AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 107–1056

CANADIAN WHEAT 301 DECISION

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

APRIL 19, 2002

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

90–081 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii	JOHN MCCAIN, Arizona
JOHN D. ROCKEFELLER IV, West Virginia	TED STEVENS, Alaska
JOHN F. KERRY, Massachusetts	CONRAD BURNS, Montana
JOHN B. BREAUX, Louisiana	TRENT LOTT, Mississippi
BYRON L. DORGAN, North Dakota	KAY BAILEY HUTCHISON, Texas
RON WYDEN, Oregon	OLYMPIA J. SNOWE, Maine
MAX CLELAND, Georgia	SAM BROWNBACK, Kansas
BARBARA BOXER, California	GORDON SMITH, Oregon
JOHN EDWARDS, North Carolina	PETER G. FITZGERALD, Illinois
JEAN CARNAHAN, Missouri	JOHN ENSIGN, Nevada
BILL NELSON, Florida	GEORGE ALLEN, Virginia

KEVIN D. KAYES, *Democratic Staff Director*
MOSES BOYD, *Democratic Chief Counsel*
JEANNE BUMPUS, *Republican Staff Director and General Counsel*

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM

BYRON L. DORGAN, North Dakota, *Chairman*

JOHN D. ROCKEFELLER IV, West Virginia	PETER G. FITZGERALD, Illinois
RON WYDEN, Oregon	CONRAD BURNS, Montana
BARBARA BOXER, California	SAM BROWNBACK, Kansas
JOHN EDWARDS, North Carolina	GORDON SMITH, Oregon
JEAN CARNAHAN, Missouri	JOHN ENSIGN, Nevada
BILL NELSON, Florida	GEORGE ALLEN, Virginia

CONTENTS

	Page
Hearing held on April 19, 2002	1
Statement of Senator Burns	4
Statement of Senator Dorgan	1

WITNESSES

Broyles, Gary, President, National Association of Wheat Growers	43
Prepared statement	44
Fisher, Neal, Administrator, North Dakota Wheat Commission	32
Prepared statement	36
Hunnicutt, Charles A., Counsel, North Dakota Wheat Commission	50
Prepared statement	54
Johnson, Ambassador Allen F., Chief Agriculture Negotiator, United States Trade Representative	4
Prepared statement	7
Miller, John C., President, Miller Milling Company	58
Prepared statement	60
Rogowsky, Robert A., Ph.D., Director of Operations, United States International Trade Commission	12
Prepared statement	14
Terpstra, Ellen, Administrator, Foreign Agricultural Service, U.S. Department of Agriculture	10
Prepared statement	11

APPENDIX

The North Dakota Wheat Commission, prepared statement	77

CANADIAN WHEAT 301 DECISION

FRIDAY, APRIL 19, 2002

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:31 a.m. in room SR–253, Russell Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Subcommittee, presiding.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. The hearing will come to order. This is a hearing of the subcommittee of the Commerce Committee. I am joined by my colleague, Senator Conrad Burns from Montana. I have called this hearing today because we want to consider and evaluate the activities dealing with the 301 trade, was an action that required an investigation of the practices of the Canadian Wheat Board.

I want to as I begin this morning say that the United States and Canada share a long border, we are good friends and good neighbors, and while we have some differences in trade from time to time, we work closely with the Canadians, they are friends of ours, and especially today, given the tragedy that has occurred in Afghanistan with respect to the death of a number of Canadian soldiers. Our hearts go out to the Canadians, to the Canadian people. We grieve with them. Our soldiers and the Canadian soldiers are linked together in fighting terrorism.

I have been to Afghanistan within the past several months and have seen the soldiers there, not just from the United States, but soldiers from the United States joined by our allies, including the Canadians. Again let me say that the tragedy that occurred this week with respect to the Canadian soldiers is a tragedy that all of us in this country regret deeply and we grieve for those Canadians, their families, and their loved ones.

I indicated that we are two countries with a 4,000-mile border, we have a great deal of things in common between our countries, and occasionally some disagreements. Those disagreements extend especially in the last decade or so from the U.S.–Canada Free Trade Agreement and in my judgment include disagreements dealing with the grain trade from Canada.

I say to my colleague Senator Burns, I was on the House Ways and Means Committee when the U.S.–Canada Free Trade Agree-

ment was negotiated. It passed the House Ways and Means Committee by a vote of 34 to 1. The one vote was mine. I voted against it because I was convinced it was negotiated in a manner that would injure the interests of American agricultural interests, especially family farmers.

I was convinced an avalanche of Canadian food would flood into our country from a state trading enterprise that would be illegal in the United States, the Canadian Wheat Board, and do it in a way that would undermine the interests of United States farmers. That happened almost immediately and has been relentless now for over a decade.

The North Dakota Wheat Commission, supported by North Dakota farmers and farmers from our region, filed a 301 petition asking for an investigation. The USTR investigation took 16 months to complete and here is what the U.S. Trade Ambassador's Office had to say about the practices of the Canadian Wheat Board. They said: "The Canadian Wheat Board has taken sales from U.S. farmers and is able to do so because it is insulated from commercial risks, benefits from subsidies, has a protected domestic market, special privileges, and has competitive advantages due to its monopoly control over a guaranteed supply of wheat. The wheat trade problem with Canada is longstanding and affects the entire U.S. wheat industry."

I welcomed that finding because it confirmed what our wheat farmers have been saying for many years: The Canadians are not playing fair with respect to grain trade. I had hoped that the USTR would take appropriately aggressive action to remedy this problem. The USTR has the authority under Section 301 to apply a broad range of remedies, including tariff rate quotas, so that the North Dakota Wheat Commission and others who had requested it would see some satisfaction with respect to a remedy. So I was disappointed when the USTR announced it would not apply tariff rate quotas because it feared the Canadians would take us to the WTO or NAFTA as a response.

I was especially frustrated when I saw the reaction of the Canadians to the USTR announcement. The President of the Canadian Wheat Board, Greg Arason, issued a statement saying: "Since the United States did not impose tariffs, we have successfully come through our ninth trade challenge." Once again, the Canadians shrug off a challenge to their unfair trade practices and our family farmers keep getting hammered by unfair trade.

The point is I appreciate that the USTR has found that the Canadians are not playing fair, but I believe that USTR has stopped short of the finish line. The finish line here is to provide a remedy for this trade that I believe is unfair trade.

Let me say that the USTR has taken other actions, for example applying tariff rate quotas on steel imports following a Section 201 investigation. I support that. I believe the steel industry is also aggrieved by unfair trade. So even though I support the steel decision, although I think it has some loopholes in it, I believe that similar remedies should have been applied with respect to wheat.

How do we explain to a North Dakota family farmer that a steelworker in Pennsylvania or West Virginia or a steel company gets help in the face of unfair trade, but a family farmer does not?

Now, the USTR has said it is committed to exploring other trade remedies. It mentioned four. The first is to take the Canadians to the WTO. I am all for that and I support that action. But I believe that it is unlikely that our great-grandchildren will see the results of that action. The WTO has never been known for speeding and think that consigning this dispute to the WTO will consign it to having a decision perhaps decades in the future.

The second remedy is to impose or to examine the possibility of filing a U.S. countervailing duty and antidumping petition. I am encouraged that the USTR has already identified key elements necessary to have the administration self-initiate such a case. I know that self-initiation is unusual and requires evidence of injury to a U.S. industry and of unusual circumstances.

It seems to me that the administration, after a 16-month investigation, has already identified a basis for such cases to be launched, and I hope that that perhaps will be done, although I must say both through Democratic administrations and Republican administrations going back now 12 years I see very little aggressive action in this area.

The third remedy is to identify specific impediments preventing U.S. wheat from entering Canada and to present these to the Canadians. Frankly, that has been done time and time again.

The fourth remedy proposed by USTR is to seek a solution to the problem at WTO agricultural negotiations scheduled to be completed by 2005.

My point is this. I personally have gone to the U.S.–Canadian border in a 12-year-old orange truck with 200 bushels of durum. All the way to the border we had Canadian trucks coming south hauling Canadian wheat into the United States, and when Earl Jensen and I arrived at the border in his little orange truck we could not get American wheat into Canada. It is fundamentally unfair.

We have asked time and time again to have this remedied. I asked the GAO, the investigative watchdog of the Congress, to investigate this. They went to Canada and in effect the Canadian Wheat Board thumbed their nose at GAO and said: We are not going to give you the information; you have no right to the information; we will not disclose our information. So we have no information about Canadian wheat sales. My understanding is even with the ITC investigation we did not have access to that information.

It is in my judgment wrong for us to sit back and do nothing in the face of unfair trade. Family farmers deserve a remedy. They deserve for our government to stand for them, stand with them, and say that we will compete anywhere in the world, but when the competition is unfair our government will take effective and decisive action to remedy it. The failure to do that in my judgment is a failure, and it has been a failure of Democratic administrations and Republican administrations, and we have the opportunity and in my judgment we have the responsibility to end that failure now.

So that is the purpose of having this hearing, to discuss all of these issues. Let me call on my colleague Senator Burns from Montana. Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. I have no opening statement, Mr. Chairman, and thank you for calling these hearings. I look forward to the testimony of the witnesses and the give and take in the conversation we might have with them. Thank you very much.

Senator DORGAN. Senator Burns, thank you very much.

Our first witness is Allen Johnson, the Chief Agricultural Negotiator, Ambassador rank, USTR. I hope you did not swallow any gum you were chewing at my opening statement, Mr. Johnson. You know the passion I have about this. I have been fighting this battle for years and years and years and years, and am weary of it.

You are the Chief Agricultural Negotiator. You were involved intensively in the 301 decision. Earlier this month you visited North Dakota. I appreciate that. The Bismarck Tribune, however, quoted you as saying that "tariff rate quotas are not an option." I was disappointed by that and perhaps we can talk about that.

Let me thank you for being here to testify and tell you and the other witnesses that your entire statement will be made a part of the record and we would ask you to summarize. Then we will have a series of questions and answers. Ambassador Johnson, thank you for being here. Please proceed.

STATEMENT OF AMBASSADOR ALLEN F. JOHNSON, CHIEF AGRICULTURE NEGOTIATOR, UNITED STATES TRADE REPRESENTATIVE

Ambassador Johnson: Well, first of all thank you for having me. I fortunately was not chewing gum at the time of your introduction, but had I been doing it I would not have swallowed it anyway, because I think I found myself in agreement with a lot of the things that you said. When it comes to the passion of wanting to do something about the Canadian Wheat Board, I can assure you that both in public and private meetings with Ambassador Zoellick he feels very, very strongly about this subject.

The second point I would like to make is to associate myself with your comments regarding the losses of Canada in Afghanistan.

Again thank you for the opportunity to testify. Canada is the United States' largest trading partner and we are committed to ensuring two-way trade is fair, transparent, and in accordance with international obligations. In the area of the wheat trade, however, Canada's single desk state trading enterprise, the Canadian Wheat Board, and Canada's impediments to market access for U.S. wheat into Canada distorts trade and is a disadvantage to U.S. wheat farmers.

The first week of April, as you pointed out, I went to North Dakota to hear first-hand from farmers and elevator operators about their concerns on the Canadian Wheat Board and their interest in increasing access of U.S. wheat into Canada. I met with the North Dakota Wheat Commission and other U.S. and North Dakota farm organizations to discuss resolution of this longstanding issue.

Those discussions were useful and provided valuable perspective on the critical issues addressed. Again, I think it is obvious from our efforts that there is no doubt that Ambassador Zoellick and I

share the same objectives of the North Dakota Wheat Commission and the U.S. wheat industry regarding the Canadian Wheat Board.

As you know and you described, on February 15th USTR announced an aggressive, multifaceted approach to press for comprehensive, meaningful, and fundamental reform of the Canadian Wheat Board and to level the playing field for U.S. wheat farmers. This administration is committed to resolving once and for all the Canadian Wheat Board's unfair trade advantages. USTR's 16-month investigation under the 301 was truly unprecedented in terms of the efforts taken to examine the North Dakota Wheat Commission's allegations, gather important information, and fully engage all parties in an open and transparent process.

I would like to also make an observation that in my view, and I think it is shared by most of the people in government, the North Dakota Wheat Commission really provided a great service to North Dakota farmers and wheat farmers across the country in focusing our attention through this vehicle, the 301, which helped to provide information and allowed us to pursue the options that I will go into and you mentioned.

On February 15th the USTR announced the findings that for over 10 years the acts, policies, and practices of the government of Canada and the Canadian Wheat Board were unreasonable and burden and restrict U.S. commerce. USTR found that the Canadian Wheat Board can unfairly benefit as a single desk monopoly through subsidies, protected domestic markets, and special benefits and privileges sanctioned by the Canadian government. Accordingly, the CWB can make sales at low prices without any risk to financial position or incurring losses.

In looking into what we would do next, the North Dakota Wheat Commission identified seven objectives in its petition. The United States administration is aggressively pursuing six of those seven objectives, recognizing however that we need to use all available vehicles as we choose to undertake actions that go beyond—we chose to go beyond the actions requested by the North Dakota Wheat Commission in their petition.

Our view is that everything that we do at this point needs to be mutually reinforcing and maintain the focus on the Canadian Wheat Board and its practices if we are to create fundamental reform.

First of all, the USTR is examining taking a possible dispute settlement case against the Canadian Wheat Board in the World Trade Organization. As we did in the 301, we have spent a significant amount of time and effort. In fact, I can say in the time I have been at USTR there is no issue we have spent more time on and put in more effort, and we will continue to do so in researching the legal options in the WTO.

The fact that there are actually no precedents in international law shows that we need to move very judiciously and carefully, but it also shows the seriousness with which this administration takes this issue, that we are willing to pursue this option.

Second, the administration is working with the North Dakota Wheat Commission and the U.S. wheat industry to examine the possibility of filing a countervailing duty and antidumping petition. In addition to USTR, I know the industry has met several times

with the Department of Commerce and the ITC in the last several weeks in exploring this option.

Third, working with industry, the USTR is identifying specific impediments to U.S. wheat entering Canada and will present these to the Canadians to ensure the possibility of fair two-way trade. This is one of the major reasons I went to North Dakota, because I wanted to hear first-hand from the farmers the impediments that they were facing. As you just pointed out, I had heard that you had run into similar problems. I look forward to hearing about your experience as we put together and prepare ourselves for these consultations.

Fourth, these short-time actions I just described are complemented by the administration's ongoing commitment to vigorous pursuit of fundamental, comprehensive, and meaningful reform of state trading enterprise and the WTO negotiations. Now, with the launch of the Doha Development Agenda in November of 2001, the United States really has an unprecedented opportunity to pursue permanent reform of the Canadian Wheat Board through the development of new disciplines and rules on STEs that export agricultural goods.

I should point out that that vehicle was not available when the 301 petition was filed in October of 2000. So we want to make sure that we make the most of it.

USTR shares the goal of the WC in the CWB's single desk trading status, to enhance its transparency and end government backing of this institution. These were important priorities to the North Dakota Wheat Commission's petition. They were also very evident in my discussions while I was in North Dakota as still being the priorities.

As recently as the last week of March, the U.S. WTO negotiating team succeeded in having export competition including state trading enterprises, placed first on the negotiating schedule for the launch of intensive negotiations after Doha. The next year is going to be critical in developing an international coalition to support meaningful rules and disciplines on STEs with the deadline of next March to agree on modalities for the agriculture negotiations.

I would just like to point out, we are not alone in going after the Canadian Wheat Board. Japan, Europe, and others have expressed an interest in this and we continue to work for that.

I would just like to make a comment. In weighing the North Dakota Wheat Commission's seventh objective—as I mentioned, we are doing six out of the seven that they outlined—to impose immediate tariff rate quota on imports of Canadian wheat—our overriding objective was to ensure that we achieve reform of the Canadian Wheat Board. Canada and other countries would have seen the TRQ as a violation of the U.S. WTO and NAFTA obligations. Unilaterally imposing a TRQ on imports of Canadian wheat would significantly undermine our mutual objectives by distracting us and our potential allies' focus during the exact same period that we are seeking to build international consensus in support of our objectives of reform in the WTO.

So in conclusion, USTR shares the goal of North Dakota Wheat Commission and U.S. wheat farmers in seeking meaningful and permanent reform of the Canadian Wheat Board. This is echoed,

by the way, by demands from Canadian farmers, including some of which commented on the 301 petition that they want to see the Canadian Wheat Board reformed. We are building international coalitions to seek this reform. USTR's actions are mutually reinforcing to each other in the ultimate goal of this reform and thereby achieving permanent relief for U.S. wheat farmers from the unfair trade practices of the Canadian Wheat Board.

The positive comments made by the North Dakota Wheat Commission and the wheat industry after the February 15th decision I think sent a clear message around the world that, particularly north of the border, that this administration and our industry and working with Congress are going to make great strides and have firm resolve in resolving this issue. I look forward to a few years from now sitting down at a coffee shop in North Dakota and discussing how we caused this fundamental change that our wheat farmers in this country are benefiting from.

So thank you, Mr. Chairman.

[The prepared statement of Ambassador Johnson follows:]

PREPARED STATEMENT OF AMBASSADOR ALLEN F. JOHNSON, CHIEF AGRICULTURE NEGOTIATOR, U.S. TRADE REPRESENTATIVE

Mr. Chairman and Members of the Committee:

Thank you for the opportunity today to meet with you and provide an update on the U.S. government's actions related to wheat trade with Canada. Canada is the United States' largest trading partner, and we are committed to ensuring that two-way trade is fair, transparent and in accordance with international trade obligations. In the area of wheat trade, however, Canada's single desk state trading enterprise, the Canadian Wheat Board (CWB), and Canada's impediments to market access for U.S. wheat into Canada distort trade and disadvantage U.S. wheat farmers. The CWB has unfair competitive advantages that hurt U.S. wheat farmers and undermine the integrity of our trading system.

The first week in April, I went to North Dakota to hear first hand from farmers and elevator operators about their concerns with the CWB and their interest in increasing access for U.S. wheat into Canada. I met with the North Dakota Wheat Commission (NDWC) and other U.S. and North Dakota farm organizations to discuss resolution of this long-standing issue. Those discussions were useful and provided a valuable perspective on critical issues to be addressed. There should be no doubt that Ambassador Zoellick and I share the same objectives as the NWDC and the U.S. wheat industry regarding the CWB.

As you know, on February 15, the United States Trade Representative (USTR) announced an aggressive approach to press for comprehensive and meaningful reform of the CWB and to level the playing field for U.S. wheat farmers. This Administration is committed to resolving once and for all the CWB's unfair trade advantages.

Background

On September 8, 2000, the NDWC submitted a petition to the U.S. Trade Representative (USTR) under Section 301(b) of the Trade Act of 1974. Section 301 provides a means for businesses, farmers and workers in the United States to seek the aid of the U.S. government to gain relief from foreign unfair trade practices and policies.

On October 23, 2000, USTR initiated an investigation under Section 301 of the wheat marketing practices of the CWB, a government trading enterprise with exclusive single desk export authority as well as exclusive rights to procure domestic supplies.

The NDWC alleged that the CWB's special privileges and benefits as a government-sanctioned single desk state trading enterprise have provided the CWB unfair competitive advantages in the hard red spring and durum wheat markets for many years. The petition states that the CWB—as a single desk seller—maintains the ability to price discriminate among buyers. The petition alleges that the CWB has substantial discretion in pricing grain due to its operating system. The CWB enjoys exclusive access to western Canadian wheat supplies, makes initial payments to producers based on a portion of the price that the CWB anticipates it can obtain

for the grain, and is able to pool wheat sales revenues. The margin between the initial payment and final payment permits the CWB maximum pricing flexibility. The CWB also enjoys the financial backing of the Canadian Government, freeing the CWB of certain financial risks.

The petitioners also alleged that the CWB provides standing offers to undersell U.S. wheat in third markets. The petition alleges that these practices have resulted in the CWB taking traditional U.S. markets. The petitioners also highlighted that the CWB operates in a protected domestic market with cumbersome regulatory procedures that act as a barrier to imports of U.S. wheat.

USTR Investigation

USTR's 16-month investigation under Section 301 was unprecedented in terms of the efforts taken to examine the NDWC's allegations and USTR's efforts to fully engage all interested parties. On November 16, 2000, USTR requested public views, including comments on the methodology to be used in conducting the investigation. For the first time ever, and in light of the NDWC's request that USTR gather extensive market data, on March 30, 2001, USTR asked the U.S. International Trade Commission (ITC) to conduct an exhaustive investigation.

As part of its investigation, the ITC held a public hearing, invited public comment, and issued questionnaires, backed by the ITC's subpoena power, to wheat buyers and sellers in the United States. In addition, USTR and the U.S. Department of Agriculture (USDA) sent questionnaires to buyers in third-country markets and to the CWB. The ITC obtained a comprehensive set of data on sales of Canadian wheat in the U.S. market through its questionnaires. The ITC also obtained some information from U.S. firms that sell Canadian wheat in third-country markets. Due to the refusal of the CWB to respond to our questionnaires, the investigation did not yield a comparable set of data on sales of Canadian wheat in third-country markets.

On September 27, 2001, the NDWC requested a 90-day extension of the original 12-month investigation to enable the U.S. government sufficient time to examine all the facts of the case. USTR granted that request on October 16 extending the investigation until January 22, 2002. The ITC issued a public version of its report on December 21, 2001. USTR solicited public comment on the issues raised in the ITC report in a Federal Register notice issued on the same day. To permit as much public input as possible, as well as to provide sufficient time to fully consider all comments, USTR subsequently extended the investigation to February 15, 2002.

