

103D CONGRESS
1ST SESSION

S. 730

To ensure fair and free trade of certain agricultural commodities between the United States and Canada, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 3), 1993

Mr. DORGAN (for himself and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To ensure fair and free trade of certain agricultural commodities between the United States and Canada, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States-Canada
5 Fair Grain Trade Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) as a result of unfair and incomplete provi-
9 sions in the United States-Canada Free-Trade
10 Agreement—

1 (A) Canadian exports of durum wheat,
2 spring wheat, and barley have increased beyond
3 the level such exports can be absorbed into the
4 United States market;

5 (B) these exports have depressed domestic
6 grain prices, causing severe financial losses to
7 American farmers and increasing the costs and
8 difficulties of implementing domestic farmer
9 support programs; and

10 (C) Canadian grain exports continue to in-
11 crease without bounds, increasing the damage
12 to United States farmers each year;

13 (2) the Congress approved the United States-
14 Canada Free-Trade Agreement subject to—

15 (A) the statement in the Statement of Ad-
16 ministrative Action that the United States
17 would “pursue consultations with Canada re-
18 garding the price setting policy of the CWB
19 (Canadian Wheat Board) as it affects goods ex-
20 ported to the United States....directed toward
21 establishing a method to determine the price at
22 which the CWB is selling agricultural goods to
23 the United States and the CWB’s acquisition
24 price for those goods”; and

1 (B) the provision of the implementing leg-
2 islation requiring that “the President will enter
3 into immediate consultation with the Govern-
4 ment of Canada to obtain the exclusion from
5 the transport rates established under Canada’s
6 Western Grain Transportation Act of agricul-
7 tural goods that originate in Canada and are
8 shipped via east coast ports for consumption in
9 the United States,”

10 yet to date there has been no progress on these con-
11 sultations; and

12 (3) the failure of the United States successfully
13 to pursue the consultations described in subsection
14 (b) led to a flawed binational panel decision that
15 renders meaningless the plain language of Article
16 701(3) of the United States-Canada Free-Trade
17 Agreement, which states that “Neither Party, in-
18 cluding any public entity that it establishes or main-
19 tains, shall sell agricultural goods for export to the
20 territory of the other Party at a price below the ac-
21 quisition price of the goods plus any storage, han-
22 dling or other cost incurred by it with respect to
23 those goods.”.

1 **TITLE I—GRAIN TRADE**
2 **NEGOTIATIONS**

3 **SEC. 101. PRICE TRANSPARENCY.**

4 (a) NEGOTIATIONS.—The President shall imme-
5 diately pursue negotiations with the Government of Can-
6 ada to establish a method to determine the price at which
7 the Canadian Wheat Board is selling agricultural goods
8 to the United States and the Board's acquisition price for
9 such goods, as required under the fourth paragraph of
10 chapter 7(B,1,c) of the Statement of Administrative Ac-
11 tion accompanying the United States-Canada Free-Trade
12 Agreement Implementation Act of 1988.

13 (b) ACTION UPON FAILURE.—If, within 120 days
14 after the date of the enactment of this Act, negotiations
15 under subsection (a) fail—

16 (1) to establish the method of determining
17 prices under subsection (a), or

18 (2) to establish procedures for obtaining the
19 data necessary to implement such method,

20 Canada shall be treated as in violation of Article 2101 of
21 the United States-Canada Free-Trade Agreement and all
22 imports of Canadian grain to the United States shall be
23 suspended until the President certifies that successful ne-
24 gotiations under subsection (a) have been completed.

1 **SEC. 102. RAIL TRANSPORTATION SUBSIDY.**

2 (a) NEGOTIATIONS.—The President shall imme-
3 diately pursue the consultations with the Government of
4 Canada described in section 304(a)(2) of the United
5 States-Canada Free-Trade Agreement Implementation
6 Act of 1988, relating to the exclusion from the transport
7 rates established under Canada’s Western Grain Trans-
8 portation Act of agricultural goods that originate in Can-
9 ada and are shipped via east coast ports for consumption
10 in the United States.

11 (b) ACTION UPON FAILURE.—If, within 120 days
12 after the date of the enactment of this Act, negotiations
13 under subsection (a) fail to obtain the exclusion described
14 in subsection (a), all imports of Canadian grain receiving
15 the benefits of the transport rates shall be suspended until
16 the President certifies that successful negotiations under
17 subsection (a) to terminate such benefits have been com-
18 pleted.

