Barriers Faced by New York State Agricultural Producers to Trade with Canada

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From the Office of

Senator Hillary Rodham Clinton

New York

REPORT BY SENATOR HILLARY RODHAM CLINTON ON BARRIERS FACED BY NEW YORK STATE AGRICULTURAL PRODUCERS TO TRADE WITH CANADA

September 2006

INTRODUCTION

Agriculture is one of the leading industries in New York State's economy. During Senator Clinton's frequent travels throughout New York State, she continues to hear from farmers about the challenges they face when they attempt to export their products into Canada. For many New York farmers, Canada represents the closest major market, just a few miles away. Senator Clinton has long expressed concern about the barriers to New York farm products. In 2002, Senator Clinton urged the United States Trade Representative (USTR) to address these barriers to trade with Canadian officials and he assured her that action should be taken. In 2003, Senator Clinton again called on the office of the USTR to take a strong stand on behalf of dairy farmers and end the over-subsidization of dairy exports from Canada. In 2004, Senator Clinton called on the government of Canada to work with the U.S. to end long-standing unfair trade restrictions on U.S. grown fruits and vegetables.

To this day, New York farmers continue to face a variety of Canadian policies that block New York's agricultural exports. This report identifies several examples of Canadian trade barriers against dairy, fruits and vegetables, wine, and horticultural products cultivated by farmers in New York. A striking result of these Canadian trade barriers, is that New York apple growers find it easier to sell apples to the United Kingdom across an ocean and thousands of miles away than selling to Canada right across the border. Another example described below is that the Canadian government subsidizes marketing of Canadian wine in the U.S. while Ontario, which border's New York, limits U.S. wine imports at the border to two duty-free bottles at a time.

This report serves as a call to action for the United States Trade Representative to make the removal of these Canadian trade barriers a top priority in its negotiations with the Canadian Government and to put the Canadian government on notice that these practices should not and cannot continue.

BACKGROUND

While agricultural trade between the U.S. and Canada has increased over the past 15 years, New York has not received its fair share of this growth. Total agricultural trade between the United States and Canada has grown rapidly since the U.S.-Canadian Free Trade Agreement (CAFTA) was enacted in 1989.[1] Agricultural exports from all fifty States to Canada have grown by an average 10% per year, as have agricultural exports from Canada to the United States. Yet, despite a common border, New York farmers, farm groups, and trade associations have expressed to Senator Clinton through extensive interviews with her office that New York is not obtaining an equitable share of the growth in agricultural trade. According to these New Yorkers, several Canadian trade barriers are responsible for the inability of New York farm exports to penetrate the Canadian market.

CANADIAN BARRIERS TO AGRICULTURAL TRADE BY COMMODITY

New York's farmers produce many agricultural commodities which face Canadian trade barriers. This report identifies several Canadian barriers to New York exports of fresh fruits and vegetables, wine, dairy, processed foods, and horticulture products. In each case, the Canadian government hides behind bureaucratic rules or provincial regulations to justify blocking New York farm products.

> *The magnitude of Canadian trade barriers is particularly striking when one compares New York apple exports to Canada with New York apple exports to the United Kingdom. New York ships two to three times more apples to the United Kingdom than to Canada, despite the fact that New York shares a border with Canada and the United Kingdom is thousands of miles away and across the Atlantic Ocean.*

[1] In 1994, the agreement was expanded to Mexico and became known as the North American Free Trade Agreement (NAFTA).

Fresh Fruits and Vegetables

Under the North American Free Trade Agreement (NAFTA), tariffs on fresh fruits and vegetables are zero. Nevertheless, Canada has erected non-tariff barriers to American apples, potatoes, and other fresh fruits and vegetables, all of which impact New York farmers.

According to the USTR's 2006 Foreign Trade Barriers report, Canada prohibits the import of fresh fruits and vegetables in packages exceeding certain standard sizes unless the Government of Canada grants an official exemption. Exemptions are generally granted only when there is a proven insufficiency of the product in the Canadian market. This applies to all fresh and processed produce in bulk containers. According to the USTR Foreign Trade Barriers report, this Canadian system has a particularly negative impact on U.S. potatoes, apples, and blueberries, all of which are New York agricultural exports. The USTR also notes that Canada prohibits consignment sales of fresh fruits and vegetables in the absence of a pre-arranged buyer.