Investigation Findings

On February 15, USTR issued its findings of the investigation and announced a multi-pronged approach to address the trade distorting effects of the CWB and the lack of market access into Canada.

USTR did find that for over ten years, the acts, policies and practices of the Government of Canada and the CWB are unreasonable and burden or restrict U.S. commerce. The investigation played a critical role in developing important information. USTR found that the CWB can unfairly benefit as a single desk state trading enterprise through subsidies, a protected domestic market, and special benefits and privileges sanctioned by the Canadian government. Specifically, the investigation found that:

- The CWB is insulated from commercial risk because the Canadian government guarantees its financial operations, including its borrowing, credit sales to foreign buyers, and initial payments to farmers.
- The CWB benefits from subsidies and special privileges, such as government-owned rail cars, government-guaranteed debt and below market borrowing costs. Considerable monies from the Canadian federal government at below-market interest rates resulted in a cost benefit, according to the ITC, of Can$107 million (approximately US$66 million) in 2000, 24 percent less than what a private borrower would have paid.
- The CWB has a competitive advantage due to its monopsony control over a guaranteed supply of wheat that western Canadian farmers are required to sell to the CWB, and sole control to export western Canadian wheat. These advantages allow the CWB to enter into forward contracts without incurring commercial risks and provide other benefits.
- The Government of Canada's burdensome regulatory scheme controlling the varieties and segregation of wheat marketed domestically result in de facto restrictions on imports of U.S. wheat.

The ITC report supported allegations in the NDWC petition that the CWB has greater pricing flexibility than private grain traders. This flexibility arises from the

fact that, by law, all western Canadian farmers must sell their wheat to the CWB for an initial payment equal to only a portion of full market value, and the farmers must wait until beyond the end of the marketing year to receive full payment. In addition, the Government of Canada guarantees initial payment to farmers. Accordingly, the CWB can make sales at low prices without any risks to its financial position or of incurring losses, with the only consequence being the reduction in the end-of-the-year wheat pool return. The CWB also has a lower cost of capital than private firms, because the Government of Canada guarantees CWB borrowings.

USTR Actions

In its September 2000 petition under Section 301 of the Trade Act of 1974 and in subsequent submissions, the NDWC identified seven objectives for addressing Canadian wheat marketing practices and the CWB. The United States is committed to aggressively pursuing six of those seven objectives. Recognizing, however, that we need to use all available vehicles to address the CWB's special privileges and benefits, we chose to undertake actions that go beyond the NDWC's requests.

Ambassador Zoellick announced on February 15 a four-pronged approach to level the playing field for American wheat farmers.

- First, USTR is examining taking a possible dispute settlement case against the CWB in the World Trade Organization (WTO).
- Second, the Administration is working with the NDWC and the U.S. wheat industry to examine the possibility of filing U.S. countervailing duty and anti-dumping petitions, with a special emphasis on applying our trade remedy laws to the unique factual circumstances arising from the CWB's single desk status.
- Third, working with industry, USTR is identifying specific impediments to U.S. wheat entering Canada and will present these to the Canadians so as to ensure the possibility of fair, two-way trade. At our request, Canada has agreed to consultations to discuss various issues surrounding two-way wheat trade.
- Fourth, these short-term actions are complemented with the Administration's ongoing commitment to vigorously pursue comprehensive and meaningful reform of state trading enterprises in the WTO agriculture negotiations.

With the launch of the Doha Development Agenda in November 2001, the United States has an unprecedented opportunity to pursue permanent reform of the CWB through the development of new disciplines and rules on state trading enterprises that export agricultural goods. USTR shares the goal with the NDWC to end the CWB's single desk trading status and enhance the transparency of this government-backed institution. The goals are important priorities for the NDWC and were highlighted in my meetings in North Dakota.

In the WTO, the United States seeks:

- To end exclusive export and domestic procurement rights to ensure private sector competition in markets controlled by single desk exporters;
- To eliminate the use of government funds or guarantees to support or ensure the financial viability of single desk exporters; and,
- To establish WTO requirements for notifying acquisition costs, export pricing, and other sales information for single desk exporters.

As recently as the last week in March, the U.S. WTO negotiating team succeeded in having "export competition", including state trading enterprises, placed first on the negotiating schedule as we launch intensive discussions following Doha. This next year will be critical in developing an international coalition to support meaningful rules and disciplines on STEs with a deadline of next March to agree on modalities for the agriculture negotiations.

In weighing the NDWC's seventh objective to impose an immediate tariff rate quota (TRQ) on imports of Canadian wheat, USTR's over-riding objective, supported by the NDWC, was to ensure that we achieve reform of the CWB. Canada and other countries would have seen a TRQ as a violation of U.S. WTO and NAFTA obligations. Therefore, unilaterally imposing a TRQ on imports of Canadian wheat would significantly detract from our mutual objectives of eliminating the CWB's special privileges and improving the transparency of its operations during the same time we are seeking to build an international consensus to support these objectives.

Conclusion

USTR shares the goal of the NDWC and U.S. wheat farmers in seeking meaningful and permanent reform of the CWB, echoing demands from some Canadian farmers for reform. We are also building international coalitions to seek reform of the CWB in the WTO.

Through this aggressive strategy, USTR is pursuing actions which mutually reinforce each other in the ultimate goal to reform the single desk, government-sanctioned CWB and improve U.S. wheat access to the Canadian marketing system, thereby achieving relief for U.S. wheat farmers from the unfair trading practices of the CWB.

Senator DORGAN. Mr. Johnson, thank you very much. We appreciate that.

Next we will hear from Ellen Terpstra, who is the Administrator of the Foreign Agricultural Service at USDA. You may proceed.

STATEMENT OF ELLEN TERPSTRA, ADMINISTRATOR, FOREIGN AGRICULTURAL SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. TERPSTRA. Thank you very much, Mr. Chairman, Senator Burns. I appreciate the opportunity to be here today to talk about this important matter. USDA fully supports the U.S. Trade Representative's decision to seek relief for our wheat farmers from the trading practices of the Canadian Wheat Board. The findings from the Section 301 investigation clearly establish that the trade-distorting practices of the Canadian Wheat Board and Canada's restrictions on imports of wheat adversely affect the U.S. wheat industry.

The four steps outlined in the decision will help us move toward removing this longstanding barrier between the United States and Canada. State trading enterprises with exclusive export rights are a particular concern because they do not have to answer to the market and they have the inherent ability to distort trade. Much of this concern arises from the lack of transparency in the practices of state trading enterprises, the special privileges of single desk sellers that result in unfair advantages, and financial backing from the governments.

This is why the United States will be working in the WTO negotiations to produce disciplines that will force fundamental reform of such organizations. As we continue to pursue remedies through trade negotiations, we are also working bilaterally with Canada to resolve some of the thorniest agricultural issues between our nations. Early next month, Secretary Veneman will travel to Ottawa, where she will meet with Canadian officials to press them on the need to improve trading conditions between the two countries.

In the long run, however, global trade liberalization offers us the best opportunity to boost U.S. agricultural export sales. As Secretary Veneman said at the launch of the Doha Development Agenda, expanding global markets for our farmers is vital to the long-term prosperity of our highly productive agricultural and food sector. Our farmers are ready to compete for business and it is our job to do everything we can to ensure that the competition is fair.

That completes my statement, Mr. Chairman, and I will be happy to answer questions.

[The prepared statement of Ms. Terpstra follows:]

PREPARED STATEMENT OF ELLEN TERPSTRA, ADMINISTRATOR, FOREIGN AGRICULTURAL SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Senator Dorgan, Members of the Committee, I appreciate the opportunity to appear before you with Ambassador Johnson to discuss the results of the Section 301 investigation of the trading practices of the Canadian Wheat Board.

The U.S. Department of Agriculture's Foreign Agricultural Service (FAS) has been working closely with the U.S. Trade Representative's office on this issue since the North Dakota Wheat Commission first filed its petition in September 2000. Of course, our wheat analysts and trade specialists have been addressing wheat trade issues with Canada for many years, as part of our primary mission to maintain export markets and expand export opportunities for the U.S. food and agricultural sector. This effort is critical to our wheat industry, which typically exports about half of its production.

USDA is fully supportive of the U.S. Trade Representative's decision to seek relief for our wheat farmers from the trading practices of the Canadian Wheat Board. The findings from the Section 301 investigation clearly establish that the trade-distorting practices of the Canadian Wheat Board, and Canada's restrictions on imports of wheat, adversely affect the U.S. wheat industry.

We are working closely with Ambassador Johnson and others at the U.S. Trade Representative's office as they:

- pursue comprehensive and meaningful reform of single-desk state trading enterprises (STEs) in the World Trade Organization (WTO) agriculture negotiations;
- examine taking a dispute settlement case against the Canadian Wheat Board in the WTO;
- work with the North Dakota Wheat Commission and the U.S. wheat industry to examine the possibilities of filing U.S. countervailing duty and antidumping petitions with the U.S. Department of Commerce and U.S. International Trade Commission; and
- identify specific impediments to U.S. wheat entering Canada and present them to the Canadian government.

USDA agrees that the actions outlined in the decision will help move us towards removing this long-standing barrier in U.S.-Canada relations. We are committed to working with Ambassadors Zoellick and Johnson to reform permanently single-desk state trading enterprises during the WTO negotiations.

Negotiations on STEs could be particularly important to the U.S. wheat industry since both wheat exporters and importers benefit from STEs. The Canadian Wheat Board and Australia's wheat board (AWB, Ltd.) are the major STEs involved in wheat exports. Together, these two organizations control roughly one-third of world wheat exports. Countries that use STEs to regulate or control wheat imports include Japan, China, India, Egypt, and some countries outside of the WTO such as Algeria and Iran.

State trading enterprises with exclusive export rights are a particular concern because they do not have to answer to the market and they have the inherent ability to distort trade. Much of this concern arises from the lack of transparency in the practices of such STEs, the special privileges of single-desk sellers that result in unfair advantages, and financial backing by their governments.

WTO negotiations should produce disciplines that will force fundamental reform of such organizations—the best way to permanently assure that U.S. producers are treated fairly in the world market.

As we continue to pursue remedies through trade negotiations, we also have been working with Canada to resolve some of the thorniest agricultural issues between our nations. The 1998 Canada-U.S. Record of Understanding contained several provisions relating to grain trade. Our two countries have been holding quarterly grain consultations that provide us with an early indication of Canadian shipments to the United States.

The In-Transit Program for Grains is a good example of the benefit of these ongoing discussions. This program provides transportation alternatives to U.S. grain shippers by facilitating the shipment of U.S. grains through Canada to final destinations in the United States. Last year (calendar year 2001), more than 1 million tons of U.S. wheat and barley were transported through the western Canadian rail system to end users in the western United States. More than 80 percent of that was wheat. North Dakota accounted for about 70 percent of all the grain shipped under this program.

In the long run, trade liberalization offers us the opportunity to boost U.S. agricultural export sales by expanding existing market access and opening new markets. As President Bush and Secretary Veneman have said, we cannot afford to sit on the sidelines while other countries negotiate preferential trade agreements. For example, Canada and Chile implemented their free trade agreement in 1997. As a result, Canada now enjoys duty-free access for its wheat, while U.S. exporters face a 7 percent duty.

We need Trade Promotion Authority to maintain U.S. leadership in initiating and writing new agreements; without it, other countries will write the future rules of trade—rules that will be made without taking into account our interests. American farmers, workers, and consumers will eventually pay the price for inaction. As Secretary Veneman said at the launch of the Doha Development Agenda, expanding global markets for our farmers is vital to the long-term prosperity of our highly productive agriculture and food sector. Our farmers are ready to compete for business and it is our job to do everything we can to ensure that the competition is fair.

That completes my statement, Mr. Chairman. I will be glad to answer any questions.

Senator DORGAN. Ms. Terpstra, thank you very much for your testimony.

Next we will hear from the Director of Operations of the International Trade Commission, Mr. Robert Rogowsky.

STATEMENT OF ROBERT A. ROGOWSKY, PH.D., DIRECTOR OF OPERATIONS, UNITED STATES INTERNATIONAL TRADE COMMISSION

Dr. ROGOWSKY. Thank you. I am also pleased to have the opportunity to discuss the work the U.S. International Trade Commission recently completed and published as "The Wheat Trading Practices: Competitive Conditions Between the U.S. and Canadian Wheat." That investigation concerned the acts, policies, and practices of the Canadian Wheat Board and the government of Canada. I would also like to take a second to commend Cathy Jabara and John Reeder, who are with me and who in very tight circumstances did what I think was an excellent study.

USTR's request of the ITC for this investigation was to help provide a factual informational base to supplement work by the Inter–Agency Section 301 Committee as it pursued its own investigation. The commission made no determination or findings and it had no part in the ultimate decision making of the Section 301 Committee.

In order to gain this information, the commission developed two survey questionnaires based upon sample questions submitted to USTR by the North Dakota Wheat Commission and in consultation with that group USTR, the U.S. Department of Agriculture, and domestic milling and grain exporter groups. The commission sent the mandatory purchaser questionnaires to U.S.-based firms that milled, imported, purchased, or processed hard red spring or durum wheat. The respondents accounted for all the U.S. imports of these two classes of wheat in marketing year 2000–2001 and for a high proportion of domestic milling of these two wheats.

To ensure that our data were as complete as possible, the commission for the first time in its long history employed its subpoena authority in a Section 332 investigation. The commission sent the mandatory exporter questionnaire to U.S.-based firms exporting U.S. or Canadian durum of hard red spring wheats to eight selected foreign countries that accounted for about one-fifth of the world wheat imports in recent years. The 20 respondents to the exporters questionnaire accounted for virtually all exports of U.S. hard red spring and durum wheat in these markets. The respondents also accounted for about 61 percent of exports of Canadian hard red spring and a portion of Canadian durum in these same eight markets.

I would like to take a few minutes and just highlight some of the things that we found in the questionnaires. With nearly 60 percent of the world trade in durum wheat in crop year 2000–2001, Canada is almost three times larger than its closest competitor, the United States. Most U.S. purchasers of hard red spring and durum wheat indicated that they price negotiation or bid-offer process was much the same in the United States as in Canada. The Minneapolis spring wheat contract was by far the most commonly cited contract on which the Canadian Wheat Board reportedly relies in price negotiations.

It was reported that Canadian durum normally commands a premium over the Minneapolis price of 5 to 10 cents a bushel. There were very few differences in the terms of U.S. versus Canadian wheat—terms of sale, excuse me. Firms that purchase wheat directly from the Canadian Wheat Board for delivery reported more forward than spot contracting, but none reported multi-year contracts. Slightly longer delivery terms were noted for a large portion of sales of Canadian wheat—a larger portion of sales of Canadian wheat than of U.S. wheat.

Direct comparisons between contracted and delivered prices for U.S. and Canadian wheats were not possible owing to differences in reported contracting terms. Given these data issues, the commission conducted two analyses of the price data set, an analysis of the contracted or largely gateway prices of comparable wheat and an analysis of delivered wheat prices in the Minneapolis area.

For contracted prices in the U.S. market, reported Canadian durum prices were above U.S. prices for all comparable months except one. For number 1 hard red spring wheat, price relationships were mixed, with some Canadian prices equal to or above U.S. prices and others below. Prices of number 2 Canadian western red spring wheat were generally higher than those for number 2 hard red spring wheat, with most contracts reported after January 2000.

The analysis of delivered prices could not be reported publicly due to confidential business information, but followed roughly the same pattern.

Data supplied by reporting firms showed declining U.S. exports of durum and hard red spring wheat and increasing exports of Canadian durum and western red spring wheat in 2000–2001. The data also showed exports of Canadian durum wheat overtaking exports of U.S. durum and hard red spring wheat in 2000–2001.

Over delivery of protein occurs in exports of both U.S. and Canadian wheat. Most overdelivery was found to be small, equal to or less than .2 percentage points over contract specifications. However, a higher frequency of protein overdelivery and a higher range was found for Canadian red spring wheat. Data did not allow comparison of overdelivery in durum wheat.

Several U.S. firms reported that price competition with Canada was an important issue and six had lost sales to Canada competition. For the Venezuela market, the only export market for which adequate data were available, export prices of number 2 Canadian western red spring and number 2 U.S. hard red spring generally moved in the same pattern.

These are just a few of the highlights and we could talk about the more, and I would be happy to answer any questions. Thank you very much.

[The prepared statement of Dr. Rogowsky follows:]

PREPARED STATEMENT OF ROBERT A. ROGOWSKY, PH.D., DIRECTOR OF OPERATIONS, UNITED STATES INTERNATIONAL TRADE COMMISSION

I am pleased to have the opportunity to discuss the work the U.S. International Trade Commission (Commission) recently completed and published as *Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat.* The Commission instituted this investigation at the request of the United States Trade Representative (USTR) on April 12, 2001.

USTR indicated in its request letter that it had initiated its own investigation under Section 301 (foreign practices affecting U.S. exports of goods or services) of the Trade Act of 1974. That investigation concerned the acts, policies, and practices of the Canadian Wheat Board (CWB) and the Government of Canada. It was precipitated by a petition filed in October 2000 by the North Dakota Wheat Commission (NDWC). In its petition, the NDWC alleged that the CWB, a state trading enterprise with a near monopoly on Canadian wheat sales, engaged in unfair practices in its export sales of wheat to the U.S. market and to certain third country markets of interest to U.S. exporters. [1]

USTR's request to the ITC for a fact-finding study under Sec.332(g) of the Tariff Act of 1930, was to help to provide factual information to supplement work by the interagency Section 301 Committee as it pursued its investigation. The Commission made no determinations or findings, and had no part in the decision-making of the Section 301 Committee. Instead, ITC's role was as an objective and impartial gatherer of facts.

In its request, USTR asked the Commission to survey the industry. Specifically, the ITC was asked to provide to USTR the following information, to the extent possible:

- a summary of a survey of U.S. Hard Red Spring wheat and Durum wheat purchasers, including wheat millers, as to the conditions of competition between U.S. and Canadian wheat during the 5 most recent years, including such data as quantity and prices, technical considerations in the purchase and sale of U.S. versus Canadian wheat, and other relevant factors of competition;
- a summary of a survey of U.S. Hard Red Spring wheat and Durum wheat exporters as to conditions of competition in key foreign markets in Latin America, the Philippines and other significant markets, between U.S. and Canadian wheat during the 5 most recent years, providing such data as quantity and prices, lost sales of U.S. wheat versus Canadian wheat, technical considerations in the purchase and sale of U.S. versus Canadian wheat, and other relevant factors of competition; and
- a summary of the current conditions of wheat trade between the United States and Canada, including relevant information on prices, exchange rates, transportation, marketing practices, U.S. and Canadian farm policies, and other significant economic factors that might be relevant.

The Commission held a public hearing on June 6, 2001, gathered evidence, and issued separate exporters' and purchasers' questionnaires to U.S. companies during May to June 2001. [2] In addition, Commission staff conducted field visits in Min-

[1] In December 2000, an estimate by the petitioner further quantified the unfair trading practices as price undercutting of approximately 8 percent of CWB wheat under U.S. wheat, overdelivered protein content in the Canadian wheat, and other transportation (rail) benefits. The petitioner recommended a tariff-rate quota on Canadian imports into the United States as a remedy for these practices.

[2] The Commission sent purchasers' questionnaires to firms that milled, imported, purchased, or processed Hard Red Spring (HRS) or the directly competitive Canadian wheat, Canadian Western Red Spring (CWRS), Durum, or both classes of wheat, from the United States, from Canada, or from both countries, during any part of June 1, 1996, through May 20, 2001. Respondents ranged in size from the major multinational grain companies to small firms that purchase limited quantities and types of wheat. Most firms were either grain companies or millers, or both. Four other firms were manufacturers of pasta or other products. Most purchased both U.S. and Canadian wheat. Respondents accounted for nearly all U.S. imports of Durum and CWRS wheat in the marketing year 2000/01. The Commission also sent questionnaires to U.S. firms exporting Durum, HRS, and/or CWRS wheat to eight selected markets: Algeria, Brazil, Colombia, Guatemala, Peru, Philippines, South Africa, and Venezuela. The responses were ob-

nesota, North Dakota, and the State of Washington to gather information from U.S. wheat millers, grain elevator operators, State officials, domestic farm organizations, U.S. wheat exporters, and U.S. importers, as well as from representatives of the Minneapolis Grain Exchange, the principal trading point for U.S. Hard Red Spring (HRS), Canadian Western Red Spring (CWRS), and Durum wheat. Staff also traveled to Canada to meet with CWB officials to discuss operations relevant to this study.

This report presents information in the following areas: the structure of the U.S. and Canadian industries and markets for Durum and HRS/CWRS wheat; pricing practices in the U.S. market and selected foreign markets; the influence of rail transportation on U.S. and Canadian industry competitiveness; product quality issues; and Canadian trade programs.

Structural Differences Between Durum Wheat Markets

In the United States, the Durum market is more narrow and more heavily dominated by Canada than is the HRS wheat market. Durum has no close substitutes and has only one principal end use: pasta production. HRS wheat has several substitutes (of varying quality) and is used in the manufacture of an array of breads and other bakery goods. With nearly 60 percent of world trade in Durum in crop year 2000/01, Canada is almost three times larger than its closest competitor, the United States.

One advantage the CWB has in the Durum market is the ability to forward contract for future delivery, as substantiated by the responses to the Commission's purchasers' questionnaire.[3] Because there are now few futures contracts traded for Durum wheat on the Minneapolis Grain Exchange (MGE),[4] and even the volume of cash Durum trade is spotty and thin, the process of price discovery in U.S. and world Durum markets is much more opaque than that for HRS or Hard Red Winter wheat. In this market environment, the CWB can forward contract Durum to U.S. and/or third-country purchasers in a way that no U.S. Durum supplier can do given the high level of risk and price volatility facing small suppliers in a thinly traded market.