19 **SEC. 103. ACQUISITION PRICE OF GRAIN.**

20 (a) NEGOTIATIONS.—The President shall imme-
21 diately pursue negotiations with the Government of Can-
22 ada to clarify the meaning of the term “acquisition price”
23 in Article 701(3) of the United States-Canada Free-Trade
24 Agreement (and any other provision accompanying such
25 agreement) so that such term includes—

1 (1) the value of any transportation subsidy ap-
2 plied to grain entering the United States;

3 (2) all payments to producers by the Canadian
4 Wheat Board or any government agency; and

5 (3) any other payments or subsidy incurred by
6 the Canadian Wheat Board, any government agency,
7 or any private interest in the acquisition, handling,
8 storage, and transportation of the grain.

9 (b) ACTION UPON FAILURE.—If, within 120 days
10 after the date of the enactment of this Act, negotiations
11 under subsection (a) fail to clarify the meaning of the term
12 “acquisition price”, all imports of Canadian grain shall be
13 suspended until the President certifies that successful ne-
14 gotiations under subsection (a) have been completed.

15 **SEC. 104. ASSISTANCE IN COUNTERVAILING DUTY CASES.**

16 Each Federal agency (other than the United States
17 International Trade Commission) shall provide full tech-
18 nical assistance and support to any petitioner in any coun-
19 tervailing duty or antidumping action under title VII of
20 the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) with re-
21 spect to the subsidies provided by Canada in connection
22 with the exportation of wheat or barley to the United
23 States.

1 **TITLE II—AGRICULTURAL**
2 **TRADE PROGRAMS**

3 **SEC. 201. USE OF EXPORT ENHANCEMENT PROGRAM TO**
4 **PROMOTE GRAIN EXPORTS.**

5 Section 301(b) of the Agricultural Trade Act of 1978
6 (7 U.S.C. 5651(b)) is amended by adding at the end the
7 following new paragraph:

8 “(9) PROMOTION OF GRAIN EXPORTS.—

9 “(A) IN GENERAL.—The Secretary shall
10 aggressively use the program established under
11 this section to permit exporters, users, proc-
12 essors, and foreign purchasers of grains pro-
13 duced in the United States to compete effec-
14 tively with exporters, users, processors, and for-
15 eign purchasers of grains produced in Canada,
16 taking into account—

17 “(i) the transportation subsidies pro-
18 vided by the Government of Canada to pro-
19 mote grain sales to Mexico; and

20 “(ii) the sale of wheat in all foreign
21 markets by the Canadian Wheat Board at
22 a price that is less than the full acquisition
23 cost for the wheat.

24 “(B) DURATION.—The requirements of
25 subparagraph (A) shall apply—

1 “(i) to counteract the transportation
2 subsidies described in subparagraph (A)(i),
3 until an agreement is concluded with the
4 Government of Canada to exclude agricul-
5 tural goods from transport rates as de-
6 scribed in section 304(a)(2) of the United
7 States-Canada Free-Trade Agreement Im-
8 plementation Act of 1988 (19 U.S.C. 2112
9 note); and

10 “(ii) to counteract the sale of wheat
11 by the Canadian Wheat Board described in
12 subparagraph (A)(ii), until an agreement
13 is concluded with the Government of Can-
14 ada to ensure the sale of wheat by the Ca-
15 nadian Wheat Board at a price that is no
16 less than the full acquisition cost for the
17 wheat.”.

18 **SEC. 202. AGRICULTURAL EXPORT PROGRAM PROTECTION.**

19 (a) IN GENERAL.—Title XV of the Food, Agri-
20 culture, Conservation, and Trade Act of 1990 (Public Law
21 101–624) is amended by adding at the end the following
22 new subtitle:

1 **“Subtitle G—Agricultural Export**
2 **Program Protection**

3 **“SEC. 1581. DEFINITIONS.**

4 “As used in this subtitle:

5 “(1) AGRICULTURAL TRADE PROGRAM.—The
6 term ‘agricultural trade program’ means an export
7 promotion, export credit, export credit guarantee,
8 export bonus, or other export or international food
9 aid program carried out through, or administered
10 by, the Commodity Credit Corporation, including
11 such a program carried out under—