Such non-tariff barriers to U.S. fresh fruits and vegetables have been in place for many years. The USTR’s 2005 Foreign Trade Barriers report notes that the United States entered into negotiations with Canada in 2004 to remove these trade restrictions. However, no mention of these negotiations was made in the USTR’s 2006 report.

<u>Apples</u>. The non-tariff trade barrier imposed by Canada has been a major concern to the New York apple industry and Senator Clinton for many years. Canada is a producer of apples, so bulk shipments of New York apples to Canada are not typically granted a Ministerial Exemption from Provincial governments. These exemptions, or bulk waivers, are required for every load of “bulk” apples purchased, by Canada, from the U.S. and are only granted when there are no Canadian apples available of the specified variety and grade. However, according to many New York farmers who have explored exporting to Canada, Canadian buyers have express strong interest in purchasing large volumes of quality bulk apples that are available from New York.

The magnitude of Canadian trade barriers is particularly striking when one compares New York apple exports to Canada with New York apple exports to the United Kingdom. As demonstrated in Table 1 below, New York ships two to three times more apples to the United Kingdom than to Canada, despite the fact that

New York shares a border with Canada and the United Kingdom is thousands of miles away and across the Atlantic Ocean.

Table 1. New York State Apple Exports To Top Seven Countries

		(# of bushels)	
		YTD 2005	**YTD 2006**
United Kingdom		561,170	337,156
Canada		229,096	108,221
Israel		61,999	42,569
Iceland		11,933	15,742
Ireland		8,669	14,420
Dominican Republic		17,733	10,874
Honduras		13,002	8,541
Total for All Exports		936,195	548,668
Source: New York State Apple Association			

Senator Clinton has long been an advocate on behalf of New York apple growers on this issue. In April 2002 Senator Clinton met with then United States Trade Representative Ambassador Robert Zoellick and delivered to him a letter prepared by the New York Apple Association. The letter presented the "Canadian Bulk Exemption" problem to Ambassador Zoellick and asked for his assistance. The letter was signed by Bruce Kirby, Chairman of the New York Apple Association; George Lamont, Executive Director of the New York State Horticultural Society; and John Lincoln, President of the New York Farm Bureau.

At that meeting, Ambassador Zoellick pledged that his staff would follow up on this issue. While there has been some improvement in the situation, many bulk shipments of New York apples to Canada are still being blocked or denied and New York state growers continue to have trouble penetrating the Canadian market.

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<u>Vegetables</u>. The non-tariff trade barriers affect the fresh vegetable market as well. In short, if Canada determines that it produces the same agricultural product domestically that a New York farmer is trying to export, the New York product will be denied border crossing. This non-tariff trade barrier especially affects onions, cabbage and potatoes, which account for several million dollars of New York vegetable production.

One New York vegetable producer reported that of the several thousand loads they produce and ship from their farm in a single year, they may only get two or three loads into Canada, even though their farm is only 110 miles from Toronto, a metropolitan market of several million people. This same producer also expressed concern that while the Canadians are erecting barriers to New York farm products, the United States has more lenient import regulations and does not adequately track Canadian farm imports. The USDA does not make available the shipping records of loads of produce coming in to New York from Canada, even though these reports are available for Mexico and other U.S. states.

Lenient U.S. import regulations may have implications for the introduction of foreign plant diseases and pathogens. *Contarinia nasturtii*, the swede midge, was first detected in York County, Ontario Canada in 2000 and causes serious economic damage and/or crop loss of crops such as cabbage, broccoli and other related crucifer vegetable crops. The swede midge was first introduced to New York fields last year from Canadian imported produce. It has jumped across Lake Ontario and has now been confirmed in Cayuga County, New York. In addition, at the end of August 2006, shipments of potato were halted coming in from Quebec because they were found to contain golden nematodes.