The demise of the Durum futures contract on the MGE is partly related to the presence of the CWB. The U.S. market is dominated by a few large suppliers and a few large domestic purchasers, but relatively low volumes. The other factors that undermined the use of futures contract in the U.S. included the difficulty in specifying contract delivery terms and annual protein and quality variation.[5]

In contrast to Durum, Canada supplied only 17 percent of global non-Durum wheat exports in the 2000/01 crop year and accounted for only 5 percent of world production. The United States supplied 28 percent of world wheat exports other than Durum in that year, and produced 10 percent of world output.

Structural Differences Between U.S. and Canadian Industries

The wheat producer and user sectors in the United States and Canada are generally similar in structure. The main difference between the two nations' industries lies in the middleman sector, between the producers (farmers) and users (millers or foreign buyers). In the United States, the middleman sector consists of numerous producer cooperatives and small and large grain trading companies. In Canada, the entire middleman sector consists of the CWB, which is empowered with both monopsony and monopoly power in the marketing of western Canadian wheat.

Market power is only one of the CWB's notable structural characteristics. The Board is in all significant respects an arm of the Government of Canada, with Government approval and backing of its borrowing and other financing, which reduces

---

tained from U.S. firms only, and therefore do not directly cover the pricing and/or export behavior of the CWB in world wheat markets. The responses do provide U.S. exporter views on CWB behavior and on the competitiveness of U.S. and Canadian wheat in the selected markets. Although these markets account for an important share of the world market for these products, the data and other analysis should not be construed to represent the CWB's activities in other third-country markets. The Commission received responses from 20 firms covering most of the market. However, responses for specific shipments were limited (or subject to different terms of sale) and therefore direct price comparisons were not possible for several markets.

[3] Eight firms responded to the Commission's purchasers' questionnaire that the CWB Durum future delivery was of value to them; six firms (three of which did not engage in importing) said the future delivery was not of value. See Chapter 4, "Contract Structure."

[4] The Durum wheat futures contract volume on the MGE fell from16,000 contracts in 1998 (the year it was first introduced) to 559 contracts in 2000, and to 67 contracts during Jan.–Apr. 2001, according to data of the MGE. See also Monte Vendeveer and C. Edwin Young, "The Effects of the Federal Crop Insurance Program on Wheat Acres," USDA, ERS, *Wheat Situation and Outlook Yearbook*, March 2001.

[5] Ibid. Also Commission interview.

its costs and insulates it from the commercial risks faced by large and small U.S. grain traders.

Further, the CWB's producer pool system (by which Canadian wheat producers are remunerated) gives the CWB flexibility in marketing beyond the ability to forward contract. Producers receive a Government-approved and -guaranteed initial payment early in the crop year, with subsequent interim and final payments as the crop is harvested and sold on world markets. Not only are such subsequent payments payable only to the extent the CWB makes money on its sales, but they are subject to a variety of CWB-determined deductions for freight and other expenses. Some of these deducted expenses are "phantom" expenses (expenses not actually incurred by the CWB). The resulting surplus revenue gives the CWB a price cushion in its negotiations with domestic and foreign buyers.

The lack of price transparency within Canada gives the CWB an inherent marketing advantage over U.S. competitors. This is particularly true in Durum markets, but also in HRS markets. The CWB's basing-point price system (using Vancouver, British Columbia, and Thunder Bay, Ontario, as base pricing points) for producer remuneration enables the CWB to adjust output prices for both domestic sales and direct Prairie sales to the United States (i.e., all shipments that do not go through either basing point) to meet its local competition. Pricing practices are the subject of the following two sections.

Pricing in the U.S. Market

The U.S. price as a basis for the Canadian price

Most U.S. purchasers of HRS and Durum wheat indicated that the price negotiating (bid-offer) process was much the same in the United States as in Canada. One firm reported that there is greater liquidity in the U.S. market owing to the presence of more sellers. Other respondents stressed the importance of price in the purchasing decision and stated that negotiated prices for CWRS wheat are based on U.S. prices, which in turn are negotiated using futures prices or cash market prices.

In questionnaire responses, the Minneapolis Spring wheat contract was by far the most commonly cited contract on which the CWB reportedly relies in price negotiations. Even in the pricing of Durum wheat, one firm reported that the CWB's prices are expressed in relation to Minneapolis Spring wheat futures. Normally, it was reported, Canadian Durum wheat commands a premium over the Minneapolis price of $0.05 to $0.10 per bushel ($1.84 to $3.67 per metric ton). Most firms were unable to specify whether the CWB's pricing practices in the U.S. market differed between exchanges.

Canada's large share of the U.S. and the world Durum markets suggests to some U.S. industry members the possibility that the CWB's actions can affect Durum prices on U.S. exchanges.[6] In this view the CWB is not entirely a price-taker in the U.S. Durum market but has some effect on prices by its decisions on how much to market.

Terms of sale between U.S. and Canadian wheat in the U.S. market

Discounts and premiums

There are few differences in the terms of sale of U.S. versus Canadian wheat, according to questionnaire respondents. A few purchasers of Durum wheat reported that contracts for U.S. wheat specify quality discounts for grade factors that do not meet contract specifications, while Canadian contracts generally do not. Generally, it was reported, Canadian contracts specify only the protein level and grade, the latter to be determined on the basis of Canadian grade standards. Grade No. 1 (# 1) CWRS wheat generally commands a premium of $0.03 per bushel over # 2 CWRS wheat, which reportedly is the same price differential applied to the equivalent U.S. wheat.

Delivery terms

Firms that purchased wheat directly from the CWB for delivery reported more forward than spot contracting, but none reported multi-year contracts. Slightly longer delivery terms were noted for a larger portion of sales of Canadian wheat as compared to U.S. wheat.

Transportation costs are generally either paid by the CWB or split between the CWB and the customer. However, respondents were generally unable to report average transportation costs between the principal Canadian origin points and principal U.S. destinations, because the price for Canadian wheat is often referenced to a

[6] Commission interviews.

"gateway" or entry point in the United States, with Minneapolis being the most frequently cited.

Price comparison of U.S. and Canadian wheat

Eighteen firms provided 785 individual price contracts for the 60 months during the marketing years 1995/96 to 2000/01. Direct comparisons between contracted and delivered prices for U.S. and Canadian wheats were not possible owing to differences in reported contracting terms as noted in Chapter 4. Given these data issues, the Commission conducted two analyses of the price data: an analysis of the contracted (largely "gateway") prices for comparable wheats (U.S. and Canadian # 1 Durum, # 1 HRS and # 1 CWRS, and U.S. # 2 HRS and # 2 CWRS) during 1996/97 to 2000/01, and an analysis of delivered prices in the Minneapolis area.

Regarding contracted prices (largely through the "gateway") in the U.S. market during 1996/97 to 2000/01, reported Canadian Durum prices were above U.S. prices for all comparable months except one. For # 1 CWRS/HRS wheat, price relationships were mixed, with some Canadian prices equal to or above U.S. prices, and others below. Prices for # 2 CWRS wheat were generally higher than those for # 2 HRS wheat, with most contracts reported after January 2000. These observed time series relationships are consistent with previous responses from firms regarding the CWB's use of grain exchanges for pricing wheat in the U.S. market.

Exports to Third-Country Markets

Level of export sales to subject markets

Data supplied by reporting firms on their exports of U.S. and Canadian Durum, HRS, and CWRS wheat to the eight markets covered in the survey show declining U.S. exports of Durum and HRS wheat and increasing exports of Canadian Durum and CWRS wheat in 2000/01. The data also show exports of Canadian Durum and CWRS wheat overtaking exports of U.S. Durum and HRS wheat in 2000/01.

Export marketing practices

Questionnaire respondents indicated that there are no material differences in transportation costs, seasonality of delivery, or use of futures or spot markets that affect the relative competitiveness of either nation's wheat in the eight subject foreign markets. Respondents also reported no quality discounts and reported no other special discounts from the CWB.

The analysis of protein delivery in exporter contracts for U.S. # 2 HRS and # 1 and # 2 grade CWRS wheats[7] shows that over-delivery of protein occurs in exports of both U.S. and Canadian wheat. Most over-delivery was found to be small, equal to or less than 0.2 percentage points over contract specifications, and this level of over-delivery occurred in both U.S. and Canadian contracts. Since most contracts have penalties for under-delivery of protein, it is likely these differences are due to actions by exporters to ensure that the minimum delivery requirements are met. However, a higher frequency of protein over-delivery in the higher ranges was found for the CWRS wheats. For example, the comparable Canadian export contracts had protein over-delivery of 0.8 percentage points or higher.

The Commission's questionnaire responses from exporters also showed that delivered prices of both U.S. and Canadian wheat are often not adjusted upward in the event of protein over-delivery, although, as noted above, most over-delivery was found to be small in the reported data. However, among the wheats/grades analyzed, price increases were found to be more frequent for the higher grades of wheat (# 1 CWRS and U.S. # 1 HRS), as compared to the # 2 grades of these wheats.

Lost sales for U.S. wheat exporters

Three out of 20 responding firms indicated that price competition with Canadian wheat is an "important" issue and that they had to cut prices to avoid losing export sales of U.S. wheat. Six responding U.S. firms reported that they had lost sales to Canadian competition. One firm reported it had difficulty competing with direct sales by the CWB.

Export price comparisons

Comparable export price data were evaluated for the Venezuelan market. These price comparisons, for export shipments to Venezuela for # 2 CWRS and # 2 U.S. HRS wheat, show that export prices for the two wheats generally moved in the same pattern during 1996/97 to 2000/01.

---

[7] Data were not sufficiently available to analyze protein over-delivery in U.S. and Canadian Durum export contracts.

Rail Transportation

Rail transportation is one of the most important factors in wheat industry competitiveness.[8] Railroads have typically been regulated in both their rate-setting and their operation of trunk and branch lines, both of which are important to wheat industry competitiveness.

In recent years, the U.S. rail industry, unlike the Canadian rail industry, has been fully deregulated: U.S. rail rates for all commodities, including wheat, are now set by railroads in negotiations with individual shippers. Only if there are disputes over rates, or proposed mergers that might restrict competition and raise rates, does the U.S. Government (the Surface Transportation Board) become involved.

In August 2000, the Canadian Government implemented new regulations for the movement of CWB wheat by the two main railroads, Canadian National and Canadian Pacific. These new regulations place "caps" on the overall revenues received by these railroads from the transport of CWB wheat and other grains (see Chapter 3 for details). Shipments to the eastern and western ports for overseas export are regulated—rates are below comparable commercial rates—as are domestic shipments to Armstrong or Thunder Bay, Ontario.

Significantly excluded from the revenue cap is western wheat shipped to the U.S. market.[9] U.S.-bound shipments from Canadian west coast ports are excluded, and rates for such shipments are free to be negotiated between railway and shipper (the CWB is the shipper of record for all wheat to the United States).

According to a report commissioned by the Canadian Department of Transportation, the CWB provides railcars to railroads "without charge." The North Dakota Wheat Commission and North Dakota State University have suggested that this is partly to compensate railroads for the lower rail rates for CWB grain.

The CWB asserts that higher U.S. versus Canadian rail rates are due to "greater railway monopoly concentration" in the United States.[10] However, with an equal number of Class I railroads servicing shippers of the subject wheat, and a roughly equal layout of short lines, there is no clear evidence that railroad concentration is higher in the United States. More broadly defined (i.e., including alternative transport modes such as trucking or riverine transport) transport concentration may be lower in the United States, although it is hard to measure precisely such concentration. The reason for lower Canadian rates appears instead to be greater railroad regulation in Canada, at least with respect to the transport of western grain.[11]

An additional rail rate issue, discussed in Chapter 3, is the freight charge the CWB deducts from its reimbursements to individual Canadian producers, and how that charge compares with the rate the CWB actually pays to Canadian railroads. The Commission did not obtain actual rail costs of shipping wheat from Canada to U.S. destinations from its questionnaire.

Product Quality Issues in the U.S. Market

Protein "over-delivery"

Most respondents to the Commission's purchasers' questionnaire reported that to their knowledge, the CWB's deliveries of wheat exceeding contracted protein specifications are considered minor and not generally anticipated. In fact, respondents reported that deliveries from both U.S. and Canadian suppliers tended to exceed the minimum contracted protein level in both the U.S. and export markets. To assess the extent of over-delivery of protein content in domestic wheat purchases, the Commission analyzed differences in contracted and delivered protein in 615 Durum,

---

[8] In addition to the economists' studies submitted to the Commission by counsel for the North Dakota Wheat Commission and for the Canadian Wheat Board, *see* The Hon. Willard Z. Estey, "Grain Handling and Transportation Review: Final Report," submitted to the Minister of Transport (Canada), Dec. 21, 1998; USDA, ERS, "Effects of Railroad Deregulation on Grain Transportation," Report ERSTB1759, 1989; and William Coyle and Nicole Ballenger, eds., "Technological Changes in the Transportation Sector—Effects on U.S. Food and Agricultural Trade," ERS Miscellaneous Publication No. 1566, 2000.

[9] Canadian Transport Agency, "Western Grain: Railway Revenue Cap," retrieved Aug. 2, 2000, from *http://www.cta-otc.gc.ca.*

[10] CWB, prehearing brief, p. 8.

[11] See Chapter 2. Indeed, the CWB concedes as much: "The Canadian railway transportation system is more highly regulated than in the United States and results in lower freight rates for all goods carried, not just wheat and barley." CWB, prehearing brief, p. 8. However, the CWB's conclusion likely is correct only with respect to grain, not "all goods." See Transport Canada, *Vision and Balance,* Final Report of the Canada Transportation Act Review Panel, June 28, 2001, p. 29. ("The National Transportation Act, 1987, freed railways and their customers to negotiate charges and conditions for moving products, except for grain.") Available on the Internet at Transport Canada's website: *http://www.reviewcta-examenltc.gc.ca/english/pages-/finalreport.htm.*

HRS, and CWRS wheat contracts reporting both sets of data. For all but # 1 CWRS wheat, most contracted purchases were shown to have a tendency toward over-delivery of protein content. However, all contracts for all comparable wheat grades and classes tended to meet or exceed the contracted protein specification for final delivery of the product. Out of 510 reported U.S. shipments of HRS and U.S. Durum wheat, 65 percent reported protein over-delivery, while 54 percent of 105 reported CWRS and Canadian Durum contracts reported over-delivery of protein. Most of these differences were found to be within a 1.0 percentage points range above the contracted protein specification, and nearly all were within 1.5 percentage points, for both U.S. and Canadian wheat.

Generally, firms reported that, to their knowledge, no adjustments to prices were made when the delivered protein content of wheat, from either U.S. or Canadian sources, exceeded contract specifications. The Commission's analysis of actual price and purchasers shipment data revealed that when the delivered protein content exceeded the contract specification, the delivered price also exceeded the contract price in about one-fifth of the reported purchasers contracts.

For both U.S. and Canadian wheat, firms reported that prices are generally reduced when the delivered protein content falls below contract specifications. Some firms indicated that price adjustments for variations in protein levels are handled on a case-by-case basis, and that a load could be rejected for not meeting the protein specification.

Dockage

"Dockage" is the foreign or undesirable matter in wheat, such as straw, weeds, pests, and broken hulls. Dockage levels are commonly included in contract specifications. Many firms reported that the CWB delivers below-dockage wheat (i.e., "cleaner" than called for in the contract); in fact, all reporting firms indicated that 95 to 100 percent of their CWB shipments were delivered below the contracted dockage level by more than a 0.2 percentage point.

The Effects of Canadian Trade Programs and CWB Pricing on U.S. Exports to Canada

The U.S. industry has indicated that Canadian regulations and laws, as well as operations by the CWB, have virtually precluded marketing of U.S. milling grade wheat or milled flour to Canadian mills and buyers. As shown in Chapter 2, U.S. exports of wheat into Canada are negligible, amounting to less than $50,000 in 2000/01. Canadian trade policies and programs, particularly the varietal registration program and end use certificates for U.S. wheat, have been reported by U.S. exporters as adversely affecting the level of U.S. wheat exports to Canada. Information supplied by both U.S. industry interests and the Canadian Government indicates that the Wheat Access Facilitation Program is no longer in use. The program was implemented by the United States and Canada as part of the Record of Understanding in 1998, to facilitate exports of U.S. wheat directly to Canadian elevators.

Additionally, the CWB sells wheat to domestic Canadian millers using a North American pricing policy that ensures that its selling prices to Canadian millers are competitive with U.S. prices. According to U.S. interests, the CWB will lower its price to Canadian wheat mills in order to eliminate any possibility of U.S. wheat or flour coming into Canada.[12]

Senator DORGAN. Mr. Rogowsky, thank you very much. Just a quick question on your testimony. Mr. Rogowsky, were you able in your evaluation to compare directly any U.S. and Canadian contracts for wheat to make the direct comparison on the contracts?

Dr. ROGOWSKY. The direct comparisons on the contracts for U.S. and Canadian? We tried the get the data on the U.S. contracts, but it was very hard to make direct contract comparisons.

Senator DORGAN. Why is that?

Dr. ROGOWSKY. Mostly because we were having trouble getting the data. We had a very difficult time getting the data.

Senator DORGAN. Let me ask, Mr. Rogowsky, did you seek data from the Canadian Wheat Board?

Dr. ROGOWSKY. Yes, we did.

[12] According to these interests, the disparity in westbound U.S. and Canadian rail rates resulted in the CWB paying the Canadian wheat mills a bonus.

Senator DORGAN. What was the response?

Dr. ROGOWSKY. Well, actually, we did not. We did not because USTR had already asked for that data and had been refused. We did not have that Canadian data.

Senator DORGAN. So in your investigation you went out to purchasers, but you were not—you did not use any data from the Canadian Wheat Board? You did not have any access to their data on who they were selling to, at what price, and so on?

Dr. ROGOWSKY. No. We have in previous studies tried to get that. USTR had tried to get it. We did not try to get it.

Senator DORGAN. You did not try to get it this time because you failed to get it in previous occasions?

Dr. ROGOWSKY. Correct.

Senator DORGAN. And because the USTR tried to get it and they failed?

Dr. ROGOWSKY. Correct.

Senator DORGAN. They failed because the Canadians refused to cooperate?

Dr. ROGOWSKY. As far as I know, they refused to cooperate, that is correct.

Senator DORGAN. They refused to cooperate with you previously?

Dr. ROGOWSKY. Previously. We did not ask them this time.

Senator DORGAN. And they refused to cooperate now, in your judgment, with the USTR.

The reason I ask the question is, if you are going to compare everything here you really have got to—you have to have all the source data and you were hamstrung in the investigation because you could not get source data from Canada because, they did to you what they did to the GAO, they did to you what they did to the USTR and everybody else. They said: Go take a hike; we do not intend to give you any of that information.

Well, Mr. Johnson, let me just say, I should have said that I think the are two glimmers of hope after well over a decade of dispute: One, when Mickey Cantor imposed a tariff rate quota and, two, when USTR announced, by Mr. Zoellick, that the result of this investigation was that our government believed that Canada was not playing by the rules. Both were glimmers of hope.

The Cantor decision was actually more than a glimmer because he imposed TRQs and in that year there was a substantial difference in the movement of grain from Canada to the U.S. But having said that I think Ambassador Zoellick has done a service by creating this record, I then said that I am disappointed that we did not go the next step.

So let me ask some questions about a tariff rate quota. We have previously applied a tariff rate quota on the Canadian sale of grain in our country, and that existed for only 1 year. Now, the administration, including USTR, applied a tariff rate quota to steel just recently, a different case, I understand. But it is a remedy you are familiar with and a remedy you have been prepared to use.

Let me ask, why are you not prepared to use it in this case and why did you choose not to use a tariff rate quota?

Ambassador Johnson: First of all, a point of clarification, if I am not mistaken the Canadians put a voluntary restraint on their exports to the U.S. under threat of a potential TRQ. So in other

words, there was a law available at that time, Section 22, that allowed for Ambassador Cantor to basically threaten to do a TRQ, the Canadians were concerned about that and came to a voluntary restraint as a result of it, which, as you pointed out, lasted for basically 1 year.

In terms of—I am actually glad you asked the question because the issue came up when I was in North Dakota about steel and about—I will even jump ahead and talk about Canadian lumber. That was another one that came up. Regarding steel, that was the result of a safeguard law. Now, I know to some extent when you are in North Dakota, as I was and you are every weekend, I am sure, trying to explain the differences and nuances of our trade laws is probably more frustrating than enlightening.

But the imposition of a safeguard in the case of steel is a temporary measure basically to allow the industry to adjust to imports, increasing imports of steel. The 301 case was in a safeguard action. The Canadian lumber case was actually an industry-initiated antidumping CVD case that again allowed for additional duties to be placed on Canadian lumber on a temporary basis, with I think the final ruling occurring in May.

So they are different. Now, at the same time, as we pointed out and both of us have mentioned, in looking at the options that we considered in moving forward, we looked at not just what the North Dakota Wheat Commission has asked us to, but we actually looked beyond that. So we responded to the five points they wanted. We are pursuing those in the WTO. The access to the Canadian market we are working with them. We went to North Dakota to get more information on that, and we will be having—have and will be having consultations with the Canadians on that.

But then we added two more. One was the WTO case, as you mentioned. The other was the antidumping CVD, which again is what was used in the case of Canadian lumber. Now, in the case of a TRQ what we are really looking for here is a permanent relief for farmers. We are not looking for a temporary measure. We want to see the Canadian Wheat Board fundamentally reformed.

