest agricultural crop with a farm gate value of over $690 million dollars, and total value to the state of over $3.5 billion dollars.

Last year approximately 88 percent of Washington's potato crop was sold to processors who transformed them into fries, hash browns, tater tots, chips, and dehydrated product.

I. General Potato Information

Utilization of Washington State Potatoes

There are approximately 250 potato growers or business entities operating in Washington State. In 2009, our growers raised 145,000 acres of potatoes with an average yield of 61,000 lbs or 30.5 tons per acre, 8,845,000,000 lbs or 4,422,500 tons total.

(2008/2009 marketing year: 3,654,766 tons processed / 514,252 tons fresh)

- 75% frozen potato processing
- 12% fresh market
- 9% dehydrated potato processing
- 3% potato chip manufacturers
- 1% other miscellaneous uses

II. Fresh Potato Export Trade Issues

Canadian Anti-Dumping Duties on Potatoes

HISTORY

For almost 25 years, the Washington, Idaho, Oregon and California potato industries have faced legal impediments in accessing a large and geographically advantageous market in British Columbia. These impediments arise from the imposition of antidumping duties on US fresh potatoes exported to British Columbia.

In the Pacific Northwest, the potato industry in Washington, Oregon, and Idaho is a large, efficient, highly competitive industry that produces high quality product. The region is blessed with a combination of rich soils coupled with controlled moisture through irrigation that result in high quality, high yield product. The Pacific Northwest industry has experienced growth principally in connection with the expanding processed food market. However, fresh potato production remains an important component of the industry's sales. British Columbia is an important and close market for which Pacific Northwest fresh potatoes have comparative advantages.

By contrast, the potato industry in British Columbia is relatively small, with very few farms producing at a scale that is competitively comparable to Pacific Northwest farms. British Columbia potato farms have less advantageous soil conditions, higher land costs, smaller acreages, less controlled water (i.e. rain rather than irrigation), and significantly lower yields.

The Pacific Northwest potato industry has unsuccessfully contested allegations of dumping and material injury since 1984. The Pacific Northwest industry finds itself in the situation where it can never be successful in challenging dumping remedies because of problems inherent in the nature of the commodity market, Canadian antidumping laws, and dumping assessment methodology.

STRUCTURAL PROBLEMS

Cyclical Dumping Allegations from Normal Agricultural Market Conditions

There are typical agricultural cyclical market situations for potatoes that; in the context of trans-border trade with British Columbia, create chronic antidumping liability. As with any agricultural commodity, there are seasons (historically an average of one out of seven) in which production is down and market prices are high. In these seasonal economic cycles, sales of US potatoes into British Columbia are at market prices, but below cost of production. Thus, these sales are technically at "less than fair value" and are found to be dumped, despite the fact that sales are at market prices.

In the agricultural commodity context there will always be seasons in which prices will be below cost of production, there does not appear to be anyway to avoid repeated allegations of dumping under current Canadian law. Moreover; as discussed below, the British Columbia industry is incented to reinstate such allegations regularly in order to maintain government enforced floor prices that ensure profitability and market share in all years.

The only option left to the US potato industry; consequently, is to obtain a Normal Value determination that minimizes dumping duty exposure. It is difficult; however, under Canadian law to obtain Normal Value reviews to reflect developments and changes in potato costs of production. Under Canadian law, there are no regular annual "administrative reviews" of dumping margins as there is under US law. If there are changes in circumstances, e.g. yield changes, that effect Normal Value calculations, it is within the complete discretion of Canadian Customs and Revenue Agency (CCRA) as to whether it will conduct a Normal Value investigation of potato products.

While the U.S. industry will seek a discretionary review, the only certain opportunity for correction of Normal Values is every five years in an "Expiry" investigation (known in the US as a Sunset investigation).

Inevitable Material Injury Findings

These cyclical low prices on fresh potatoes exported to British Columbia are always found to cause "material injury" to the small British Columbia industry because British Columbia has been found to be a "regional industry." The Canadian International Trade Tribunal (CITT) finds material injury because it has not recognized that certain numbers of seasonal losses are normal agricultural commodity economic phenomena, rather than an indicium of injury. (Interestingly, the CITT in a similar case involving onions recognized that certain seasonal losses in this agricultural commodity was normal and did not constitute material injury. However, the CITT did not apply subsequently the same principle to potatoes.)

Further, the cyclical nature of agricultural commodity prices is a basis for the CITT's findings that there is always a threat of future injury to the British Columbia industry.