The same producer also voiced the irony in the fact that chain grocery stores around Rochester have "Home-grown produce" labels marking products that comes from Canada.

Wine

The commercial wine industry in New York State is severely disadvantaged by Canadian regulations and an unjust border situation. The lopsided trade in wine is hurting wineries and tourism throughout New York State. Individuals entering Canada through Ontario are allowed only two bottles per person duty-free. Beyond that, the Ontario Liquor Board levies a 100 percent duty on each additional bottle. As a result, the border is effectively closed for Canadian tourists who would like to visit New York to travel its wine trails and take home New York wines.

By contrast, the U.S. does not place meaningful restrictions on the import of Canadian wines. At U.S. border check points, the official duty imposed is only a couple percent on incoming Canadian wines. This is negligible and often not collected by U.S. customs agents. Compounding this problem, the Canadian government currently subsidizes wine marketing expenses for Ontario wineries targeting US consumers in the Rochester and Buffalo region.

> *"We [New York wine producers] don't feel that it's fair to have our neighbors to the North feeding off of our core customers with government dollars subsidizing their efforts, while we are powerless to do anything."*
>
> -- *Finger Lakes winery owner*

The flow of wines from small Canadian winery operations into the U.S. is big business for the Canadian market and a hindrance to the development and expansion of wine production and tourism in New York State. According to the Wine Business Monthly, Canadian winemakers sold 85 percent of their products to the United States in 2003-2004.

Dairy

Canada uses high duty rates and bureaucratic obstacles to limit the amount of New York milk allowed into Canada. Canada has long supply-managed the amount of dairy, poultry, and eggs available to Canadian consumers. To do so, the Canadian Federal Government distributes maximum production quotas to provincial governments, which in turn distribute maximum production quotas to local farmers. In general, the holders of these quotas are the only farmers allowed to sell their products in Canada. Prior to the 1994 World Trade Organization (WTO) Uruguay Round Agreement on Agriculture, Canada specifically used quotas to restrict imports of supply-managed products. This system restricted New York dairy farmers' access to Canadian markets, and it also removed surpluses from the market and thereby inflated local prices. In 1994, the World Trade Organization (WTO) Uruguay Round Agreement obliged Canada to convert its import quotas into tariff-rate quotas (TRQs).[2]

At present, these Canadian TRQs permit small amounts of imports of dairy, poultry, and eggs to enter Canada at low rates of duty. However, larger imports are subject to high duties, often between 100% and 350%. This system severely limits the ability of New York dairy farmers to export their product to Canada. Many experts suggest that American dairy exports to Canada would expand if the Canadian authorities increased the amount of imports that are allowed in at low rates of duty and/or lowered the duty rates on larger imports.

Fluid Milk. New York dairy farmers are no strangers to Canadian management of dairy products and trade barriers. New York producers have tried repeatedly to ship fluid and raw milk to Canada, often without success. In many cases, New York producers have been unable to obtain the required documents from Canadian authorities despite already having signed contracts with Canadian processing companies. During meetings with Canadian officials at the Canadian Embassy in Washington, D.C., representatives of Northeast dairy producers have been told that they would not be allowed to ship their milk into Canada without considerable tariffs imposed, even during dairy shortages in Canada, such as occurred in 2002.

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[2] Under a tariff-rate quota (TRQ), imports under the quota portion of the TRQ are usually subject to a lower, or sometimes a zero, tariff rate. Imports above the quota's quantitative threshold face a much higher (usually prohibitive) tariff. Both Canada and the United States employ TRQs to shield domestically produced commodities from foreign competition.

According to a release from the Canadian Restaurant and Foodservices Association, in December 2002, the Canadian Dairy Commission could have imported over 1.6 million pounds of U.S. cheddar cheese because domestic supply could not meet Canadian demand. At the same time, the Canadian dairy industry still insisted on imposing tariffs of up to 245 percent to block U.S. dairy products from coming into Canada, and any U.S. cheese that did cross the border was still subjected to a considerable price mark up by the Canadian Dairy Commission so that U.S. cheeses were considerably higher priced than their Canadian equivalents. Restaurant operators have long been frustrated by the high price of mozzarella cheese in Canada, which costs at least one-third more than in the U.S.