Our concern is, unlike when the North Dakota Wheat Commission filed their petition, we did not have a Doha Round going at that time, and this is a very critical period in the WTO negotiations because basically between now and next March we are to determine the modalities, the framework of the negotiations. We are going about as we speak of building coalitions to support our position in reforming the Canadian Wheat Board, and a TRQ would have clearly been WTO and NAFTA-inconsistent and then the focus would have been on us instead of on the Canadians, which is what we want to do in the next year.

Senator DORGAN. But Mr. Johnson, your answer tells me that when farmers ask us why there is not a remedy, your answer suggests, well, because we are involved in international negotiations and if we do something that would upset the Canadians it would injure our ability to create a coalition with them to do other things. You know, that is not an answer farmers understand. They see this: one, there is unfair trade; two, there ought to be a remedy to stop it.

Now, the first hearing that I held on this was about 10 years ago. So I am a little impatient here. I am not nearly as impatient as the farmers who are losing money every single day because of unfair trade. You are talking about things that are not going to occur for some long while—reforming the Canadian Wheat Board. The fact is the Canadian Wheat Board existed in the 1980's, did it not?

Ambassador Johnson: I do not know exactly when it started. I know this problem has been in existence for many years.

Senator DORGAN. Well, the point is before NAFTA, before the U.S.–Canadian Free Trade Agreement, we did not have this problem of an avalanche of grain coming down, we just did not. It happened after we negotiated a trade agreement with Canada and Mr. Yeuter gave, regrettably, some concessions that were not disclosed for a couple of years. We discovered later that there were secret concessions in terms of what the acquisition cost would be, how it would be computed. The acquisition cost would not include all of the payments to the Canadian farmers from the government. I believe it was only the first GRP payment.

So we did not even know that when the negotiation was done. In the first hearing we held on this, a USTR official lied to us on that subject, regrettably. But that is not on your watch. That was a decade ago.

My point is this: We have been seeking relief now for almost a decade. I want to show you a couple of charts, if I might, because the charts describe the quantity of grain that has been coming across. I think you can see this chart. A 10-year average, and incidentally this really—this would not exist prior to that, in the 1980's. We did not have a problem at all.

But the 10-year average of Canadian grain exports, to the U.S. this is spring wheat and this is durum. This is the current crop year, by the way, which is why there is a substantial bubble of pressure again, as has been the case now for a decade.

But you can see what is happening to us. It is a relentless intrusion into our market. There are two issues here. One is grain coming into this country and the second is underselling us in an unfair way into third world markets, northern African markets and so on.

But let me just for a couple of minutes ask questions about how our farmers can expect some relief and when. Can you give me any time estimates on when our farmers might see some action that you are describing that would result in real relief for them? Any time estimate?

Ambassador Johnson: Well, let me first say, in terms of when I was talking about coalition-building, it was not building coalitions with the Canadians. It was building coalitions with other countries to isolate the Canadians and to cause reform.

I will just go through the different options. In terms of the antidumping CVD case, again, as I mentioned, I know that Canada has met at least three times in the last month or so, with the Commerce Department, with the ITC in terms of determining how that might go forward. That is a quasi—it is not really our area, but those——

Senator DORGAN. Would you agree that is an unlikely remedy?

Ambassador Johnson: No, I would not agree.

Senator DORGAN. How often has such a case been self-initiated?

Ambassador Johnson: Well, I do not know that the issue is—again, having not been party to those discussions, I do not know that the issue is just self-initiation or not. But in terms of anti-dumping CVD cases being pursued, as we just pointed out, the softwood lumber folks have pursued one and succeeded in getting temporary relief.

Senator DORGAN. What are the odds of our seeing a case, and if you think the odds are good—if you tell me you think that the odds are good that we will see a case, when might such a case exist?

Ambassador Johnson: Well, I would not be giving you odds. It is not my place to be giving odds as to whether or not that would move forward.

Senator DORGAN. Well, why?

Ambassador Johnson: Because it is really up to the industry and the regulatory agencies that are involved in that decision, not USTR.

Senator DORGAN. What is your opinion of it? Do you think, given what you know of the investigation, do you think such a case has merit and should proceed?

Ambassador Johnson: Well, we felt that the reason why we put it on the list of things that should be explored was because we felt that the North Dakota Wheat Commission in their petition and in the 301 investigation had raised additional information and given that market circumstances had changed, that at least was something worth exploring.

So again, it is not for me to prejudge how that quasi-judicial process should proceed, and frankly I think it would be counterproductive if I did.

Senator DORGAN. I understand. But my own view is I think that is an unlikely result, and I think if it did happen it would be long into the future. Do you disagree with me about that?

Ambassador Johnson: Again, I would not want to prejudge as to what the time lines would be or what the probability is. I am not dodging your question as much as it is not my responsibility and I think it would be doing a disservice to the process if I did do that.

Senator DORGAN. But could you cite me one instance in trade in which the Federal Government has been speeding along here, in which we have seen in these kinds of cases an expeditious result?

Ambassador Johnson: Well, no, I cannot cite you one case, but that does not mean that there is not any.

Senator DORGAN. Well, I cannot cite one either.

Ambassador Johnson: In terms of the WTO case, again, because we are going into a legal area that really is unprecedented in terms of international law and we are very interested in doing that, in challenging state trading enterprises, again the nuances of the legal case we would not want to be discussing in public, but I can tell you that our folks have been working very hard, as they did on the 301 investigation, in creating the strongest case possible and in terms of presenting—the first step in that process is really requesting information through the WTO from the Canadians, information that, as you just heard, they have not been forthcoming with in the past.

We anticipate we will be moving forward with that request in a matter of weeks.

Senator DORGAN. But Mr. Johnson, if this were 1995 or 1996 instead of 2002 and we were holding the hearing six, seven years ago, whoever the witness would have been would have said the same thing that you are saying: We are going after STEs, state trading enterprises are sanctioned monopolies that ought not exist, we are going to go after them.

My point is everybody says that. They have been saying that since we started this fight and no action, really no progress.

I am going to have to recognize Senator Burns in just a moment, but would you pick out, of the remedies, the potential remedies you suggested, pick out for me the one that you think might provide the shortest route to a remedy that farmers could say, all right, someone has taken action now to help us? What is the one that has the shortest route to that result?

Ambassador Johnson: Well, my argument would be that we are taking action to help them right now in the steps that we have taken, both in February and since February, in building a case along each one of the lines that we have identified. One of the things that was a concern when I went to North Dakota, I know, is, well, what has happened since February? You had a big press release and then what have you done?

I identified when I was there the actual activities that we have been under in all four of the areas. I think that we have shown a record that we are not sitting still on this and we are moving forward. In terms of again how the antidumping CVD process works is not my role to call. That has the potential for doing something. The WTO case, we are moving forward as aggressively as possible.

In the WTO negotiations, we have already met with some success. At the end of last month we were able to get the export competition, including state trading enterprises, as the first agenda item to be discussed by the negotiators. In terms of the access to the Canadian Wheat Board, or Canada, we have already started the consultative process with Canada.

Now, I know your answer to that is, well, we have started and missed that several times in the past. But at least we are very interested in pursuing that option. I think that, again, the message that came on February 15th and since on the part of the industry and on the part of the administration is that we are committed to working together to fundamentally resolving this issue once and for all. We are not looking for a 1-year solution; we are looking for a permanent solution.

Senator DORGAN. Mr. Johnson, with due respect, let me say that having consultations with Canada on the Canadian grain shipments to the U.S. and the underselling of the U.S. in other markets is like taking a long afternoon walk in the desert without a map. I have heard this—in fact, usually I get a call before somebody goes to Canada to do consultations, just because they want us to understand they are doing something.

But the fact is nothing has ever resulted from it. Every consultation that has been done in the Clinton Administration, the first Bush Administration, resulted in nothing. The Canadians simply thumb their nose at us and say: Look, we have a Wheat Board,

that is the way we do business, we do not intend to give you a shred of information; if you do not like it, tough luck. That has been the result of every single consultation.

So I guess my question is when will our farmers see something that is tangible in terms of a penalty that is imposed on those that are violating trade laws, in this case the Canadians?

Let me come back to you. If you want to respond to that you may, but Senator Burns obviously would like to ask questions and I do not want to monopolize this.

Senator BURNS. Thank you, Mr. Chairman.

I just have a couple of questions. On time lines, Mr. Johnson, we could compare the action taken by this action and also on softwood lumber. It did not take you very long to make a decision on that. So I think there is a comparison there as far as the activity of your office is concerned.

Ms. Terpstra, what would be our estimated total production of durum wheat in the United States this year? Have we got an estimate on that? I am getting estimates anywhere from 110 to 150 million bushels.

Ms. TERPSTRA. I understand our estimate is 80 million bushels.

Senator BURNS. 80?

Ms. TERPSTRA. 80 million bushels.

Senator BURNS. That is as low as it has been in quite a while; is that correct? What was our carryover from this last year? Do you have those numbers?

Ms. TERPSTRA. Roughly 30 million.

Senator BURNS. Roughly 30 million.

It just seems like to me when we start talking about domestic production, and our miller friends are coming up with all kinds of numbers, why they should not have access to the Canadian market under certain circumstances, that we have to figure out a way. It is pretty obvious to me we have been trying to deal with the Canadians on their grain board and the way they market their wheat and grain, okay.

If they are not going to change, should we not start changing the way we have to deal with them? In other words, are there actions that we can take or things structurally that we can do in our marketing, because I will tell you we have not looked at grain marketing in this country for the last 100 years. It has never been a question, the role that the grain companies play in this country. In other words, the Continental Grains and the Cargills and all the people that maybe when it boils down to it—I know at one time there were only five and I think there are less now in reality.

Now, the independents, they say they are formidable in the competition of bidding on this grain. But we have never looked at the way we market our grain. Maybe it is time that we make some changes domestically in order to deal with the government-sponsored monopolies that other countries do. Am I not correct, Australia has a national grain board, do they not? New Zealand, I think. Does not New Zealand have a grain board? I am not sure.

Ms. TERPSTRA. No, New Zealand does not, but Australia does.

Senator BURNS. But Australia does. In other words, if you take Canada and Australia, which is two majors—how about the European Union?

Ambassador Johnson: No.

Senator BURNS. No? In other words, they are all individual and marketed through cooperatives; is that correct?

Ambassador Johnson: Companies.

Senator BURNS. Well, what I am saying is that I think—and I have very few questions. I have got quite a few questions for the next panel. But I think it is time that we look on how we deal with government-sponsored monopolies and take that to the negotiating table, that we are going to deal with these on a different basis than we do if you have got an open market or a bidded market.

Let us change our way, the way we approach that whenever we go into negotiations. We have not questioned, never once have I seen in the Ag Committee and I do not think the chairman has either of anybody questioning the practices or the actions taken by the major grain companies that buy and export American grain. I know they are big and I know they are powerful.

So when I look at what our domestic production is and what our domestic demand is, that gives me a little insight on what we should be doing here as far as positioning our farmers in the market to where they can take advantage of a stronger market, not necessarily maybe from the imports. I know the Canadians. The Canadians are masters at putting up non-tariff barriers. My God, we have faced them—I have lived in Montana. We have faced them and I have gone both ways on that line.

Now we are moving some feeder cattle across the line up there now. But I am telling you, any time they stop my truck and say, well, your wheel base on the tractor of this truck is over 244 inches, you have to sit right here—and nowhere in the manual it says, what is 244 inches on a wheel base of a truck, the tractor that is on the front of that semi? Or they can throw up little things all the time.

Do we do that in return? I do not think we do. I have not heard of it. Maybe I do not get the same reports, it is a little bit slanted. But I think we have to look into those kind of situations and be able to respond to them.

So I just want to know the production and those type things, because I think we have to start looking at a different way we deal. If a country is going to maintain a government-sponsored monopoly, then that is going to put them in a different category than countries who open their markets or the markets are similar to others around the world. I think we have to take a look at that. I really do. I think they have to be treated a little bit differently.

If they continue to do that, then they are going to be dealt with in a different light.

So the sermon is over. I will pass the plate.

Senator DORGAN. Senator Burns, thank you.

We were computing, Ambassador Johnson, what you were alluding to in terms of the period—you heard from farmers about the period from your announcement to now. In the two months following the announcement we had the equivalent of 13,400 18-wheelers come down from Canada, 13,400 truckloads, 18-wheeler trucks, of Canadian grain in the two months.

I guess the question—I am continuing to ask this question because I think farmers need to have an answer. They filed an action.

That is not inexpensive. It required them to put some money together through the Wheat Commission, the State, and so on. They took the initiative. They filed an action.

Yes, it is true that Canada has not been playing fair. We also now understand once again that Canada will not open its information or its books and records from the Wheat Board to us. But nonetheless, we believe Canada is not playing fair and we have said the equivalent to them: You better watch it. Well, so what? We have been telling them that for a decade.

When and how might our farmers in Montana and North Dakota see some remedy in the form of a penalty with respect to those who commit unfair trade or unfair trade with our country?

Ambassador Johnson: Well, first of all, just to clarify in terms of what we have said to the Canadians, and I think again it is a chorus of industry and government together, is we have not said you better watch it. We said: We are going after you. That has been very clear. I think in terms of the WTO context, they are basically becoming more and more isolated and trying to protect that in the negotiations. Our goal is to keep that pressure and that focus on them.

As you look at the different remedies that we are pursuing or the different options that we are pursuing, again—and I should have clarified this on your earlier question before you went to Senator Burns. Part of our consultations with the Canadians is not just what they are doing in our market and what they are doing in third country markets, although that is obviously a concern, but it is also what they are doing in not allowing us to have access to their market.

Some of the things the Senator described is one of the reasons we went to, one of the important reasons we went to North Dakota, was to try to find out what those impediments are. I would like to again hear more about your experience on that, because that has a potential. I met with one of the farmers that was there who only lived five miles from the border with Canada, another one that lived 25 miles away, and they took that seriously as being an opportunity and an opportunity in a couple of different ways: in terms of the transportation system that exists in Canada, that there was a feeling that if we could have access to the transportation system there could be more efficient access, not just to Canada, but third country markets, if we are treated fairly and equally with Canada wheat.

There was an interest in terms of putting, basically putting a crack in the dike of the Canadian Wheat Board. So there was a lot of interest in that and we are very interested in pursuing that. I have actually brought this up with Mr. Van Cleef on a phone conversation with him when we talked about it.

So I think—now, we have done that before. Your note is taken. But I think they also need to recognize that we are hitting on multiple, as Ambassador Zoellick describes it, multiple bullets in the gun. So all these things are moving forward, not just one.

Secondly, on the CVD antidumping case, I should have said this earlier, that the way this works is that there is a preliminary determination, as there is in the softwood lumber case, that puts in a temporary tariff while they produce a final finding. That process

can take a matter of months, so it is not necessarily as—I think you alluded to earlier it can take until your children or grandchildren are involved. These are processes that can move fairly quickly.

In terms of the WTO negotiations, as I said, the modalities are to conclude next year, but the negotiations themselves are to conclude in just over two and a half years. So that again our focus is not—is that we want to make sure that everything we are doing are complementary and mutually reinforcing, both short-term measures and long-term measures, with the ultimate objective being permanent reform and permanent relief for the wheat farmers in this country.

Senator BURNS. Mr. Chairman, if I might.

You mentioned that people who look at an advantage, who live in near proximity to the border. We have farmers that farm both sides of the line. Mr. Johnson, we have—I think probably you go to Botineau, North Dakota, and I think you have got farmers that farm in Canada, they own land in Canada, and they also own land in the United States and they are operating under two different systems. They do not know from one day to the next exactly where they stand as far as when they market grain.

You are right, there are a lot of folks who farm on the prairies of Canada that want to do away with the Wheat Board. But you get from Winnipeg east and that is not the general consensus. Now, something tells me in that case that this is a political question and probably a question that Ottawa feels like that it wants to continue to control and it is not in the hands of the individual farmers.

Ambassador Johnson: Well, I think you raise an excellent point. In fact, one of the farmers that I met with, he was not currently, but had farmed on both sides of the border. It was actually very helpful in hearing his experiences and the comparisons. As I said, we are putting together our consultations as we speak.

So as you know other farmers as well as your own experiences, please get them to us, because now is the time.

Senator BURNS. Well, we have a man that sits on our FSA board in Montana is one of those kind of farmers. So any time you want to visit with Jerry Thusen, and I am sure Mr. Broyles is here, he knows him very well. He is a good man to visit with whenever you start talking about both sides of that border.

I am sorry to intrude here. I have taken far too much liberty here.

Senator DORGAN. No, no, no, no.

The dilemma is that our farmers, given a period, a long period of collapsed prices, are trying to survive in the short term and all of the solutions you describe are solutions you are trying to negotiate in the long term.

Let me ask this question. Is there any evidence, any evidence that one can cite, that the Canadians have altered their behavior since the announcement several months ago?

Ambassador Johnson: Well, the short answer is I have not looked for evidence. We have been looking at what we are going to be doing with them. In terms of—again, I must not be doing a very good job of explaining it. Both the antidumping CVD option could

be a shorter period than years and, depending on what our consultations with Canada could do, have the potential of making some progress.

I think again that that is consistent with what our long-term objective is, and by long-term I do not mean decades. I mean a few years, not decades. I know you are concerned. I appreciate it, and I heard it when I was in North Dakota. But we do not think that it would be constructive to impose a TRQ that would ultimately be challenged, we would lose, and not only would we have lost that TRQ and lost that case, but it will have overlapped exactly with the same period of time that we are trying to build an international coalition.

Senator DORGAN. Why do you say we would lose, Mr. Johnson?

Ambassador Johnson: Because with our WTO obligation since the Uruguay Round and our NAFTA obligations, that our ability to impose tariffs that are above, with this action that are above our bindings, would be WTO-inconsistent.

Senator DORGAN. Even in the teeth of unfair trade?

Ambassador Johnson: But again, that is why an antidumping CVD case is something we can do, because that is a vehicle for addressing those issues, as it was in the softwood lumber case.

Senator DORGAN. Except that the antidumping is being negotiated away, as I understand, as well in these talks. But aside from that, let me just put up a chart. You talked about the U.S. exports to Canada, which are very small; Canadian wheat exports to the U.S., quite large. I want to put this up. This is what the Canadian Wheat Board President said: "Since the United States did not impose tariffs, we have successfully come through our ninth trade challenge."

That is why farmers look at me and look at Conrad Burns and you and they say: Wait a second, the Canadians claim victory and they have not through a decade been required to disclose one shred of evidence that exists in the bowels of the Wheat Board with which we could make better judgments about this. They have come through it. You have said: Canada, you are guilty, but, by the way, there is no remedy.

So the Canadians are gloating about this. They have come through this again. From your testimony, I guess I can only conclude that you cannot give me any time estimate of any kind of a remedy that might exist. Consultations, I am just telling you, buy the plane tickets in bulk and just keep consulting, but nothing will happen and you and I know it. A year from now—in fact, if Senator Burns would like we will schedule another hearing a year from today, and we will ask you, what is the evidence that your consultations with the Canadians have been able to bear fruit? Because no one in your position in the last 10 years has been successful.

Unless you use real levers and real remedies, the Canadians are not going to respond. I mean, the only way that we can do this, it seems to me, is to say to the Canadians: Either you play fair or you ship that durum to Newfoundland. Then when you decide that you are willing to play fair, then let us have reciprocal open markets with fair trade.

So I do not want to keep you much beyond this, but can you give our farmers any hope that there is any remedy that they might see in the next two months, six months, twelve months, and if so what might that be?

Ambassador Johnson: Well, first of all, when it comes to the Canadians gloating over this decision, my sense is that they understand, and I can speak with a fair amount of confidence that they recognize, that this is not business as usual, that we are going aggressively after them. We do have the WTO process, we did launch a round, they are isolated. You had mentioned that the Canadian–U.S. Trade Agreement had allowed for them to continue in operation. Well, we took a lesson from that experience. Next round, we are not allowing them to continue operations as normal, which was a very important message I heard when I was in North Dakota.

Again, at the risk of sounding redundant, there are measures that we are taking, including the possibility of an antidumping CVD investigation, which the Commerce Department and the ITC are discussing with the industry, that is a matter of months if that is decided to be pursued by the industry in their wisdom that that is something that would be constructive for their purpose.

So there are possibilities out there. But again, we want to see permanent relief, and having the Doha round, having this vehicle available to us, with the aggressive time lines that we are dealing with, the last thing that we want to do is create a focus on us and what we are doing that is WTO-inconsistent versus what we think the Canadians are doing WTO-inconsistent. And either it is WTO-inconsistent in the terms that we are taking the case, it is WTO-inconsistent in terms of if the rules are not strong enough, which I think is what you are arguing, then we need to strengthen them when it comes to the export state trading monopolies.

We are pursuing both of those options very, very aggressively and, regardless of what they might say in the press, I think the Canadians understand that.

Senator DORGAN. But every trade ambassador that I have talked to in a decade has said exactly the same thing. Charlene Barshefsky said it, they all said it, Republicans and Democrats. I could put a blindfold on and simply listen and could not tell you the difference between any administration in the last 12 years, and they all say it. Look, I wish you well. I hope you succeed in everything that you describe today.

As I said when I started, I think there is a glimmer of hope that you at least—this administration, Mr. Zoellick and you have at least said, look, Canada, you are engaged in trading that is unfair. But you stopped short of the finish line, Ambassador Johnson. The finish line is to say: you are guilty of unfair trade and we are imposing a penalty. I want you to get to the finish line. I want to help you get there, not next year and not five years from now, but I would like you to get there next week.