12 “(A) the Agricultural Trade Act of 1978
13 (7 U.S.C. 5601 et seq.)—

14 “(i) including the export enhancement
15 program established by section 301 of such
16 Act (7 U.S.C. 5651); but

17 “(ii) excluding the market promotion
18 program established by section 203 of such
19 Act (7 U.S.C. 5623);

20 “(B) the Agricultural Trade Development
21 and Assistance Act of 1954 (7 U.S.C. 1691 et
22 seq.);

23 “(C) section 416 of the Agricultural Act of
24 1949 (7 U.S.C. 1431); or

1 “(D) section 5 of the Commodity Credit
2 Corporation Charter Act (15 U.S.C. 714c).

3 “(2) COVERED FOREIGN COMMODITY.—The
4 term ‘covered foreign commodity’ means wheat, feed
5 grains, or soybeans produced in a foreign country
6 that is imported into the customs territory of the
7 United States.

8 “(3) ENTRY.—The term ‘entry’ means the
9 entry into, or the withdrawal from warehouse for
10 consumption in, the customs territory of the United
11 States.

12 “(4) PERSON.—The term ‘person’ includes an
13 exporter, an assignee, and a participant in an agri-
14 cultural trade program.

15 “(5) SECRETARY.—The term ‘Secretary’ means
16 the Secretary of Agriculture.

17 “(6) UNITED STATES AGRICULTURAL COMMOD-
18 ITY.—The term ‘United States agricultural commod-
19 ity’ has the same meaning given the term in section
20 102(7) of the Agricultural Trade Act of 1978 (7
21 U.S.C. 5602(7)).

22 **“SEC. 1582. MONITORING OF DOMESTIC USES MADE OF**
23 **CERTAIN FOREIGN COMMODITIES.**

24 “(a) IN GENERAL.—

1 “(1) END-USE CERTIFICATE.—An end-use cer-
2 tificate that meets the requirements of subsection
3 (b) shall be included in the documentation covering
4 the entry of any covered foreign commodity.

5 “(2) QUARTERLY REPORTS.—A consignee of a
6 covered foreign commodity (including a secondary
7 consignee of a covered foreign commodity and a con-
8 signee of a covered foreign commodity that has been
9 commingled with a commodity produced in the Unit-
10 ed States) shall submit to the Secretary a quarterly
11 report that certifies—

12 “(A) what percentage of the covered for-
13 foreign commodity that is subject to an end-use
14 certificate was used by the consignee during the
15 quarter; and

16 “(B)(i) that the covered foreign commodity
17 referred to in paragraph (1) was used by the
18 consignee for the purpose stated in the end-use
19 certificate; or

20 “(ii) if ownership of the covered foreign
21 commodity is transferred, the name and ad-
22 dress and other information, as determined by
23 the Secretary, of the entity (or consignee) to
24 whom it is transferred.

1 “(b) END-USE CERTIFICATE AND QUARTERLY RE-
2 PORT CONTENT.—The end-use certificates and quarterly
3 reports required under subsection (a) shall be in such
4 form, and require such information, as the Secretary con-
5 siders necessary or appropriate to carry out this section.
6 At a minimum, the Secretary shall require that end-use
7 certificates and quarterly reports indicate—

8 “(1) in the case of the end-use certificate—

9 “(A) the name and address of the importer
10 of record of the covered foreign commodity that
11 is subject to the certificate;

12 “(B) the name and address of the con-
13 signee of the covered foreign commodity;

14 “(C) the identification of the country of or-
15 igin of the covered foreign commodity;

16 “(D) a description by class and quantity of
17 the covered foreign commodity;

18 “(E) the specification of the purpose for
19 which the consignee will use the covered foreign
20 commodity; and

21 “(F) the identification of the transporter
22 of the covered foreign commodity from the port
23 of entry to the processing facility of the con-
24 signee; and

25 “(2) in the case of the quarterly report—

1 “(A) the information referred to in sub-
2 paragraphs (A) and (B) of paragraph (1);

3 “(B) the identification of the end-use cer-
4 tificates currently held by the consignee;