Another intractable problem is that the mere disparity of size means that material injury will always be found in any case. The British Columbia industry remains small because of its inherent comparative disadvantages. The size and nature of the British Columbia industry is portrayed continuingly as vulnerable to the production capabilities of the Pacific Northwest. Consequently, in any future case, injury will inevitably be found under this test.

Illegal Dumping Enforcement

The antidumping duty remedy under Canadian law is different from the United States. A Normal Value is established for different packs of potatoes. Any imports at or above the Normal Value are not assessed antidumping duties. Any imports priced below Normal Value are assessed a dumping duty equal to the difference between the price and the Normal Value.

Current Normal Values:

PRODUCT by (CWT)	NORMAL VALUE (US$)
5x10 lb	$14.46
10x5 lb	$15.20
50 lb Carton	$15.73
50 lb Sack	$14.56
100 lb Sack	$13.71

Because the Canadian government experienced dumping duty order circumvention problems in the mid 1980's, it deviated from the normal procedure of calculating dumping duties based on invoice prices of each import shipment. Instead, it developed a methodology for calculating blanket dumping duties applicable to all importers by comparing the Normal Value to average prices reported by the USDA *Market News* for the prior Wednesday shipment. This methodology effectively means that above average prices for the product are assessed dumping duties even though they in fact can be above Normal Values.

Net Market Effect: Perpetual Import Restrictions/Price Floor Protection for BC Industry

Dumping duties are not imposed on U.S. potatoes because they are unfairly traded. Rather, the fundamental reason dumping duties are maintained is that a very small number of competitive British Columbia producers have taken advantage of the arbitrary treatment of normal industry/market circumstances under Canadian antidumping law to achieve a perpetual floor price that guarantees them profits in all years. In other words, the pricing and market restrictions on US fresh potato imports guarantee that the small British Columbia industry will never lose money because of floor prices at cost of production, contrary to normal agricultural commodity economic dynamics in a free market. This is confirmed by Canadian government statistics that show the average farm price received by Canadian potato growers in British Columbia was 182% of the average Canada farm price received by Canadian potato growers per pound of fresh potatoes in 1992 – 1996.

KOREA FTA

Fresh table stock potatoes (HS 0701.9). In addition to Korea's WTO commitments, Korea has established a 3,000 MT duty free quota for US fresh potatoes (other than chipping potatoes) that grows each year before snapping back to the 304 percent tariff. After the first five years, the quota grows 3 percent a year.

Fresh potatoes for chipping (HS 0701.9). Tariffs on fresh potatoes for chipping will be immediately eliminated for the period of December 1 to April 30 each year. From May 1 to November 30, the tariff will stay at 304 percent for the first seven years, and then will be eliminated in equal segments over the next eight years.

III. Processed Potato Export Trade Issues

Processed potato exports, including frozen fries and dehydrated potatoes, make up the majority of US potato exports. While the US exported over $148 million in fresh potatoes in 2009, it exported over $845 million worth of fries and dehy during that same period. For this reason, maintaining and expanding processed potato export markets is a key element of our potato market access efforts.

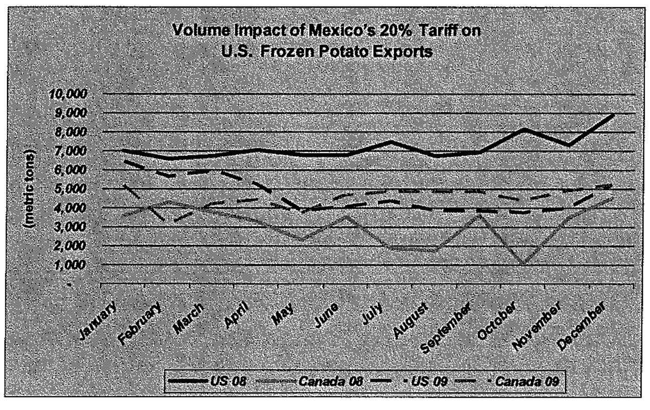
Impact of Mexico's 20 percent Tariff on U.S. Frozen Potato Exports