Ambassador Johnson: Well, the only comparison I would make is we are not finished, and we are going after this. I am not unrealistic. I recognize that this problem has existed for at least a decade, if not decades, and we are committed to doing this. We are going to have to build up our record of confidence. There is a lot of disillusionment, I think is a safe description, as you were describing,

in the countryside regarding trade in general, but in particular the Canadian Wheat Board.

Senator DORGAN. No, they are furious. I mean, disillusionment—Charlene Barshefsky went to Minot as well. Farmers are just furious about this, because they know it is unfair and they cannot get anybody to take notice to demand that we have fair trade, and if our trading partners will not give us fair trade then you slap penalties on. They are furious that that does not happen.

Sorry to interrupt you.

Ambassador Johnson: No, that is fine. But from our point of view, we know that just by me sitting here or me showing up in North Dakota that the is not going to make everyone go to bed and sleep better at night, thinking, well, good, they are on the job, they have solved the problem, or we can be sure that it is going to solve the problem.

We are going to have to build a record of success. If you call a hearing a year from now, I am sure I will be here at your request and would be able to outline at that point the things that we are doing right now. As I said, as far as I am concerned we have not passed the finish line. We are just starting on what we are going after.

I think the Canadians recognize that.

Senator DORGAN. Ambassador Johnson, I am going to call a hearing six months from now, mid–October. That is six months. Then let us talk in six months, what has happened between now and then. If in two months we have 13,500 18-wheelers bringing grain south during that period, how much additional grain is coming there? They are at a record pace, as you know. I want to know what has happened in six months.

I hope that you will go back and tell the folks you work with, Mr. Zoellick, Ambassador Zoellick and others, that it is time to slap a TRQ on these folks, and if there is a risk to do that, let us take some risks for a change on behalf of our farmers. Just take some risks and demonstrate to the rest of the world that we are interested in expanded free and fair trade, but, by God, this country is no longer going to sit back and allow companies and individuals to be injured by unfair trade.

So you are good to come and testify today. Let me again say that I took heart in the announcement a couple of months ago. That is something that others did not do and should have done. So thank you for that. But as I said, you stopped short of the finish line and I want to help you get there in a hurry. I am going to ask that we have another hearing in six months, and I hope that you can work furiously between now and six months and that we will have testimony we will see substantial progress.

Ambassador Johnson, Ms. Terpstra and Mr. Rogowsky, thank you very much for being here today. We appreciate it.

If we can excuse these witnesses, we will ask the second panel to come forward: Neal Fisher, Administrator, North Dakota Wheat Commission; Gary Broyles, President, National Association of Wheat Growers—he is a farmer from Montana—Charles Hunnicutt, counsel at the law firm of Robins, Kaplan, Miller and Ciresi; and John Miller, President of the Miller Milling Company.

If you would please come forward and take seats, we would appreciate having your testimony.

Senator BURNS. I might add, Mr. Chairman, that as Mr. Broyles makes his way to the table, he has got something on his ranch, grain farm out at Rapplegee, Montana, that he has not had in the last four years.

Senator DORGAN. What is that?

Senator BURNS. Mud.

Senator DORGAN. If we could have the door closed, we will begin. Let me ask Mr. Fisher to begin. Mr. Fisher is the Administrator of the North Dakota Wheat Commission. Neal, thank you for being with us. Why do you not proceed, and we will accept your entire statement as a part of the record and you may summarize.

STATEMENT OF NEAL FISHER, ADMINISTRATOR, NORTH DAKOTA WHEAT COMMISSION

Mr. FISHER. Thank you, Mr. Chairman and Senator Burns, for this opportunity to appear here today. I have some charts that are attached to the testimony and I may make some reference to a couple of other charts as we move forward. But again, thank you for this opportunity.

My name is Neal Fisher. My family has a farming and ranching operation in central North Dakota in Kidder County, where we raise cattle, wheat, other small grains. I am also the Administrator of the North Dakota Wheat Commission, an entirely producer-funded, producer-controlled organization that represents over 19,500 North Dakota wheat producers.

Today's hearing, as you might guess, is of great interest to North Dakota farmers. The U.S. wheat industry has been at the forefront of every major trade debate facing U.S. agriculture. Our experience with the U.S.–Canada Free Trade Agreement, with NAFTA, and the bilateral disputes that have occurred since 1989 dictates that we stay very deeply involved because we know that our futures rest heavily on trade negotiations and the dynamic nature of U.S. farm policy, and it affects ultimately our farm incomes.

The United States and Canada are the world's largest wheat exporters and, while Canada is a major wheat producer, its domestic market is relatively small. So with this large quantity of wheat, it has tremendous market power to set prices and also to create havoc in the market. It places the Canadian Wheat Board in a unique position to inflict injury on producers like our own in North Dakota and Montana and other foreign competitors, as Ambassador Johnson has pointed out.

The Canadian Wheat Board is a self-professed government-sanctioned state trading enterprise or STE. It has total control over the exports of all western Canadian wheat. The main impact of the Wheat Board's marketing practices is felt in the United States and in other third country wheat markets where the board is active. We compete head to head for market share.

The effect of the Wheat Board on the average U.S. wheat farmer has been drastically negative. I think that has been well-documented in the case. Wheat farmers in North Dakota and Montana are particularly vulnerable to the situation, not only because we live on this common border that was described this morning, but

that we also produce high-quality specialty market wheats that are very similar in application.

Since the implementation of the Canada–U.S. Free Trade Agreement in 1989 and the North American Free Trade Agreement in 1994, the tensions across the border have only worsened. As the largest single wheat exporting entity, the Canadian Wheat Board's monopoly actions have distorted the world grain trade for years. They have deflated world prices and they have reduced returns to U.S. and in my case—I represent the North Dakota producers—definitely taken money out of the pockets of North Dakota producers.

I would like to take a break, Mr. Chairman, from the outline of my prepared remarks and just highlight some of the impacts on our industry and on North Dakota farm families like my own, if I might. I have some charts that I will refer to, but an immediate concern of mine right now is my 22-year-old son, who is a fifth generation farmer and rancher in North Dakota and he hopes to carry on the dream of his great grandparents. He, like me, is concerned about his future, and I think there is good reason for that.

Attached to my testimony there is a chart that shows North Dakota wheat plantings and the history of it. What you will find here is a 30 percent decline in the last six short years in that commitment of North Dakota producers to wheat. That is not of their own accord. It is because they have been discouraged from doing so by the practices of the Canadian Wheat Board, and I think we will point that out as we go through the testimony.

The most recent report from USDA indicates that there is another 6 percent decline in acres in North Dakota. Most of the producers think it is the result, in part at least, of a conscious effort on the part of the Wheat Board to demoralize production and their producer attitude.

I think that chart also measures the impact of the abuse of the monopoly power granted by the Canadian government to the Canadian Wheat Board: this guaranteed borrowing authority that was well documented in the case, and the generous freight advantages that they have. These powers and privileges have resulted in noncommercial operations of the Wheat Board and have created this downward spiral in our wheat production in the U.S., particularly in the spring wheat and durum region.

Some producers have called this a self-fulfilling prophecy, if you will, that the Wheat Board targets you as a market, depresses prices and replaces you as a supplier. It has been documented very well in the U.S. You increase the imports. That depresses prices. It creates this disillusionment with planting wheat. Production goes down. Some would then justify additional imports, and you start the cycle all over again.

If you do that enough times, pretty soon the U.S. industry is dependent totally on a foreign government for its source of raw material.

I have also some additional charts that show the plantings of durum in the United States. I know that the USDA report is only a prediction at this time, but it does not show the kind of response that one would anticipate or one would think would show up on the basis of the shorter world wheat situation and the world durum sit-

uation. We have not seen the producer response that we would anticipate.

If you look at the chart that shows the Canadian production, also attached, we see a very different situation. We did see a 20 percent increase in durum plantings in Canada this year. We think that may be related to the import picture, which shows again, if you extrapolate from the first 9 months of this marketing year, record levels of imports. We may very well come close to eclipsing the record year of imports of Canadian wheat into this country.

Also notable on this chart I think is the gap that we see back in the 1995–1996 period when the TRQ was in place and actually had some impact on import levels and produce responses. You will notice that the equivalency or the adequacy of U.S. durum and spring wheat availability also tracked very well with that. We did see a producer response.

If we look at another chart that I have in hand here, that we will again attach to our testimony, it shows the adequacy level of U.S. wheat and the lack of need, if you will, for Canadian imports. It shows that in fact some of the years when Canadian imports were the highest we actually had the greatest availability of U.S. supplies.

So I think it is an inconsistent message we sometimes hear from our critics on this issue. I have other documentation that will support that.

One last reference that I would like to make is, I am holding a stack of documents which represents 100 days trade at the Minneapolis Grain Exchange, 100 days of trade, and you find only 9 active bids for durum. The under-the-table long-term contract deals offered by the Canadian Wheat Board to processors here and around the world have taken away the need for price discovery at the Minneapolis Grain Exchange. The trade goes on without having to be documented anywhere.

If I may, I will return to some more organized comments at this time. The trend in imports of Canadian spring wheat and durum since the implementation of the free trade agreements, as we have said, has grown dramatically, but a temporary reprieve was accomplished when we did have the tariff rate quota. The recent trends and the impacts they are having on U.S. producers are indeed startling.

We had a decline in domestic stocks this year, a slight decline, and we thought that would bring the producers running. Instead they have been sufficiently demoralized so that they have not responded to the signals.

As another example of the market issue, simply put, the noncommercial, non-transparent operations of the Canadian Wheat Board have led to a dysfunctional market in our country.

We were encouraged by the cataloguing and the confirmation of all of these allegations that we have made for so many years in the Section 301 investigation and that the result was the affirmative finding on February 15th. Unfortunately, on February 15th we were also disappointed, as you indicated, Senator, that tariff rate quotas were not going to be a part of the remedy at that time.

The TRQ was the preferred choice of our growers in the U.S. wheat industry for several reasons. It provides that immediate re-

lief that was being discussed earlier this morning. But probably fitting into everybody's discussion, it also provides the best leverage to bring the Canadians to serious negotiations. I think that is something that Ambassador Johnson and everyone would want to see, is a serious negotiating position offered by the Canadians.

The position of the North Dakota Wheat Commission and the majority of North Dakota wheat farmers is cautious optimism for the U.S. Trade Representative's plan. We were deeply disappointed, as I said, that Ambassador Zoellick chose not to impose the tariff rate quotas, but we are pleased with this sort of get-tough dialogue that we are hearing.

But there are some problems here. Under the current USTR plan, a solution, as you said, is many years away. Many of our farmers may not last that long.

So, Mr. Chairman, time is not on the side of the American wheat farmer. We need immediate relief to offset the ongoing injury. We harbor no illusions that the Wheat Board is going to change any of its position any time soon, but we need to hear your voice, the voice of the committee, certainly as we have this morning on this issue.

The North Dakota Wheat Commission also appreciates the position of the U.S. Millers concerning state trading enterprises. We were encouraged that they were supporting the U.S. commitment to impose discipline on these monopoly state trading enterprises. But we have also been disappointed that the millers and the North American Millers Association have not supported or stayed on the sidelines, as it were, as this case progressed. Instead their position might be a bit self-serving. It is a beneficial commercial position that they have with the Canadian Wheat Board in many instances.

The imposition of a tariff rate quota would not threaten their access to sufficient quantities. The depictions in the charts that I have here will support that. Instead, The millers have sacrificed the long-term benefits that could be gained from true reform of the Wheat Board and the free and fair trade that might result from that.

One of the ironies of all that is that I think if nothing is done U.S. millers and exporters will continue to become increasingly dependent, as I said earlier, on a foreign government and its supply monopoly for the supply of their principal raw material, if you let that self-fulfilling prophecy play out.

Maybe I have covered enough of the position of the North Dakota Wheat Commission at this time. I think we will have some additional interesting producer comments from Mr. Broyles. I do appreciate the opportunity to testify before you here today, and I cannot stress the urgency enough in the hearts and minds of all of our producers on this very serious issue.

Thank you.

[The prepared statement of Mr. Fisher follows:]

PREPARED STATEMENT OF NEAL FISHER, ADMINISTRATOR, NORTH DAKOTA WHEAT COMMISSION

Thank you Mr. Chairman and Members of the Committee for the opportunity to present this statement today. My name is Neal Fisher, and my family has a farming and ranching operation in Kidder County, North Dakota, where we raise cattle, wheat and other small grains. I am also the Administrator of the North Dakota

Wheat Commission, an entirely producer-controlled organization that represents over 19,500 North Dakota wheat producers. The North Dakota Wheat Commission was established in 1959 for the purpose of promoting, aiding and developing the orderly marketing and processing of North Dakota wheat. Today, it works to expand worldwide use of U.S. hard red spring and durum wheat through export market development, domestic promotion, research, trade and public information initiatives. And all too often, we also find it necessary to assist our producer members in defending themselves and their markets from the distortions and injury caused by unfair trading practices of some foreign competitors.

Today's hearing is of great interest to North Dakota farmers. I am proud to acknowledge that the North Dakota Wheat Commission, along with U.S. Wheat Associates, the Wheat Export Trade Education Committee, the National Association of Wheat Growers, and many other state wheat organizations have been at the forefront of every major trade debate facing U.S. agriculture. Our experience, awakened by the Canada-United States Free Trade Agreement and forged in the bilateral disputes with Canada since 1989, dictates that farmers must remain deeply involved in the development and implementation of U.S. trade policy. We see trade and trade negotiations as dynamic elements of U.S. farm policy and ultimately farm income.

The United States and Canada are the world's largest wheat exporters. On average, U.S. production of spring wheat at 506 million bushels annually is nearly double the amount used domestically for food, seed and residual purposes. U.S. production of durum averages just over 110 million bushels annually and has outpaced domestic use in all but one of the last ten years. While Canada is a major wheat producer, its domestic market is relatively small. Thus, with its vast quantity of wheat available for export, it has become the acknowledged price setter for wheat in the international market. This places the Canadian Wheat Board in a unique position to inflict injury on its foreign competitors who cannot discipline the process in a meaningful way by exporting to Canada. And, the Canadian Wheat Board is a government-sanctioned state trading enterprise, or "STE", which has total control over the export of western Canadian wheat. With a small home market, the main impact of the Canadian Wheat Board's marketing practices is felt in the United States and in other third country wheat markets around the world in which the Board is active.

The impact of the Canadian Wheat Board on the average U.S. wheat farmer has been drastically negative. We trace our problems with the Canadian Wheat Board back to the negotiations for the CUSTA which did not adequately address the practices of state-supported monopoly export boards and their impact on U.S. producers. Wheat farmers in North Dakota have been particularly vulnerable to these practices not only because we live along the border with Canada, but also because we produce specialty wheats for the same export markets as does the Canadian Wheat Board. The wheat belt for hard red spring wheat and durum does not recognize the U.S.-Canada border.

Since the implementation of the Canada-United States Free Trade Agreement in 1989 and the North American Free Trade Agreement in 1994, the tensions across the border over wheat trade have worsened. As the world's largest single wheat exporting entity, the Canadian Wheat Board's monopoly actions distort world grain trade and deflate world wheat prices. Aspects of those unfair practices are not just persistent, but actually growing under NAFTA. Canada's unfair trade practices have reduced returns to U.S. producers, and as a result have raised U.S. taxpayer outlays in the form of larger loan deficiency payments and emergency government assistance payments.

I have seen firsthand the injury suffered by United States wheat growers, particularly North Dakota producers, from the unfair trading practices of the Canadian Wheat Board. The impact of the Board's discriminatory pricing and market practices are having a devastating effect on our farming economy.

As the series of charts attached to my statement illustrate, the negative impacts have been lost domestic market share, reduced prices and lost acres. The first chart shows a loss of one-third of the wheat acres in North Dakota since 1996. Low market prices due to the ever increasing influx of Canadian wheat imports continues to move producers out of wheat production. Unfortunately, it is becoming a self-fulfilling prophecy. Our domestic milling and pasta industries are becoming more dependent on a foreign source for its product needs in hard red spring wheat and durum .

The milling and pasta industries are quick to incorrectly point to alleged inefficiency on the part of U.S. producers or lack of adequate production. However, you can clearly see that supplies of both durum and hard red spring wheat have been more than adequate to cover domestic needs. It is simply because U.S. millers and pasta producers are continually receiving unfairly priced and marketed Canadian Wheat Board wheat and durum. This is not healthy economically for U.S. consumers

or U.S. workers, in addition to the loss it is creating across farm enterprises in North Dakota.

The trend in imports of Canadian spring wheat and durum since implementation of the Canada-United States Free Trade Agreement has grown dramatically. A temporary reprieve occurred in the mid–1990s when a successful U.S. Section 22 investigation brought about tariff rate quotas. This tariff rate quota was successful in bringing about true market signals to both U.S. producers and end-users. As some of the later charts indicate, this resulted in a fair market price and increased acres and production which provided end-users with more stable supplies to draw on. Since the elimination of the tariff rate quota however, Canadian wheat and durum imports are once again on a dangerous upward trend. This year, current trends will take us to 18.5 million bushels of durum and 44 million bushels of spring wheat. This would be the second highest level of durum imports ever from Canada and will mean the loss of 25 percent of the U.S. domestic market in durum and 15 to 20 percent in hard red spring wheat.

The impact these recent trends are having on U.S. producers is startling. This year domestic stocks of durum were projected to be drawn down to tight levels of 25 million bushels, compared to more recent years of 50 million bushels. This should have provided stronger market prices as end-users rationalized the tighter supplies. This has not happened however. Instead, cheaper priced Canadian durum imports have kept prices low and reduced market returns for U.S. producers. The result of all this—U.S. producers may not respond with higher planting intentions this year. The March 2002 U.S. Department of Agriculture producer survey showed acres could fall by 2 percent in the U.S. and 5 percent in North Dakota. As I mentioned earlier, in the past, a normal functioning market should bring about higher prices to entice production when stocks are drawn down. Producers then respond with increased plantings the following year to meet domestic needs. Why is that not happening this year? As I mentioned earlier, it is becoming a self-fulfilling prophecy. The U.S. end-user will become increasingly dependent on a foreign source for its raw material as Canadian Wheat Board predatory pricing pushes U.S. producers out of production.

To better show the impact on our market, I have with me a stack of Minneapolis Grain Exchange price quotas from last November. Despite more than five months of price quotes, there are minimal quotes for durum. How can there not be an impact on our market? The non-transparent nature of the Canadian Wheat Board in the U.S. market has eliminated all typical market signals. There are two sides to every market, a buyer and a seller. When the buyers do not even need to put forth bids because of the under-the-table offers they are getting from the Canadians, U.S. wheat producers have no way to respond. Instead they see U.S. Department of Agriculture forecasts for tight domestic stocks lead to lower and lower prices. Simply, the non-commercial operations of the Canadian Wheat Board have led to a dysfunctional market.

The Canadian Wheat Board is more than a "farmers' marketing agency." It has been given monopoly authority under federal legislation which allows it to control the marketing and sale of wheat. It boasts on its web site that it's "the only game in town" and has publicly admitted that it has the ability to charge different prices in various export markets as part of its export strategy. It uses this policy of international price discrimination to hurt both the domestic and export sales by U.S. growers. All of these practices were catalogued and confirmed in the Section 301 investigation which resulted in the affirmative finding.

Indeed, the Canadian Wheat Board is the largest such wheat trading entity in the world, controlling annual revenues of some $4.4 billion. Past investigations never vindicated the Board's activities as it claims. Instead they inevitably led to the Section 301 investigation and to this moment of truth. Can U.S. and Canadian wheat farmers continue to co-exist in a market where one country's farmers compete in a free market, while the farmers of the other country hunger for the right and freedom to sell wheat on the open market but are forced to turn it over to a government-sanctioned and financed monopoly marketing board? U.S. wheat producers say no. And significantly, the U.S. Trade Representative has now agreed.

Unfortunately, on February 15th, the Office of the U.S. Trade Representative determined that tariff rate quotas were not an appropriate remedy to deal with the Canadian Wheat Board at this time. The tariff rate quota was the preferred first choice of our growers and the U.S. wheat industry for several reasons. In particular, it would provide an immediate and much needed remedy; but, also because it would provide leverage against the Canadian Wheat Board which will lead to a negotiated outcome. Instead of the tariff rate quotas, the U.S. Trade Representative has recommended a multipronged strategy designed to accomplish our shared goal—the elimination of the CWB.

The position of the North Dakota Wheat Commission and the majority of North Dakota wheat farmers is cautious optimism for the U.S. Trade Representative's plan. We are disappointed that Ambassador Zoellick chose not to impose tariff rate quotas, but we are pleased that our government has finally committed to resolving this ongoing trade dispute.

The North Dakota Wheat Commission applauds our government's "get tough" attitude and we agree and support the need for reform in the next round of WTO negotiations. However, there is one major problem, a solution is at best several years away and many of our farmers will not last that long. Mr. Chairman, time is not on the side of the American wheat farmer. We need immediate relief to offset the ongoing injury inflicted upon us by the CWB and the Government of Canada.

The Canadian Wheat Board has, in the past decade, maintained the facade that its increased exports of wheat to the United States are the direct result of "normal" market forces, and that it does not have the incentive or ability to engage in predatory conduct and market distortion. This line of argument is patently false, and no economic data support it. Even many Canadian wheat growers acknowledge that the Board is not market driven, and have long argued that it should be eradicated or at least subject to market competition. Unfortunately, Canadian farmers have no choice. The Canadian Wheat Board's mandate was originally supply management to the Canadian Government and selling farmers' wheat and barley. However, that mandate has been lost as the Board has increasingly shifted its mission to the self-serving protection of itself and the status quo. In essence, it has become the center of domestic farm policy in Canada. According to one Canadian source, the Canadian Wheat Board is now "dedicated to the cause of single desk selling, pooling and government guarantees. These are its principles—its 'pillars,' as it calls them—and the Canadian Wheat Board will do anything to defend them."

