

Board ("CWB"), the sole responding exporter. See 19 CFR § 351.204(b)(2).

### Case History

The following events have occurred since the publication of the preliminary determinations in the **Federal Register** on March 10, 2003. See *Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, (68 FR 11374) ("Preliminary Determinations").

On March 17, 2003, the petitioners submitted ministerial error allegations relating to the *Preliminary Determinations*. The Department of Commerce ("the Department") addressed these ministerial allegations in the April 1, 2003, memorandum to Susan Kuhbach entitled "Ministerial Error Allegations for Preliminary Determination," which is on file in the Department's Central Records Unit in Room B-099 of the main Department building ("CRU"). The Department sent out supplemental questionnaires to the Government of Canada ("GOC") and the CWB on March 18, 2003 and received responses to these supplemental questionnaires between March 27 and April 14, 2003. On May 5, 2003, the Department issued a memorandum entitled "Preliminary Determination for the Initial Payment Guarantee Program" in which the Department preliminarily determined that the GOC's guarantee of the CWB's initial payment to producers does not confer a measurable subsidy on hard red spring or durum wheat. See May 5, 2003, memorandum to Acting Assistant Secretary Joseph A. Spetrini from Deputy Assistant Secretary Jeffrey May which is on file in the CRU. The Department's *Preliminary Determinations* had not addressed this new subsidy allegation raised by the petitioners.

On May 16, 2003, the CWB requested an extension of the final determinations for the dumping and countervailing duty investigations, therefore the Department published a *Notice of Postponement of Final Antidumping Determinations and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, (68 FR 35381) on June 13, 2003.

The Department conducted verifications of the questionnaire responses submitted by the GOC, the provincial governments (e.g., the Government of Alberta ("GOA") and the

Government of Saskatchewan ("GOS")), and the CWB from May 5 through May 14, 2003 in Canada. We received case briefs from the GOC, GOA, GOS, CWB and the petitioners between June 20 to 23, 2003. These same parties submitted rebuttal briefs between June 27 to June 30, 2003. We held a hearing in these investigations on July 8, 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

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

Since the Department's *Preliminary Determinations*, 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 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 CRU.

### Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended ("the Act"), the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On November 25, 2002, the ITC transmitted to the Department its preliminary determinations finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of durum and hard red spring wheat. See *Durum and Hard Red Spring Wheat from Canada*, 67 FR 71589 (December 2, 2002).

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these investigations are addressed in the "Issues and Decision Memorandum for the Final Countervailing Duty