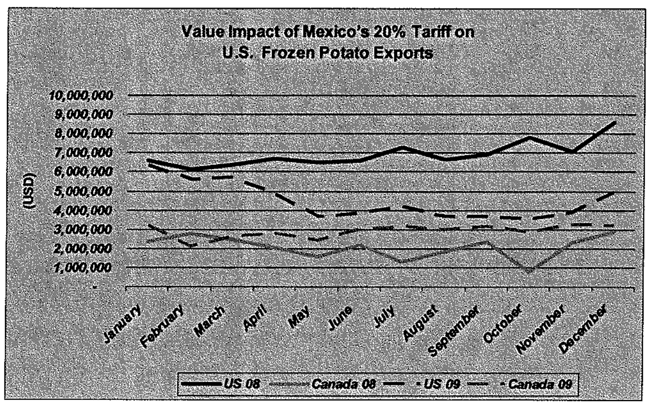
The Omnibus spending bill; recently approved by Congress and signed by the President, contained language that forced the closure of the pilot program for Mexican trucks to operate on a limited basis in the United States. In response to those actions and supported by the conclusions of a NAFTA dispute resolution panel, the Mexican government exercised their rights under NAFTA to institute tariffs on a list of U.S. exports including frozen processed potatoes. The 20 percent tariff placed on those U.S. frozen potato products has initiated a reduction or loss of an $80 million dollar market to Canada. This will lead to a reduction of potato acreage, jobs (both on farm and in potato processing factories), and will further weaken our Washington State economy.

Even though the last of the 2010 fiscal year appropriations were passed without language that would prohibit funding for a cross border trucking program, the fix now lies with the Administration and Congress.

Mexico has been the third largest market for U.S. frozen potato exports following Japan and Canada. Official USG statistics state the value of frozen potato products from Washington State reached $40 million in 2008, almost half of the U.S. trade with Mexico.

A loss of **41 percent** of the US frozen potato export market share to Mexico occurred for the month of **December**. That represents a value loss of over **$3.6 million dollars**. The cumulative impact of the 20 percent tariff on US frozen potato exports **total over 27,966 metric tons** of product at an estimated value loss of over **$28 million dollars** for the months of April, May, June, July, August, September, October, November, and December.





Source: USDA, FAS Agricultural Export Aggregations

KOREA - FTA

Frozen potatoes (including fries) (HS 2004.10): the 18 percent tariff will be immediately eliminated. In 2009, the US shipped over 37,000 MT of frozen potatoes to Korea valued at over $36 million. Over $6.5 million in tariffs were paid last year on these products. With the elimination of this tariff, US frozen potatoes will enter duty-free. Moreover, products from Canada, Australia, New Zealand, and the EU will still face the 18 percent tariff.

Processed dehy potatoes (HS 2005.20): the 20 percent tariff will be eliminated in equal stages over seven years.

Dehydrated potato flakes (HS 1105.20): 5,000 metric tons will enter duty free and will expand over the course of the tariff phase out. The 304 percent over quota tariff will be eliminated over 11 years in non-equal stages.

PANAMA – FTA

Frozen potatoes (including fries) (HS 2004.10): Panama has agreed to a 3,500 metric ton tariff rate quota that will expand by 4 percent annually compounded. The quota will last five years. After that, fries will enter duty free.

Dehydrated potato flakes (HS 1105.20): For dehy flakes, pellets and granules shipped under HS 1105.2 there will be a five-year phase out of the currently applied 15 percent tariff.

Other: For processed products shipped under Chapter 20 (HS 2005.2) there are two tariff reductions proposed. HS 2005.20.10 "papas fritas," there will be an immediate elimination of the 15 percent duty once the agreement is implemented.

For other potatoes, prepared or preserved (HS 2005.20.20) there will be a five-year phase out of the 15 percent tariff. The tariff reduction schedule will be similar to the dehy flake schedule cited above.

COLOMBIA - FTA

In the US-Colombia Free Trade Agreement, Colombia agreed to eliminate its 20 percent fry, dehy, and potato chip tariffs on implementation. The US exported over $1.8 million dollars worth of processed potatoes to Colombia last year and has 47 percent of the frozen processed potato export market.

CAFTA – FTA SUCCESS

The processed potato industry made great strides in the CAFTA negotiations. Once implemented fry tariffs were immediately eliminated in Honduras, El Salvador, Guatemala, and Nicaragua. This reduction gave US business a 15 percent advantage over our competitors. In Cost Rica, the fry tariff will match that offered to Canada, thus evening the playing field. In the Dominican Republic, the 20 percent fry tariff will be phased out in five years.

As a result of CAFTA's implementation, since 2005 the US frozen potato industry has increased its market share by 83 percent at a value just under $13 million dollars. The US dehy industry has increased its market share by 90 percent at a value just under $1.7 million dollars.