We harbor no illusion that the Canadian Wheat Board or the Canadian Government will alter any of their prior positions on the status and activities of the Board unless the U.S. and the international community demand a change. Although they claim innocence, they have continuously responded by deflecting criticism and making false allegations, and by steadfastly refusing access to relevant information and hard data which would once and for all allow the U.S. government to conduct a full investigation into U.S./Canada wheat trade. If the Canadian Wheat Board truly has nothing of which to be ashamed, then Canada should have no reluctance in releasing information in a confidential manner. Failure of one of our major trading partners to respond to legitimate questions after tens years of repeatedly asking, should be unacceptable to the U.S. trade officials.

The injury to U.S. farmers is significant and longstanding. The loss to the Canadian Wheat Board of exports to third-country markets detailed in the Section 301 investigation is a large problem—the ebb and flow of competition losses in some markets is frequently not made up by gains in others and U.S. producers see their stocks rise due to unfair Canadian Wheat Board activities which limit the ability to increase U.S. exports in large crop years. In addition, the substantial costs of bringing the necessary trade actions to respond to the Canadian Wheat Board's unfair practices are imposing great costs on farmer organizations like the North Dakota Wheat Commission that could otherwise be fully devoted to growing the market and supporting trade enhancement measures like the Free Trade Area of the Americas.

After ten years of grappling with this issue, we need your help and support. Ambassador Zoellick needs to hear your voice and understand that U.S. wheat farmers need a resolution of this matter. With strong Congressional support and oversight, this trade problem will be aggressively pursued, and could present a significant opportunity to reach a solution that provides short-term relief for wheat farmers, and a longer term solution to the problem of a state-run monopoly operating in a free trade area and distorting international trade.

U.S. wheat farmers are not asking for any advantage, we just want a level playing field, and are simply insisting that the Canadian Wheat Board operate in a fully transparent manner under commercial terms in competition with other exporters of grain and to allow full market access for U.S. wheat in Canada shall go a long way in creating market equality.

The North Dakota Wheat Commission appreciates the position of U.S. millers concerning state trading enterprises, and in supporting the U.S. commitment to impose discipline on monopoly state trading enterprises under the WTO. Both the North American Millers Association and the North American Export Grain Association have expressed concern over the market distortions which inevitably result given the legislative protection from competitive discipline enjoyed by the Canadian Wheat Board, and that state trading enterprises such as the Canadian Wheat Board must be forced to accept a larger exposure to competitive market forces.

Thus, we have been greatly disappointed that millers and the North American Millers' Association, have not supported, or at least stayed on the sidelines, in this investigation. This trade matter is not a threat to the U.S. milling industry's supply of wheat. Their argument that they need access to Canadian wheat for quality purposes was shown to be false throughout the investigation. NAMA's position during the Section 301 investigation, and likely continuing today, is simply a selfserving commercial position because U.S. millers know they can buy their wheat cheaper from Canada. The web of influence of the Canadian Wheat Board is vast and NAMA's position has proven this. Despite an official NAMA position paper which calls for an end to discriminatory and distorting trade practices and state trading enterprises in agriculture, the NAMA and its member millers were afraid to bite the hand that has been feeding them underpriced wheat for the past decade. Despite our assurances that any action we would ask the U.S. government to take against the Canadian Wheat Board—even the imposition of tariff rate quotas—would not threaten their access to sufficient quantities of quality wheat, they sacrifice the long-term benefits that they would gain from true reform of the Board, and free and fair trade, for the short-term benefit of cheap, underpriced Canadian wheat. And the irony, if nothing is done, is that U.S. millers and exporters will continue to become increasingly dependent upon a foreign government monopoly for the supply of their principal raw material.

I would like to once again stress to them that the short-term remedies we continue to seek from the U.S. Trade Representative will not create any supply shortages for U.S. domestic millers, pasta manufacturers or grain exporters. The tariff rate quotas we are suggesting are not meant to shut down border trade. The North Dakota Wheat Commission, with its wheat allies, has focused on the longer-term goal which is the breaking up of the Canadian Wheat Board monopoly. Tariff rate quotas will help U.S. wheat farmers survive in the short-term until the longer-term goals can be achieved. If a tariff rate quota is implemented, there will be ample domestic supply and carry-over wheat stock so that our domestic millers and exporters will not be adversely affected. As such, they should be supportive of our efforts to combat the trade distorting practices and price discrimination engaged in by the Canadian Wheat Board, for resolution of this problem will also be beneficial to their efforts to obtain the highest quality wheat at fairly established prices once the wheat market is operating openly and freely.

Mr. Chairman, over the last decade, the national wheat organizations have supported the NAFTA, annual MFN for China, the Uruguay Round Agreement of GATT, PNTR for China, fasttrack (now-Trade Promotion Authority), and continued negotiations for agricultural trade reform in the WTO. With the Canadian Wheat Board trade dispute unresolved, it becomes increasingly difficult to convince our rank and file producers how they can directly benefit from these expanded trade opportunities. To a certain degree that sentiment has been exacerbated, not lessened, with Ambassador Zoellick's affirmative finding. With the injury we have incurred over the past decade, our producers are frustrated that their government has recognized an injury, but will not at this time provide the short-term relief we need in order to stem the ongoing damage caused by the unfair practices of the Canadian Wheat Board. While we appreciate and support the actions and overall goals cited in the February 15th finding, our U.S. trade officials must realize that without short-term relief many of America's wheat farmers will not survive long enough to benefit from resolution of this trade problem which under the U.S. Trade Representatives current plan of action is years away.

I thank you for the opportunity to testify before the Committee today and look forward to answering any questions which you may have.

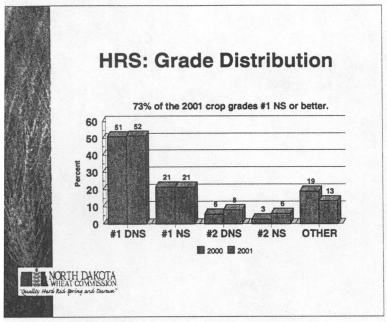
NORTH DAKOTA CROP PLANTINGS
(Thousand Acres)

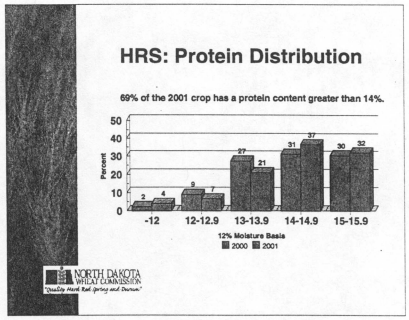
Crop	1996	1997	1998	1999	2000	2001	*2002	Change
All Wheat	**12,680**	**11,570**	**9,770**	**9,410**	**10,170**	**9,450**	**8,580**	*-9%*
Spring	**9,600**	**8,800**	**6,700**	**5,900**	**6,800**	**7,100**	**6,400**	*-10%*
Durum	**3,000**	**2,700**	**3,000**	**3,450**	**3,250**	**2,200**	**2,100**	*-5%*
Barley	2,650	2,400	2,000	1,350	1,900	1,500	1,500	*0%*
Sunflower	1,180	1,470	1,990	1,700	1,340	1,090	1,160	*6%*
Oats	530	700	730	650	600	575	700	*22%*
Corn	900	800	970	800	1,080	880	1,200	*36%*
Soybeans	850	1,200	1,500	1,350	1,900	2,150	2,600	*21%*
Dry beans	580	600	750	630	610	440	600	*36%*
Flax	80	120	280	300	540	550	575	*5%*
Sugarbeets	227	231	250	255	258	262	267	*2%*
Canola	220	500	800	850	1,270	1,300	1,320	*2%*
Total Crops	**19,897**	**19,591**	**19,040**	**17,295**	**19,668**	**18,197**	**18,502**	
Summerfallow	2,000	1,800	1,700	3,000	1,950	3,000	3,000	**
Unknown	700	1,150	1,850	1,900	850	1,000	750	**
CRP Acres	3,000	2,800	3,300	3,400	3,600	3,600	3,600	
Hay	2,900	3,150	2,600	2,900	2,450	2,700	2,600	
Total Acres	**28,497**	**28,491**	**28,490**	**28,495**	**28,518**	**28,497**	**28,452**	

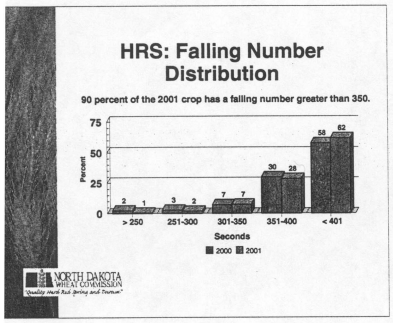
*USDA March 2002 Report

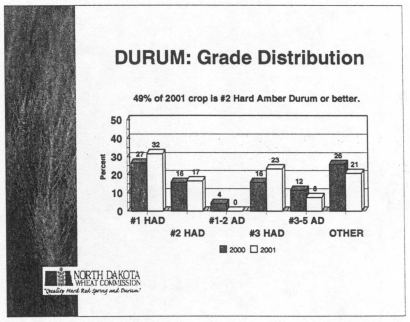
NDWC 4/8/02

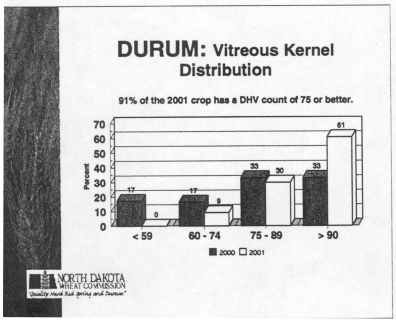
** Unofficial estimates for 2001 -2002

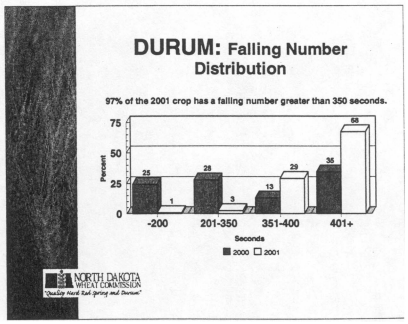

HRS: Grade Distribution
73% of the 2001 crop grades #1 NS or better.
Percent
60
50
40
30
20
10
0
51 52
21 21
6 8
3 5
19 13
#1 DNS
#1 NS
#2 DNS
#2 NS
OTHER
2000 2001
NORTH DAKOTA WHEAT COMMISSION
"Quality Hard Red Spring and Durum"

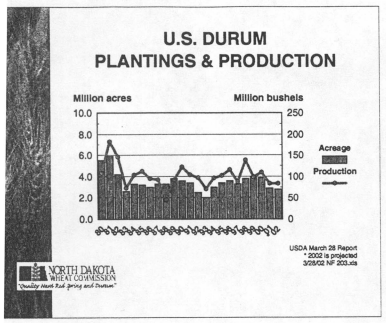

HRS: Protein Distribution
69% of the 2001 crop has a protein content greater than 14%.
Percent
50
40
30
20
10
0
2 4
9 7
27 21
31 37
30 32
-12
12-12.9
13-13.9
14-14.9
15-15.9
12% Moisture Basis
2000 2001
NORTH DAKOTA WHEAT COMMISSION
"Quality Hard Red Spring and Durum"

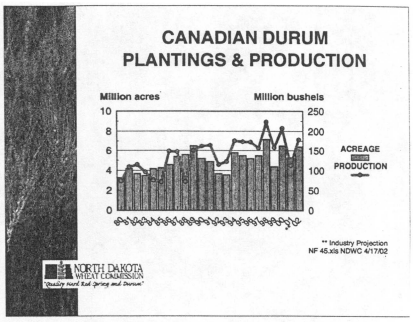

HRS: Falling Number Distribution
90 percent of the 2001 crop has a falling number greater than 350.
Percent
75
50
25
0
2 1
3 2
7 7
30 28
58 62
> 250
251-300
301-350
351-400
< 401
Seconds
2000 2001
NORTH DAKOTA WHEAT COMMISSION
"Quality Hard Red Spring and Durum"

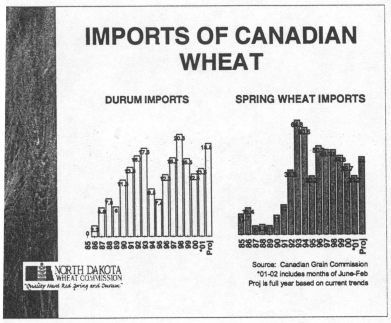

DURUM: Grade Distribution
49% of 2001 crop is #2 Hard Amber Durum or better.
Percent
50
40
30
20
10
0
27 32
16 17
4 0
16 23
12 8
26 21
#1 HAD
#2 HAD
#1-2 AD
#3 HAD
#3-5 AD
OTHER
2000 2001
NORTH DAKOTA WHEAT COMMISSION
"Quality Hard Red Spring and Durum"

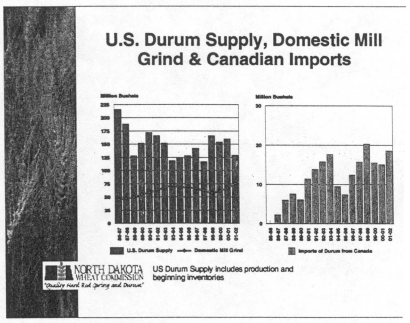

DURUM: Vitreous Kernel Distribution
91% of the 2001 crop has a DHV count of 75 or better.
Percent
70
60
50
40
30
20
10
0
17 0
17 9
33 30
33 61
< 59
60 - 74
75 - 89
> 90
2000 2001
NORTH DAKOTA WHEAT COMMISSION
"Quality Hard Red Spring and Durum"

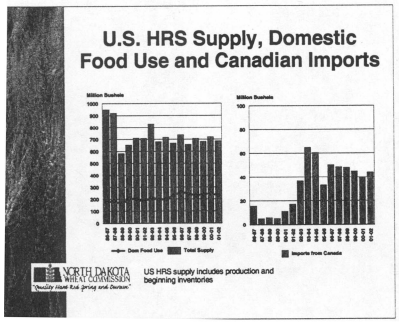

DURUM: Falling Number Distribution
97% of the 2001 crop has a falling number greater than 350 seconds.
Percent
75
50
25
0
25 1
26 3
13 29
35 68
-200
201-350
351-400
401+
Seconds
2000 2001
NORTH DAKOTA WHEAT COMMISSION
"Quality Hard Red Spring and Durum"


U.S. DURUM
PLANTINGS & PRODUCTION
Million acres
Million bushels
10.0
8.0
6.0
4.0
2.0
0.0
250
200
150
100
50
0
Acreage
Production
USDA March 28 Report
* 2002 is projected
3/28/02 NF 203.xls
NORTH DAKOTA
WHEAT COMMISSION
"Quality round Red Spring and Durum"


CANADIAN DURUM
PLANTINGS & PRODUCTION
Million acres
Million bushels
10
8
6
4
2
0
250
200
150
100
50
0
ACREAGE
PRODUCTION
** Industry Projection
NF 45.xls NDWC 4/17/02
NORTH DAKOTA
WHEAT COMMISSION
"Quality round Red Spring and Durum"


IMPORTS OF CANADIAN
WHEAT
DURUM IMPORTS
SPRING WHEAT IMPORTS
Proj
Proj
Source: Canadian Grain Commission
*01-02 includes months of June-Feb
Proj is full year based on current trends
NORTH DAKOTA
WHEAT COMMISSION
"Quality round Red Spring and Durum"


U.S. Durum Supply, Domestic Mill
Grind & Canadian Imports
Million Bushels
Million Bushels
30
20
10
0
U.S. Durum Supply
Domestic Mill Grind
Imports of Durum from Canada
US Durum Supply includes production and
beginning inventories
NORTH DAKOTA
WHEAT COMMISSION
"Quality round Red Spring and Durum"


U.S. HRS Supply, Domestic
Food Use and Canadian Imports
Million Bushels
Million Bushels
Dom Food Use
Total Supply
Imports from Canada
US HRS supply includes production and
beginning inventories
NORTH DAKOTA
WHEAT COMMISSION
"Quality round Red Spring and Durum"

Senator DORGAN. Mr. Fisher, thank you very much.

Next we will hear from Mr. Broyles, the President of the National Association of Wheat Growers. Senator Burns will return. He had to go away for a few minutes. Mr. Broyles, why do you not proceed.

STATEMENT OF GARY BROYLES, PRESIDENT, NATIONAL ASSOCIATION OF WHEAT GROWERS

Mr. BROYLES. Good morning and thank you on behalf of American wheat farmers. I am Gary Broyles. I am a wheat, barley, and cattle producer near Rapplegee, Montana, and currently serve as the President of the National Association of Wheat Growers. Today I also speak, besides for the national Wheat Growers, on behalf of the Wheat Export Trade Education Committee and U.S. Wheat Associates.

The national wheat organizations fully supported the North Dakota Wheat Commission's Section 301 petition before the U.S. Trade Representative and are pleased that the affirmative positive finding issued by Ambassador Zoellick heartily acknowledged that our wheat farmers, what they have long known, and that is that the Canadian monopolistic wheat trading system disadvantages American wheat farmers and undermines the integrity of our trading system.

While we are disappointed the administration did not provide the tariff rate quotas as North Dakota requested, we are very supportive of the actions which were announced. We are also encouraged by the strong commitment expressed by Ambassadors Zoellick and Johnson to find a way to end the trade-distorting practices of the Canadian Wheat Board. Their commitment to aggressively pursue a level playing field for our wheat farmers is critical.

A permanent resolution to the problems of the Canadian Wheat Board and its injurious effect on U.S. wheat farmers must be accomplished. The problems and unfair trade practices of the Wheat Board date back to 1989 and the implementation, as we have stated earlier, of the Canadian-U.S. Free Trade Agreement. I have attached to my written statement a chronology of the Canadian wheat issues that I believe is very enlightening. This chronology highlights both the lengths that U.S. wheat farmers have gone to in attempting to resolve this trade problem as well as the actions of the Canadian Wheat Board in its effort to stonewall any efforts which may lead to true reform.

The fact that the North Dakota Wheat Commission on behalf of U.S. wheat farmers had to once again bring a trade action against the Canadian Wheat Board speaks to the disregard that Canada has to open and fair trade. The case also speaks volumes to our commitment to resolving this longstanding problem, and we simply seek a permanent resolve to this matter.

This case is not an attach on Canadian wheat farmers. It is, however, verification of the Canadian Wheat Board's practice of undercutting prices and its negative impact on our farmers. With the continued trade-distorting practices of the Canadian Wheat Board, it becomes increasingly difficult to convince U.S. wheat farmers that they have benefited from wheat agreements.

Again, a prompt resolve to this problem will facilitate, I believe, our success in future negotiations for free trade agreements and in the next round of WTO negotiations. One of our priorities in the WTO agriculture negotiations is the elimination of monopolistic export trading. This priority is also part of the formal U.S. negotiating position in both the WTO and the Free Trade Area of the Americas. We ask you to encourage the USDA to use export enhancement programs to provide the needed short-term relief to create sufficient leverage to bring the Canadian Wheat Board to the negotiating table and then to engage in meaningful reform.

The EEP is a very effective tool that must be implemented at times like this to resolve trade inequities. EEP will be helpful also in gaining access to the stonewalling and the withholding of information that is closely guarded by the Canadian Wheat Board.

In the long term, rules must be rewritten in the WTO that discipline how STEs operate. The U.S. must play a strong role in making these changes a reality. The U.S. wheat industry asks for the backing of Congress for a critical element of support, which is legislation granting the administration trade promotion authority. TPA will help create new opportunities to sell U.S. wheat around the world and granting TPA will send a strong signal to Canada as well as the world that the U.S. is committed to maintaining an aggressive leadership role in promoting free and fair trade.

I believe that with the elimination of trade distortions created by the Wheat Board and the passage of TPA that the administration, working in partnership with Congress, will be empowered to aggressively negotiate positive trade agreements. The trade industry is committed to working with you and the administration to see that these things come together and work for America.

Thank you for this opportunity and I look forward to our questions later.

[The prepared statement of Mr. Broyles follows:]

PREPARED STATEMENT OF GARY BROYLES, PRESIDENT OF THE NATIONAL ASSOCIATION OF WHEAT GROWERS

Good morning, Mr. Chairman, it is a pleasure for me to be here and I'm grateful for the opportunity to speak with you today on behalf of the U.S. wheat industry on a topic that is of increasing importance to America's wheat farmers.

My name is Gary Broyles. I am a wheat, barley, and cattle producer from Rapelje, MT and currently serve as the President of the National Association of Wheat Growers. Today, I am also speaking on behalf of the Wheat Export Trade Education Committee and U.S. Wheat Associates. On behalf of all of our constituents, thank you Mr. Chairman for conducting this hearing.

I want it clearly understood that we in the national wheat organizations fully supported the North Dakota Wheat Commission's Section 301 petition before the U.S. Trade Representative and are pleased that the affirmative finding issued by Ambassador Zoellick finally acknowledges what our wheat farmers have long known—that Canada's monopolistic wheat trading system disadvantages American wheat farmers and undermines the integrity of our trading system. While we are disappointed the Administration did not provide the tariff rate quotas as North Dakota requested, we are very supportive of the actions which were announced. We are also encouraged by the strong commitment expressed by Ambassadors Zoellick and Johnson to find a way to end the trade distorting practices of the Canadian Wheat Board.

