

Abstract

Christina A. Barone

The Hedge-to-Arrive Controversy: Conflicting Outcomes in Administrative and Judicial Proceedings

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Abstract by Sanford A. Fine

In *The Hedge-to-Arrive Controversy: Conflicting Outcomes in Administrative and Judicial Proceedings*, Christina Barone evaluates the administrative and judicial outcomes in hedge-to-arrive (HTA) cases, which involve grain futures contracts. The Commodity Future Trading Commission recently addressed the issue of whether these HTA contracts should be deemed as standard forward contracts, in which they would fall under the jurisdiction of the Commodity Exchange Act (CEA), or whether they are classified as futures contracts and thus fall outside the purview of the CEA.

In the article, Barone first provides an overview of the federal legislation regulating commodity futures trading. Next, the author summarizes the complex terminology and background involving forwards and futures, and the case law distinguishing them; additionally, Barone defines and explains the purpose of the hedge-to-arrive contract. Barone then discusses and analyzes the role of the court in categorizing and adjudicating cases involving HTA's.

Barone concludes that the CFTC should not have brought enforcement actions in connection with the HTA contracts. The author finds that the CFTC interpretation and position concerning the HTA's is incompatible with the historical usage of the HTA contracts. Barone argues that Congress introduced volatility in the grain price market by removing corn price supports, which caused farmers to enter into HTA's to hedge against severe economic losses, not as speculative ways to circumvent exchange-trading formalities. Accordingly, the CFTC should not have brought enforcement actions against the individuals that utilized HTA's in that fluctuating and risky market.