According to the Organization for Economic Cooperation (OECD), Canadian consumers subsidize dairy producers in the amount of $2.47 billion annually through higher than world prices, and about 70 percent of all Canadian consumer subsidies to agriculture go to milk producers.

While the Canadians make it difficult for New York farmers to access Canadian markets, the United States allows Canadian dairy products to be sold in U.S. markets. For example, the United States allows the entry of unpasteurized raw milk into the U.S. for processing if the supplier applies for and receives proper permits from State Health Departments. Prior to 2003, suppliers in Canada had applied for and received approval from the Indiana State Health Department to ship raw milk from Canada to Indiana, to be processed into cheese that would be sold in the United States, including in the Northeast. Canadian companies even planned to expand their exports of raw milk to the United States, but backed off after the discovery of a mad cow case in Canada. (It should be noted that there is no evidence that mad cow disease can be transmitted through raw milk.)

Cheese Snack Foods. Another Canadian barrier to U.S. dairy products comes in the form of TRQs on imports of cheese snack foods. In 1999, Canada stopped allowing duty-free entry of snack foods from the United States, and imposed a TRQ on cheese snacks with an over-quota tariff of 245% ad valorem. Canada was retaliating against U.S. imposition of a TRQ with a high over-quota tariff. The USTR has indicated willingness to ask the President to proclaim a return to duty- and quota-free tariff treatment of Canadian cheese sticks if Canada agrees to provide the same treatment for similar U.S. cheese snack foods. However, according to the USTR, Canada rejected this offer in 2002 and indicated that Canada has no intention of negotiating a return to duty-free, quota-free trade in cheese snack foods.

Processed Products

New York's processed food products also are disadvantaged by Canadian regulations. Canada's Agricultural Products Act prescribes standard container sizes for a wide range of processed fruit and vegetable products. For example, Canadian regulations require that manufacturers of baby food sell in only two standardized container sizes: 4.5 ounces and 7.5 ounces. This requirement to sell in container sizes that exist only in Canada creates an obstacle to United States products. USTR reports that Canada has said it is rewriting the regulations, but that the effort to revise the regulations has stalled.

Horticultural products

It is common to see Ontario trucks on the New York State Thruway hauling flowers or similar products in to New York markets. In general, the Ontario Region is showing tremendous growth in its horticultural products. While a good deal of this business is directed within Canada there is little doubt that much of the growth is directed to the enormous market to the south, in the United States.

The U.S. has a relatively transparent and open market in horticulture. At the same time, New York horticultural producers complain that Canada imposes many import barriers, such as specific growing practices and phytosanitary requirements that make it difficult for U.S. producers to comply and penetrate the Canadian market. Because of the difficulty in penetrating the Canadian market restrictions, New York horticultural producers are at a competitive disadvantage and the availability of Ontario greenhouse products is hindering the growth of the New York horticultural industry.

CONCLUSION

As this report demonstrates, Canadian consumers are being denied access to various New York agriculture products because of many Canadian trade restrictions. Conversely, Canadian growers have little trouble accessing the U.S. market and in some cases, the Canadian government subsidizes their exports. Because agriculture is one of New York's leading industries, the stakes could not be higher.

Following this report, the United States Trade Representative must take action to level the playing field between New York and Canadian agricultural products and put the Canadian government on notice that the U.S. will not continue to let the Canadian government hide behind bureaucratic hurdles to protect their market while the U.S. offers free access to our market Canadian producers.

TAKING ACTION

To promote sustained attention to the concerns of New York's farmers, Senator Clinton is contacting the U.S. Trade Representative to request a written update on the negotiations related to dairy, fruits and vegetables, wine, and horticultural products, and to urge that Canadian barriers to New York products be addressed quickly and effectively.

To share your own comments and concerns about these issues with the U.S. Trade Representative, please contact:

Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508
United States of America
(202) 395-7360 (Main Administrative Line)
(202) 395-6127 (Agriculture related issues)

Please also feel free to share your thoughts with Senator Clinton. She can be reached at:

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