Their commitment to aggressively pursuing a level playing field for our wheat farmers is crucial. A permanent resolution to the problems of the Canadian Wheat Board and its injurious effect on U.S. wheat farmers must be resolved. As you well know, Mr. Chairman, the problems and unfair practices of the Canadian Wheat Board date back to 1989 and the implementation of the Canada-United States Free Trade Agreement.

Much of the problem with Canadian wheat trade practices has resulted from the rendering of an inadequate definition of the term "acquisition price." To ease concerns that the Canadian Wheat Board would sell wheat into the United States below the Canadian farmers' cost of production, language in the Canada-United States Free Trade Agreement specified that neither country could sell agricultural products to the other at a price "below the acquisition price of the goods plus any storage, handling or other costs incurred by it with respect to those goods." This provision did not resolve concerns of the United States, however, since the agreement did not define "acquisition price."

In May of 1992, the United States, believing that Canada was offering wheat export prices below the cost of acquisition, requested a dispute resolution panel under provisions of the Canada-United States Free Trade Agreement. The panel, in its final report, determined that "acquisition price" is defined to include only the Canadian Wheat Board's initial payment. This definition ignores the interim and final payments to Canadian farmers, their subsidized transportation system, grading and inspection fees, and Board administrative costs.

A review of the Canadian Wheat Board's mechanism for paying farmers underscores the inaccuracy of this definition. Before each marketing year, the Board, in consultation with the Canadian Government, makes initial payments to farmers for the delivery of grain to elevators. The initial payment acts as a minimum guaranteed price to the wheat farmer. At the close of the marketing year, final payments are made to farmers reflecting receipts minus all fees for transportation, handling, administration and initial payment. Thus, the full return that the Canadian producer receives, *i.e.*, the full acquisition price, is not paid until the final payment at the end of the marketing year, and sometimes not even until the next marketing year. In other words, the aggregate of the initial, interim and final payments plus the costs, constitutes the real total acquisition price. The initial payment methodology adopted by the panel gives the Canadian Wheat Board tremendous flexibility in manipulating prices without regard to the market value of the wheat being exported. This interpretation has continued to aid Canada's destructive export strategy, which damages U.S. wheat farmers.

The United States Government over the past decade has repeatedly studied the Canadian Wheat Board's activities and recognized an ongoing trade problem through separate trade actions and government investigations. These actions have consistently found that the Canadian Wheat Board restricts competition and as a monopoly state-trading enterprise distorts wheat trade. I have attached to my written statement a chronology of the Canadian wheat problem that I believe is very enlightening, and I would ask that it be made a part of the formal record of this hearing along with my statement.

Mr. Chairman, this chronology highlights both the lengths U.S. wheat farmers have gone to in attempting to resolve this trade problem, as well as the actions of the Canadian Wheat Board and its blatant efforts to stonewall any efforts which may lead to true and meaningful reform of its operations. The General Accounting Office, Department of Commerce, the Department of Agriculture, the U.S. Trade Representative, and even the World Trade Organization have tried to get detailed information and data from the Canadian Wheat Board but have been rebuffed on every occasion. The United States has never been able to get clear and accurate data. Despite the best efforts of the U.S. International Trade Commission in an investigation which did lead to substantial new and damaging information about the Canadian Wheat Board, a close look at the International Trade Commission's final report reveals that once again the pricing data and contract information that is necessary for a conclusive review by our government officials was not forthcoming from the Board.

Not only has the Canadian Wheat Board refused to lift the veil of secrecy on its activities, the chronology reveals that it enters into negotiations concerning its activities and then refuses to implement any of the agreed upon actions. For example, in 1995, the Canada-United States Joint Commission on Grains released a final report that recommended, among other things, reciprocal access to the other country's grain handling infrastructure, continued deregulation of Canada's rail transportation system, and the standardization of our countries grain inspection methods. The Canadian Wheat Board chose to ignore and not implement most recommendations.

Again in 1998, United States and Canadian officials entered into a Record of Understanding in an attempt to resolve some of these longstanding issues. Again, the Canadian Wheat Board has refused to meaningfully implement many of the issues agreed to under this Record of Understanding, including market access.

This is a sad chronology of events, Mr. Chairman. The fact that the North Dakota Wheat Commission, on behalf of all U.S. wheat farmers, had to once again bring

a trade action against the Canadian Wheat Board, speaks volumes to the total disregard one of our major trading partners has for open trade and fair trade not only in the free trade zone of North America but in third country markets as well. The case also speaks volumes to our commitment to resolving this long-standing trade problem. We strongly urge the U.S. Trade Representative address the matter once and for all and negotiate, from a position of strength and with force if necessary, a long-term and meaningful resolution of this matter.

The perfect place to start working towards achieving this goal was the Section 301 trade case against the Canadian Wheat Board. We believe, it has provided the necessary proof, and should provide the tools and leverage to bring the Canadian Wheat Board and the Government of Canada to the negotiating table; forcing them to enter into serious discussions to reform the discriminatory practices of the Board or face unilateral action under U.S. law for the damages and the burden they have placed on our wheat farmers.

This case has not been an attack on Canadian wheat farmers. It has been, however, verification of what farmers and many Members of Congress already know or have suspected about the Canadian Wheat Board's price undercutting and its negative impact on U.S. farmers. The Western Canadian Wheat Growers Association, whose wheat is controlled by the Board, has long cried out for true reform of the Canadian Wheat Board.

Previous trade agreements, including the Uruguay Round Agreement on Agriculture, have fallen short in their ability to effectively discipline the anti-competitive practices of state trading enterprises, like the Canadian Wheat Board. This oversight has long aggravated our fellow farmers in North Dakota, but it has also bedeviled wheat farmers all over the world. The Board, a government-sanctioned state trading enterprise, uses its monopoly power to distort trade in North America and third country markets.

Progress and reform of the international wheat market was steady throughout the 1990s, with the notable exception of the Canadian Wheat Board. In 1990, 90 percent of all international wheat purchases were made by governments. That figure is now about 40 percent, and falling. I find it ironic that when allowed to enter the WTO, China agreed to more disciplines on its state trading enterprises, including the introduction of private-sector imports, than Canada—our major trading partner—has ever entertained. It is time for the Canadian Wheat Board to commit to negotiating a fair resolution of this wheat trade distortion. If this does not occur, they must face unilateral action by the U.S. government.

With the Canadian Wheat Board trade problem unresolved, it becomes increasingly difficult to convince our wheat farmer constituents how they can directly benefit from expanded trade opportunities. Past failures to address this trade problem have undermined farmers' confidence in trade negotiations. It is only appropriate that U.S. wheat farmers expect a fix to the inequities in past trade agreements by addressing the trade distorting practices of the Canadian Wheat Board. While our future lies in the expansion of export market opportunities, and fair competition for those opportunities, we must revisit and fix the inequities in the Canada-United States Free Trade Agreement and the NAFTA and address continuing trade distorting practices. Expanding the free trade area in which the Canadian Wheat Board can act, without addressing its monopoly position would be folly.

I hope this Committee and Ambassador Zoellick concur with such a view. Certainly, a prompt resolution of this problem will facilitate success in future negotiations for free trade agreements and the next round of WTO negotiations. We contend that it is inappropriate to allow the Canadian Wheat Board to market wheat in the free trade area created by the Canada-United States Free Trade Agreement and expanded in the NAFTA, under its current structure. It is outmoded thinking. As evidenced in the WTO negotiating positions tabled over the last year in Geneva, the world trading system can no longer tolerate the unfair trade practices of state trading enterprises, among which the Canadian Wheat Board stands out as one of the most egregious examples. In its July 2000 negotiating proposal to the WTO, the U.S. identified the power of exporting state trading enterprises to maintain sole control over the export supply of wheat from their countries combined with their ability to price discriminate among wheat buyers as a de facto export subsidy. In addition to identifying the problem, the U.S. negotiating proposal includes a specific "get tough" framework for dealing with state trading enterprises like the Canadian Wheat Board in the WTO negotiations in agriculture.

In January 2001, Argentina, Brazil, Paraguay, Uruguay, Chile and Colombia submitted their proposal urging "[t]hat, as part of the agricultural negotiations, Members agree to discipline the activities of governmental and non-governmental enterprises and marketing boards which benefit from monopoly import/export rights, with a view to avoiding distorting effects on the market." The European Communities

has also submitted a proposal on export competition to the WTO that is extremely critical of state trading enterprises. The EC proposal recognizes the current inequity among exporters in the world agriculture market, stating "that there is an urgent need for a more level playing field in export competition since the current provision of the WTO Agreement on Agriculture fully cover only one of the means of support to exports, namely export subsidies." To illustrate this further, the EC notes, "single desk exporters (enterprises with responsibility for domestic and export sales) account for large shares of world trade in certain products: about 40 percent for wheat . . . " Their "'exclusive or special rights or privileges' confer to STEs considerable market power, which can result in unfair competition against other world market traders, STEs can distort trade in several ways and, as a result, they can circumvent the export subsidy disciplines and commitments of the [Uruguay Round Agreement on Agriculture]." The EC concludes its argument on state trading enterprises by saying, "Three highly trade-distorting practices of STEs, i.e., cross subsidization, price discrimination, and price pooling, can be identified as 'hidden' export subsidies." I submit to this Committee that clearly, by its own admission, and from the evidence of past U.S. government investigations, and evidence presented in the Section 301 investigation, the Canadian Wheat Board engages in such export subsidy equivalents.

One of the wheat industry's priorities in the WTO agriculture negotiations is the elimination of export state trading monopolies. It is also part of the formal U.S. position submitted for the negotiations in both the WTO and the Free Trade Area of the Americas. While this objective remains a high priority, it is becoming clear that once again the Canadian Wheat Board will do all in its power to maintain the status quo. In late March of this year, a director of the Board went before the Canadian House of Commons Agriculture Committee and insisted that the Government of Canada resist all efforts by the United States to restrict the activities of state trading enterprises in negotiations through the WTO and the FTAA negotiations. Thus, I fear that even if the Canadian Government indicates a willingness to enter into negotiations on the trade distorting activities of the Canadian Wheat Board, the Board will again use any power at its disposal to thwart efforts to bring true and meaningful reform to its activities and operations.

The only time the Board has restricted its unfair practices was after the 1994 Section 22 investigation—and it only acquiesced to limited imports once it knew the U.S. Government was serious and that import quotas would be forthcoming. The U.S. Trade Representative must act with equal resolve in this current dispute—as the Canadian Wheat Board operates from a position of power they will only respond to an opponent who operates from an equal basis of power.

The multi-prong approach that Ambassador Zoellick set forth in the Section 301 Finding is impressive, and again, we are supportive of this approach. But, there must be movement on these matters soon and on all fronts.

Furthermore, Congress can play a significant role in showing the Canadian Wheat Board that this time around the matter will be resolved. In the short-term the National Association of Wheat Growers, Wheat Export Trade Education Committee and U.S. Wheat Associates urge you to encourage the Department of Agriculture to use the Export Enhancement Program to provide the needed response to Canadian Wheat Board pricing. The EEP program can be useful in gaining access to information so closely guarded by the Canadian Wheat Board and will help bring Canada to the negotiating table.

Mr. Chairman and Members of this Committee, since wheat is an export dependent commodity, our options are limited to one—to be fully engaged in efforts to make world trade free and fair. We believe in free trade so long as it encompasses fair trade. The Canadian Wheat Board's monopolistic practices are not fair trade.

In the long term, the WTO must discipline the way in which STE's are allowed to operate. If the U.S. is to have a strong role in making these changes a reality, the U.S. wheat industry believes they must have the backing of the U.S. Congress. One key element of support is legislation granting Trade Promotion Authority (TPA). TPA will enhance opportunities to sell quality U.S. wheat around the world. Granting TPA will send a strong signal to Canada and the world that the U.S. is committed to maintaining an aggressive leadership role in promoting free and fair trade. We need every tool available to make the markets work for us and you can provide some of those tools.

While we support the need for reform of state trading enterprises in the next round of WTO negotiations, it is clear that action is needed now on the Canadian Wheat Board's activities, in order to save the livelihood of our farms. We urge the Administration and Congress to continue their support for trade liberalization by providing short-term relief remedies as we all work towards the changes ultimately needed in the WTO.

Thank you, for this opportunity to appear before the Committee this morning. I look forward to answering any questions you may have.

Chronology of the Canadian Wheat Problem

Jan.1989 The Canada-United States Free Trade Agreement addressed the pricing of wheat, Canadian transportation subsidies, market access, and import restrictions. To ease concerns that the Canadian Wheat Board ("CWB") would sell wheat to the United States at below Canadian farmers' cost of production, Congress sought specific language in the agreement stating that neither country could sell agricultural products to the other at a price "below the acquisition price of the goods plus any storage, handling or other costs incurred by it with respect to those goods." This provision did not resolve concerns of the United States, however, since the agreement did not define "acquisition price."

June 1990 The U.S. International Trade Commission undertook a Section 332 investigation on the conditions of competition between the U.S. and Canada durum wheat market. The finding was that it was not demonstrated that prices paid by U.S. processors during 1986 to 1989 for Canadian durum wheat were significantly different than prices paid for similar quality U.S. durum. The investigations did conclude that Canada's subsidized transportation for the CWB was problematic.

June 1992 A GAO study confirms that the Canadian government had backfilled huge deficits in the CWB pool account amounting to $428 million in 1990 and $575 million in 1991 due to insufficient income from wheat export sales to cover initial payments to producers. This report firmly linked the CWB to Canadian government support.

May 1992 The United States, believing that the CWB was continuing to offer wheat export prices below the cost of acquisition, requested a dispute resolution panel under provision of the CUSTA. The panel, in its final report, determined that "acquisition price" is defined to include only the initial payment. This ignores the interim and final payments to farmers, the subsidized transportation system Canada provides, grading and inspection fees, and CWB administrative costs. Thus, the full return that the Canadian producer receives, *i.e.*, the full acquisition price, is not paid until the final payment at the end of the marketing year. In other words, the aggregate of the initial, interim and final payments plus the costs constitute the real total acquisition price. This initial payment methodology gives the CWB tremendous flexibility in manipulating prices in export markets without regard to the market value of the wheat being exported.

Jan. 1994 Contrary to appeals from U.S. wheat farmers, the North American Free Trade Agreement ("NAFTA") retained the previously negotiated CUSTA market access provisions affecting Canada and the United States. Thus, in addition to adding new bilateral commitments on agriculture between the two countries and Mexico, the flawed definition of "acquisition price" remained in effect.

July 1994 At the President's request, the U.S. International Trade Commission initiated an investigation under Section 22 of the Agricultural Adjustment Act to determine whether wheat, wheat flour, and semolina were being imported into the United States under such conditions and quantities as to "render or tend to render ineffective, or materially interfere with, the price support, payment and production adjustment program conducted by" the U.S. Department of Agriculture for wheat. Given that Canada was the principal source of wheat imports into the United States, the Commission focused on such imports. This investigation resulted in a decision that wheat was being brought into the United States under such conditions and quantities to materially interfere with United States wheat

Sept.1994 As a result of the Section 22 investigation, Canada and the United States reached a negotiated settlement and signed a Memorandum of Understanding. Under the memorandum, the United States applied a new schedule of tariffs on the importation of wheat and set tariff-rate limits on Canadian wheat exports to the United States for a twelve month period. Thus, a tariff-rate quota system was created in 1994. Since 1994, the governments of Canada and the United States have monitored exports on a quarterly basis, although no effort has been undertaken by Canada to implement the recommendations of the Joint Commission on Grains, which was also part of the 1994 settlement.

Aug. 1995 The Government Accounting Office ("GAO") released a report to Congress providing information about the nature of state trading in other countries and the treatment of state trading enterprises ("STEs") in the General Agreement on Tariffs and Trade ("GATT") and the World Trade Organization ("WTO"). This report highlighted problems with discipline, the lack of enforcement, and lack of sufficient transparency surrounding the activities of STEs.

Oct. 1995 The Canada-United States Joint Commission on Grains released a final report addressing policy coordination, cross-border trade, grain grading and regulatory issues, infrastructure, and domestic and export programs. The report noted that, "The use of discretionary pricing by governments, directly through their programs or entities, had led to trade distortions." It recommended that the countries "eliminate the excessive discretionary pricing practices of their institutions; and . . . modify their domestic agricultural policies to remove trade distorting effects . . . ." Other recommendations included:

- That both countries pursue the long-term goal of providing reciprocal access to the other's grain infrastructure.
- That Canada continue deregulating its rail transportation system, and that the ownership of its grain car fleet be managed in a non-trade distorting manner.
- That the grain inspection authorities in both countries standardize their methods and develop a common basis for the science of measurement.

Unfortunately, the CWB chose to ignore and not implement most recommendations.

June 1996 The GAO reviewed state trading enterprises in Canada, Australia and New Zealand. Regarding Canada, the report specifically focused on the CWB. The GAO concluded that: (1) the board benefitted from the Canadian government's subsidies to cover periodic operational deficits; (2) the board benefitted from a monopoly over both the domestic consumption and export wheat markets; and (3) the board benefitted from pricing flexibility through delayed producer payments.

July 1996 The Western Grain Marketing Panel, appointed by Canadian Minister of Agriculture, released a report concluding that a growing number of farmers wished for more options and flexibility in marketing their wheat, and that there was mounting concern of Canadian farmers about the CWB's lack of accountability and inflexibility in its operating policy.

Oct. 1998 The GAO issued another report concerning Canadian grain exports to the United States. This report focused also on the operations of the CWB and the trade remedies applicable to the activities of state trading enterprises. This report acknowledged that the CWB is currently the largest grain marketing board in the world, handling about 20 percent of the world wheat and barley trade. It confirmed prior governmental reports finding that the CWB is a "state trading enterprise with a monopoly on certain Canadian grain sales and receives Canadian government subsidies in a number of direct and indirect ways." The report concluded that available information regarding CWB contracts is insufficient to determine whether it is complying with existing trade laws. Nevertheless, in responding to a draft of this 1998 GAO report, the Department of Agriculture stressed that the CWB, "as the sole buyer of Canadian wheat for domestic human consumption and for export, is able to engage in trade-distorting actions.

Dec. 1998 U.S. and Canadian government leaders reach a Record of Understanding in an attempt to resolve some the longstanding trade issues between the two countries. The agreement was to provide farmers in North Dakota and Montana with easier access to some Canadian elevators. In reality, Canadian Wheat Access Facilitation Program requires that sellers complete a compliance agreement and obtain a phytosanitary certificate to truck wheat into Canada. Any participating Canadian grain company in Canada must arrange for a representative of the Canadian Grain Commission to be available at the elevator at the arranged time of delivery to monitor the unloading of the grain and to take a sample for information purposes. The CGC must ensure that the elevator does not commingle U.S. and Canadian wheat. There were only 27 elevators in Canada on the participating list when the program debuted in 1999.

Another component of the ROU allowed U.S. grain with a certificate of origin from North Dakota, Montana and Minnesota to be shipped on the Canadian rail system to U.S. west coast ports. The transshipment item could have been helpful if U.S. wheat were bestowed the same discounted rates applied to grain grown in western Canada. Rail car access also remained an outstanding

issue since the vast majority of rail cars in Canada are owned by the provinces, the CWB or the Canadian government. Again, the cars are for western Canadian wheat only.

Mar. 2000 The *2000 National Trade Estimate Report on Foreign Trade Barriers*, released by the United States Trade Representative, indicated that despite recent changes in its organization, "the CWB continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition." Since prior Canadian government action had done nothing to result in competition (ending monopoly privileges or financial links to the government), the report stated that the United States is calling for the WTO agriculture negotiations to create disciplines for state trading enterprises that "would provide for greater openness, allow for greater competition in the marketplace, and reduce or eliminate the trade-distorting effects of monopoly STE's, like the Canadian Wheat Board."

June 2000 The United States submitted to the WTO its proposal for Comprehensive Long Term Agricultural Trade Reform to correct and prevent restrictions and distortions in world agricultural markets. In the section of the proposal concerning state trading enterprises, the United States sought (1) to end exclusive export rights to ensure private sector competition in markets controlled by single desk exporters; (2) to establish WTO requirements for notifying acquisition costs, export pricing , and other sales information for single desk exporters; and, (3) to eliminate the use of government funds or guarantees to support or ensure the financial viability of single desk exporters.

July 2000 Administrator Timothy Galvin of the U.S. Department of Agriculture's Foreign Agricultural Service informed the President of the CWB that substantial academic studies supported his recent Congressional testimony stating that, "There's every indication that the Canadians . . . are essentially giving away quality or giving away protein . . . By that, I mean those factors are not fully reflected in the prices that [CWB] charge[s]." Mr. Galvin's statements reflect continuing acknowledgment by the United States government that the CWB's lack of transparency in pricing, monopolistic practices, and predatory trade practices continue unabated.

Oct. 2000 The U.S. Trade Representative initiates a Section 301 investigation into the wheat trading practices of the CWB in order to determine whether certain acts, policies or practices of the Board with respect to wheat trading are unreasonable and burden or restrict U.S. commerce.

Mar. 2001 The *2001 National Trade Estimate Report on Foreign Trade Barriers*, released by the United States Trade Representative, indicated again that "the CWB continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition." The report confirmed that the U.S. would press for the WTO agriculture negotiations to create disciplines for STEs.