5 “(C) a statement of the quantity of the
6 covered foreign commodity that is the subject of
7 each of the end-use certificates identified under
8 subparagraph (B) that was used during the
9 quarter;

10 “(D) a statement of the use made during
11 the quarter by the consignee of each quantity
12 referred to in subparagraph (C);

13 “(E) a statement of the quantity of the
14 covered foreign commodity that was exported by
15 the consignee during the quarter;

16 “(F) a statement of the quantity of the
17 covered foreign commodity that was commin-
18 gled with commodities produced in the United
19 States and the disposition of the commingled
20 commodities; and

21 “(G) a statement of the quantity of any
22 covered foreign commodity that is transferred
23 to a subsequent consignee, the name and ad-
24 dress of the consignee, and the change in end-
25 use.

1 “(c) SALES PRICE.—The Secretary may require the
2 importer or the first consignee of a covered foreign com-
3 modity to report to the Secretary the sales price of a cov-
4 ered foreign commodity that is subject to an end-use cer-
5 tificate issued under this section if the Secretary considers
6 the sales price necessary to facilitate enforcement of
7 United States trade laws and international agreements.

8 “(d) CONFIDENTIALITY.—In carrying out this sec-
9 tion, the Secretary shall take such actions as are necessary
10 to ensure the confidentiality and privacy of purchasers of
11 covered foreign commodities.

12 “(e) ENTRY PROHIBITED UNLESS END-USE CER-
13 TIFICATE PRESENTED.—The Commissioner of Customs
14 may not permit the entry of a covered foreign commodity
15 unless the importer of record presents at the time of entry
16 of the covered foreign commodity an end-use certificate
17 that complies with the applicable requirements of this
18 section.

19 “(f) PENALTIES.—

20 “(1) CUSTOMS PENALTIES.—End-use certifi-
21 cates required under this section shall be treated as
22 any other customs documentation for purposes of
23 applying the customs laws that prohibit the entry, or
24 the attempt to enter, merchandise by fraud, gross
25 negligence, or negligence.

1 “(2) CIVIL PENALTIES.—Any person who know-
2 ingly violates any requirement prescribed by the Sec-
3 retary to carry out this section is punishable by a
4 civil penalty in an amount not to exceed \$10,000.

5 “(g) REGULATIONS.—The Secretary shall prescribe
6 such regulations as are necessary to carry out this section,
7 including regulations regarding the preparation and sub-
8 mission of the quarterly reports required under subsection
9 (a)(2).

10 **“SEC. 1583. COMPLIANCE PROVISIONS.**

11 “Subsections (b) and (c) of section 402 of the Agri-
12 cultural Trade Act of 1978 (7 U.S.C. 5662) shall apply
13 to the programs authorized under this subtitle.

14 **“SEC. 1584. SUSPENSION OR DEBARMENT FOR USE OF FOR-**
15 **EIGN AGRICULTURAL COMMODITIES IN CER-**
16 **TAIN AGRICULTURAL TRADE PROGRAMS.**

17 “(a) HEARING.—The Commodity Credit Corporation
18 shall provide a person with an opportunity for a hearing
19 before suspending or debarring the person from participa-
20 tion in an agricultural trade program for using a foreign
21 agricultural commodity in violation of the terms and con-
22 ditions of the program.

23 “(b) WAIVER.—

24 “(1) IN GENERAL.—The Commodity Credit
25 Corporation may waive the suspension or debarment

1 of a person from participation in an agricultural
2 trade program for using a foreign agricultural com-
3 modity in violation of the terms and conditions of
4 the program if the person demonstrates, to the satis-
5 faction of the Corporation, that—

6 “(A) the use of the foreign agricultural
7 commodity was unintentional; and

8 “(B) the quantity of the foreign agricul-
9 tural commodity used was less than 1 percent
10 of the total quantity of the commodity involved
11 in the transaction.

12 “(2) OTHER PENALTIES.—Any waiver by the
13 Commodity Credit Corporation of a suspension or
14 debarment of a person under paragraph (1) shall
15 not affect the liability of the person for any other
16 penalty imposed under an agricultural trade pro-
17 gram for the quantity of the foreign agricultural
18 commodity involved.”.

19 (b) EFFECTIVE DATE.—This section and the amend-
20 ment made by this section shall become effective 120 days
21 after the date of enactment of this Act.

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