



Consuming Industries
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FERTILIZER: THE 'POSTER CHILD' FOR TRADE LAW FAIRNESS

Last month's issue of *CITAC Connections* described CITAC-sponsored legislation that would make U.S. trade laws fairer to consuming industries. There is no better example of the need for the "Transparency and Fairness Trade Act" (H.R. 2770) than a recent antidumping investigation filed against fertilizer imported from four countries.

On April 19, 2002, three U.S. producers filed an antidumping action against urea ammonium nitrate (UAN) imported from Belarus, Lithuania, Russia and the Ukraine. UAN is a type of nitrogen fertilizer widely used by farmers for a range of important crops. It is largely produced and sold in the Midwest, as shipping it to the East or West Coasts from the Midwest production facilities is prohibitively expensive. Consequently, imports predominantly supply the coastal markets for fertilizer, and domestic production dominates supply in the Midwest.

To understand how the "Transparency and Fairness Trade Act" would help American farmers, one needs a bit of background about what gave rise to this dumping investigation. When natural gas costs spiked in December 2000 and January 2001, many U.S. fertilizer producers shut down fertilizer production and instead sold their rights to purchase natural gas for high prices.

The shutdown of fertilizer production created uncertainty in the market – right at the time when wholesalers and retailers needed to build supply for the coming Spring planting season. Producers provided no specifics on the length of the expected shutdowns or whether other shutdowns were imminent, and suggested buyers look elsewhere for UAN.

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So retailers and wholesalers went looking for other sources of nitrogen. They found them in Russia, Ukraine, Belarus and Lithuania. Then, beginning about March 2001, U.S. producers got back into the business of fertilizer production, despite full UAN inventories. Not surprisingly, prices declined. U.S. producers found themselves sitting on inventories produced with relatively high-priced natural gas, and fertilizer prices too low to make profits. They blamed imports and launched the dumping case.

American farmers and fertilizer dealers think this dumping case is unwarranted and unjust to them and to the foreign producers that assisted American farmers when they needed fertilizer. A number of them organized a group called the Committee for Competitive Fertilizer Markets and retained an economist to represent them at the U.S. International Trade Commission (ITC) phase of the dumping investigation. The economist met with lawyers and other economists representing foreign producers and importers, prepared a brief for the Committee to present to the ITC, and helped Committee witnesses make their presentations to the ITC.

However, because the economist represented a consumer group, U.S. trade law does not permit the Committee's representative to see confidential information submitted by the parties to the ITC (note: U.S. trade law *does* permit representatives of foreign producers to see this information). When the other counsel prepared to discuss the confidential information, the Committee's representative had to leave the room. Thus, even though those using fertilizer and buying fertilizer from both foreign and U.S. producers were in the best position to offer perspective on the confidential data submitted by all the parties to the ITC, the Committee's representative could not review the information and develop arguments from the data to present to the ITC.

HOW THE CITAC BILL WOULD HELP

Had the "Transparency and Fairness Trade Act" been in effect when this investigation was launched, American farmers and fertilizer retailers would benefit in two important ways. First, they would be viewed as full "interested parties" in trade remedy investigations, which means that their lawyers and economists could see confidential information submitted by the parties and comment substantively on it. There would be no guarantee that the consumer view of the data would prevail, of course, but at least the farmers' and retailers' views of what explains the data could have been fully presented.

Second, and perhaps most significant: if the investigation ultimately results in antidumping duties applied to imports from the targeted countries, and if U.S. producers elect again for some reason to not make fertilizer after those dumping duties go into effect, then farmers and fertilizer dealers could seek a short supply exemption for UAN imported from the targeted countries until such time as the U.S. producers decide to get back into the business of producing fertilizer. Such an option would enable farmers to get the UAN they need when they need it, without any harm done to U.S. producers who are not making the product. Once the U.S. producers got back into the business of making fertilizer, the antidumping duties could go back into effect.

In short, the "Transparency and Fairness Trade Act" would be a win for all parties: farmers could fully participate in trade cases, and they could benefit substantially from a short supply option during the time supplies are not available domestically. But then, when would fairness in trade policy *not* be a good thing?