April 2001 The U.S. International Trade Commission, at the request of the U.S. Trade Representative, initiated a fact finding investigation pursuant to Section 332 of the Tariff Act of 1930 concerning the conditions of competition between the U.S. and Canadian wheat industries in the U.S. and third country markets. The investigation's findings are to be submitted to the USTR in the Fall of 2001.

Senator DORGAN. Mr. Broyles, thank you very much.

Next we will hear from Mr. Hunnicutt. Mr. Hunnicutt.

STATEMENT OF CHARLES A. HUNNICUTT, COUNSEL, NORTH DAKOTA WHEAT COMMISSION

Mr. HUNNICUTT. Thank you, Mr. Chairman. It is always a pleasure to appear before you. I'm Charles Hunnicutt, Counsel for the North Dakota Wheat Commission.

As you and some of the others have already mentioned this morning, trade relations are an important part of our bilateral relationship with Canada. Good faith discussions can help us resolve longstanding issues, but yesterday's tragic events should underscore that these discussions take place between friends and allies.

That having been said, the United States and Canada compete for world wheat markets in fundamentally different ways. These

differences have led to increased friction over the past decade. Mr. Broyles has already provided this Committee with the long, sad history of this tragic problem and the defiance of the Canadian Wheat Board.

However, despite the best efforts of the U.S. wheat industry over the past decade, no previous case, investigation, or temporary settlement including the Section 22 tariff rate quotas or voluntary restraint, as Ambassador Johnson preferred, has addressed the fundamental problem of the Canadian Wheat Board. That is, the existence and operation of a monopoly marketing board, especially in a free trade area.

I did want to take this opportunity this morning after you heard from Mr. Rogowsky to commend the U.S. International Trade Commission and its staff for the Section 332 investigation that you discussed earlier. They worked very hard and under difficult circumstances, where parties opposing the action either would not cooperate or had self-interest which biased their responses. The Commission's final report added significantly to the evidence against the Canadian Wheat Board.

I would like to mention briefly the pricing analysis issue that was discussed by Mr. Rogowsky. With all due respect to the Commission, while the report includes some attempts at pricing comparisons between U.S. and Canadian spring wheat and durum sales, they are unfortunately of very questionable value because, once again, the Board, as you pointed out in your questioning, refused to provide specific pricing data and contract information.

This is not a poor reflection on the U.S. International Trade Commission, but rather reflects that the Board continues to hide behind a veil of secrecy. In the Section 301 investigation, the Board was given every opportunity to fully participate. We even offered to enter into a protective order so that information could be confidentially exchanged. At every turn they refused to cooperate.

The lack of genuine efforts by the Canadian Government and the Canadian Wheat Board to modify its unfair pricing practices led to the Section 301 petition and has now led to the affirmative finding issued by Ambassador Zoellick. Ambassador Zoellick said: "We agree with U.S. wheat farmers that Canada's monopolistic system disadvantages American wheat farmers and undermines the integrity of our trading system." Our government and its top trade officials have now on the record acknowledged that the Canadian Wheat Board is harming our farmers and the affirmative finding commits them to using all effective tools at their disposal to stop the monopolistic Canadian Wheat Board from hurting U.S. farmers and distorting trade.

As you know, Mr. Chairman, Ambassador Zoellick committed the U.S. government to aggressively pursue multiple avenues to seek relief. Some of these have already been discussed this morning. I can report to you from my experience that Ambassadors Zoellick and Johnson have a good faith intention to see these matters through.

My concern is that the Canadian Wheat Board in its arrogance does not believe that the United States will ultimately push for a resolution of this trade problem. As you pointed out, it continues to believe that in stonewalling and rebuffing the U.S. Trade Rep-

resentative the status quo will be maintained. Frankly, who could blame them? The chronology of events that Mr. Broyles presented to you reveals that the Board has an excellent track record in this area.

Thus, the strategy proposed and pursued by the U.S. Trade Representative must be aggressive and needs to send a clear signal to the Board and the government of Canada that the United States Government is now fully on board with the plight of U.S. wheat farmers and that this matter is not going to go away until meaningful reform is achieved.

To date, I am pleased that Ambassador Johnson remains open to a dialogue and exchange of ideas on the issues surrounding the Section 301 investigation and they are indeed keeping their word to work with us to pursue a resolution of this problem. As was pointed out, we have met numerous times with the U.S. Trade Representative, Department of Commerce, USDA, and USIT officials since the Section 301 decision and we too appreciated Ambassador Johnson and USTR and USDA staff taking the time to visit North Dakota wheat farmers.

We have been assured that under the provisions of Article XVII an information request will shortly be submitted to the Canadian Wheat Board, and that was reiterated this morning. We have also been working with U.S. Trade Representative officials to strengthen the WTO case. We have made clear to them that a WTO Article XVII complaint against the Canadian Wheat Board is acceptable as part of the long-term resolution of the wheat trade dispute, but that it does not address short-term problems facing U.S. wheat producers or the fundamental structure of the Canadian system.

The U.S. Department of Commerce has also begun to consult with us to examine the possibility of pursuing U.S. countervailing duty and antidumping cases, with a special emphasis on applying U.S. trade remedy laws to the unique factual circumstances arising from the Canadian Wheat Board's monopoly status. In our meetings with the Department of Commerce, we are encouraging the self-initiation of any antidumping case against the Board. We believe the special circumstances required for self-initiation are present in this matter due to the findings set forth in the ITC report and the affirmative finding of the U.S. Trade Representative that "the acts, policies, and practices of the government of Canada and the Canadian Wheat Board are unreasonable and burden or restrict U.S. commerce."

Ambassador Zoellick has confirmed injury. Now the U.S. Government needs to follow up by sending a message to U.S. wheat farmers that our government will stand with them in defending against unfair trade practices and to also send a strong message to the Canadians that this matter must be resolved.

In answer to your timing questions regarding antidumping and countervailing duty, as farmers are currently purchasing seed and making planting decisions, even with a preliminary determination after the filing of a potential antidumping and countervailing duty case, it will be too late for farmers to base this year's planting decisions on any potential action in the dumping-countervailing duty area. It will have to come from some other action.

Allow me to turn briefly to our disappointment in Ambassador Zoellick not agreeing to implement tariff rate quotas at this time. There is clearly a need to immediately address the injury U.S. farmers continue to suffer. Mr. Fisher provided the committee with specific details of the injuries the farmers are suffering. Such injuries will continue for as long as the Canadian Wheat Board is allowed to engage in its unfair practices in the United States and third country markets.

U.S. wheat farmers have suffered for the past decade. How much longer must they deal with the injuries caused by the Board before they see relief? Perhaps Ambassador Zoellick's multi-pronged approach to pursuing the Canadian Wheat Board will convince the Canadian government that this time the United States means business and that the issue is not going to fade away. I remain hopeful. But if the arrogant and defiant press releases and statements issued by the Board since February 15th are any indication, I do not think it has yet gotten that message.

Thus, Ambassador Zoellick must be willing to soon revisit the issue of providing short-term relief to America's wheat farmers if the Canadians refuse to begin cooperating—and I mean true cooperation and negotiation, not the facade of consultations and vaguely responding to queries, as the Board and the Government of Canada did in the Section 301 investigation.

This problem has been ongoing for over a decade and our farmers are suffering greatly. After turning to the Office of the U.S. Trade Representative for help by filing the Section 301 petition, it would be a tragedy leading to greater skepticism and anger by U.S. wheat farmers if the U.S. Trade Representative remains insistent that, while there is a violation of Section 301 that merited a clear affirmative finding of injury, this Administration will forego the most effective and immediate remedy because it assumes that a WTO panel might some day find against the United States in a matter never to date adjudicated by the WTO.

If that remains the case, I would plead with this Committee that any construction of a statute or treaty that results in a violation without a remedy must be fundamentally flawed and could not be a correct reading of the intent.

All of the avenues that have been proposed by Ambassador Zoellick to date are applauded by wheat farmers, but the results of such actions are years away and we need relief now. Failure to provide some short-term remedy will allow the continuation of the escalating injury Mr. Fisher just described to you. After years of competing against the unfair practices of the Board, U.S. farmers require and merit interim short-term relief in addition to the longer term effort being currently initiated, even if the U.S. Government must develop a creative solution for a unique problem of Canada's making.

I thank you for holding this timely hearing. I would be pleased to answer any questions.

[The prepared statement of Mr. Hunnicutt follows:]

PREPARED STATEMENT OF CHARLES A. HUNNICUTT, COUNSEL TO THE NORTH DAKOTA WHEAT COMMISSION

Mr. Chairman and Members of the Committee, it is a pleasure for me to appear before you this morning to discuss our ongoing and hard-fought battle against the unfair trading practices of the Canadian Wheat Board. My name is Charles Hunnicutt, and I am counsel to the North Dakota Wheat Commission in matters involving the unfair trading practices of the Canadian Wheat Board.

The United States and Canada compete for world wheat markets in fundamentally different ways. These differences have led to increased friction over the past decade. Most, if not all, of this friction is the direct result of the fact that the Canadian Wheat Board is a government-sponsored state trading enterprise with monopoly power to market and sell western Canadian grain. The power of the Board is immense, and the preferences and subsidies it receives from the Government of Canada make it even more powerful, while also protecting it from the pressures and risks facing any commercial wheat producer. The Canadian Wheat Board is the world's largest exporter of wheat and its monopolistic powers allow it to engage in unfair pricing which distorts the world wheat trade market.

As a result of the Board's unwillingness to enter into good faith negotiations to resolve this trade problem over the past decade, there have been numerous negotiations, our successful 1994 trade action, and several U.S. government studies and investigations. All of which repeatedly recognized an ongoing trade problem concerning the Canadian wheat trade. These actions have consistently found that the Canadian Wheat Board restricts competition and as a state trading enterprise distorts trade. I also represented the North Dakota Wheat Commission in the 1994 Section 22 case which was a definitive defeat of the Board. Unfortunately, our farmers relief in that instance was short-lived. The United States and Canada reached a negotiated settlement in which a new schedule of tariffs was applied on Canadian wheat coming into the United States for only a 12-month period. Afterwards, the Canadian Wheat Board was back to its old habits and practices.

The Board has argued for the past sixteen months that the Section 301 investigation is simply harassment by U.S. wheat interests since all past investigations have purportedly not found any evidence to support the claims of unfair activities by Canada. Nothing, as you well know Mr. Chairman, could be further from the truth. In reality, the General Accounting Office, International Trade Commission, Department of Commerce, and even the WTO have tried to get information from the Canadian Wheat Board which would assist in resolving this issue once and for all but have been rebuffed and never able to get sufficient data. Lack of transparency makes information about the Canadian Wheat Board almost impossible to obtain.

Despite the best efforts of the U.S. wheat industry over the past decade, no previous case, investigation or temporary settlement has addressed the fundamental problem of the Canadian Wheat Board. That is—the existence and operation of a monopoly marketing board, especially in a free trade area.

So, on September 8, 2000, the North Dakota Wheat Commission took the lead and filed a Section 301 petition pursuant to the Trade Act of 1974. Section 301 may be used to enforce U.S. rights under international trade agreements and may also be used unilaterally to respond to unreasonable or discriminatory practices that burden or restrict U.S. commerce. For quite some time that clearly has been the correct description of the practices of the Canadian Wheat Board.

As detailed in our original Section 301 petition to the U.S. Trade Representative, the Canadian Wheat Board has a longstanding history of questionable practices aimed at systematically creating and developing a competitive advantage on a noncommercial basis in United States and third country wheat markets. Recognizing that such practices are controversial and subject to challenge under statutes such as Section 301 of the Trade act of 1974, the Canadian Wheat Board is anything but transparent. Its transactions, discounts, and discriminatory pricing are veiled in secrecy and complicated by indirect discounting via artifices such as over-delivery of protein and the provision of longer-term forward (*i.e.*, future) pricing that have real value in the marketplace, but for which the Board does not require appropriate compensation.

I want to take this opportunity to commend the U.S. international Trade Commission and its staff for its Section 332 report requested by the U.S. Trade Representative as part of the Section 301 proceeding. They worked diligently and under difficult circumstances where parties opposing the action either would not cooperate or had self-interests which could bias their responses. As Ambassador Zoellick acknowledged, the Commission's final report added significantly to the evidence against the Canadian Wheat Board.

Among some of the reports critical findings are that:

- U.S. exports to eight foreign markets are down 48 percent during the last five years, primarily due to Canadian activity;
- The Canadian market is essentially closed to U.S. wheat;
- The Canadian Wheat Board has a competitive advantage in contracting for sales of durum wheat for future delivery. This has contributed significantly to the lack of a viable futures market on U.S. grain exchanges;
- The Canadian Wheat Board benefits from substantial transportation preferences.
- The Board is essentially an arm of the Government of Canada

With all due respect to the Commission, while the report includes some attempts at pricing comparisons between U.S. and Canadian spring wheat and durum sales, they are unfortunately of questionable value because once again the Canadian Wheat Board refused to provide specific pricing data. This is not a poor reflection on the U.S. International Trade Commission, but rather reflects that the Board continues to hide behind a veil of secrecy. In the Section 301 investigation, the Canadian Wheat Board was given every opportunity to fully participate. We even offered to enter into a protective order so that information could be confidentially exchanged. At every turn, they refused to cooperate. It's obvious why the Board is afraid to release pricing data. Unlike its private sector competitors, the Canadian Wheat Board is not required to ever turn a profit or maximize Canadian grower returns. Instead, as a state trading enterprise, it simply passes its sales discounts on to Canadian farmers in the form of lower returns than they would otherwise receive.

As the Board cries out that our continued efforts to address this unfair trade practice is yet another attempt by U.S. wheat farmers to harass and interfere in Canada's wheat trade, it has no one to blame but itself. The lack of genuine efforts by the Canadian Government and the Canadian Wheat Board to modify its unfair pricing practices led to the Section 301 petition and have now led to the affirmative finding issued by the U.S. Trade Representative on February 15 of this year.

Despite our frustration that Ambassador Zoellick refused to implement tariff rate quotas, the affirmative finding is a victory for U.S. wheat farmers. A lot of hard work went into presenting the factual arguments in our case, and for the first time in this longstanding trade dispute, the U.S. Government has formally recognized that the Canadian Government grants the Canadian Wheat Board special privileges which give it unfair advantages that hurt U.S. wheat farmers. Unlike some of the past investigations, this cannot be construed as an inconclusive finding. Despite their galling effort to do so, the Canadian Wheat Board cannot with any credibility crow about a U.S. investigation finding that it is a fair trader. Ambassador Zoellick said, "We agree with [U.S.] wheat farmers that Canada's monopolistic system disadvantages American wheat farmers and undermines the integrity of our trading system." Our government and its top trade officials have now, on the record, acknowledged that the Canadian Wheat Board is harming our farmers, and the affirmative finding commits them to using all effective tools at their disposal to stop the monopolistic Canadian Wheat Board from hurting U.S. farmers and distorting trade.

As you know Mr. Chairman, Ambassador Zoellick committed the U.S. Government to aggressively pursue multiple avenues to seek relief for U.S. wheat farmers. Among the approaches, four were included in the findings:

- First, a dispute settlement case against the Canadian Wheat Board in the World Trade Organization;
- Second, the possibilities of filing U.S. countervailing duty and antidumping petitions with the U.S. Department of Commerce and U.S. International Trade Commission;
- Third, working with the U.S. wheat industry to ensure access for U.S. wheat into Canada; and,
- Fourth, combining these actions with the Administration's ongoing commitment to vigorously pursue comprehensive and meaningful reform of monopoly state trading enterprises in the WTO agriculture negotiations.

I can report from my experience that Ambassadors Zoellick and Johnson have a good faith intention to see these matters through. My concern is that the Canadian Wheat Board, in its arrogance, does not believe that the United States will ultimately push for a resolution of this trade problem. It continues to believe that in stonewalling and rebuffing the U.S. Trade Representative, the status quo will be maintained. And, frankly, who can blame them?

Thus, strategy proposed and pursued by the U.S. Trade Representative must be aggressive and needs to send a clear signal to the Canadian Wheat Board and the

Government of Canada that the U.S. Government is now fully onboard with the plight of U.S. wheat farmers and that this matter is not going to go away until real and meaningful reform of the Board's practices are implemented.

As a result of the U.S. International Trade Commission's investigation and report and its own investigation, the U.S. Trade Representative has found that the acts, policies and practices of the Government of Canada and the Canadian Wheat Board are unreasonable and burden or restrict U.S. commerce. The U.S. Trade Representative has finally concluded that the Board unfairly benefits as a monopoly state-trading enterprise through subsidies, a protected domestic market, and special benefits and privileges sanctioned by the Canadian government. If the Canadian Wheat Board wishes to continue to play games with our trade officials, I think it does so at its own peril. Even the Western Canadian farmers who are forced to sell their wheat to the Board have recently stated that "it's time to face reality."

From the U.S. wheat farmer perspective, as a result of the affirmative finding the U.S. Government now has a policy condemning the activities of the Canadian Wheat Board and the benefits it receives from the Canadian Government. We will hold them to this. After a decade of trying, I hope we now have the attention of U.S. trade officials. But, more importantly, I think they now fully understand this issue and have indicated that they are on our side and will work with us to address the problems with the Canadian Wheat Board. With continued Congressional pressure and industry insistence on aggressively pursuing the approach that Ambassador Zoellick has laid out, I believe we will see the end of the unfair practices of the Canadian Wheat Board.

To date, I am pleased that Ambassador Johnson remains open to a dialogue and exchange of ideas on the issues surrounding the Section 301 case, and they are indeed keeping their word to work with us to pursue a resolution of this problem. We have met numerous times with U.S. Trade Representative, Department of Commerce, Department of Agriculture, and U.S. International Trade Commission officials since the findings were issued on February 15th, and Ambassador Johnson and staff from U.S. Trade Representative and the U.S. Department of Agriculture took the time recently to visit North Dakota to meet with and discuss the concerns of our wheat farmers.

We have provided the U.S. Trade Representative with additional information regarding a dispute settlement case against the Canadian Wheat Board before the WTO. They believe that our Section 301 case uncovered significant new information which proves that the Canadian Wheat Board engages in certain non-commercial actions which are actionable under the existing WTO agreement. Furthermore, it has been made abundantly clear that Ambassador Zoellick is very eager to undertake such a WTO case which would allow the U.S. Government to build a coalition of allies from nations which are already on record as opposing the trade distorting activities of the Canadian Wheat Board. We have been assured that under the provisions of Article XVII an information request will shortly be submitted to the Canadian Wheat Board in Geneva. This information request is a means to seek documents and data which we know to be in the sole possession of the Canadian Wheat Board and which the Board has refused to ever release in any past U.S. investigations of its activities.

In working with U.S. Trade Representative officials to strengthen a WTO case, we have also made clear to them that a WTO Article XVII complaint against the Canadian Wheat Board is acceptable as part of the long-term resolution of the wheat trade dispute, but that it does not address short-term problems facing U.S. wheat producers or the fundamental structure of the Canadian system.

The U.S. Trade Representative has also indicated it will work to pursue permanent reform of the Canadian Wheat Board through the development of new WTO disciplines and rules on state trading enterprises that export agricultural goods. Therefore, in all future WTO agriculture negotiations, we have been told that the U.S. will continue to press the following: (1) for an end to exclusive export rights to ensure private sector competition in markets controlled by single desk monopoly exporters; (2) the elimination of the use of government funds or guarantees to support or ensure the financial viability of single desk exporters; and, (3) the establishment of requirements for notifying acquisition costs, export pricing, and other sales information for single desk exporters such as the Canadian Wheat Board. Again, we support this but would add that this same position must be emphasized in all relevant trade negotiations, such as the U.S.-Chile Free Trade Agreement, and the Free Trade Area of the Americas. No future free trade agreements should be entered into by the United States if the agreement does not limit the area in which the Canadian Wheat Board may engage in its unfair trade practices.

The U.S. Department of Commerce has also begun to consult with us to examine the possibility of pursuing U.S. countervailing duty and antidumping cases, with a

special emphasis on applying U.S. trade remedy laws to the unique factual circumstances arising from the Canadian Wheat Board's monopoly status. The latter part of that last sentence is important, for the Board does present unique problems if pursued under "cookie cutter" antidumping/countervailing duty methodologies. We have made it very clear that use of these provisions of U.S. trade law will only be helpful to U.S. wheat farmers if the methodologies used in these cases can be adapted to the specifics of our situation and accommodate some of the unique aspects involved in trading a commodity such as wheat. Furthermore, the Section 301 case uncovered significant new information despite the Canadian Wheat Board's unwillingness to release data and information in its possession, and any further U.S. investigations must make use of the information gained by the U.S. Trade Representative.

In our meetings with the Department of Commerce, we are encouraging the self-initiation of any antidumping case against the Canadian Wheat Board. We believe the "special circumstances" required for self-initiation are present in this matter due to the findings set forth in the U. S. International Trade Commission's report, and the affirmative finding of the U.S. Trade Representative that "the acts, policies and practices of the Government of Canada and the Canadian Wheat Board are unreasonable and burden or restrict U.S. commerce." Ambassador Zoellick has confirmed injury, now the U.S. Government needs to follow up by sending a message to U.S. wheat farmers that our government will stand with them in defending against unfair trade practices, and to also send a strong message to the Canadians that this matter must be resolved now. I believe our meetings with Department of Commerce officials on this issue and other antidumping/countervailing duty matters have shown that they are serious in their desire to consult with us and seek our input on how best to proceed.

Finally, U.S. Trade Representative officials have indicated that they want to quickly proceed in identifying specific impediments to U.S. wheat entering Canada so they may press the Canadian Government to rectify the situation. The U.S. Trade Representative investigation saw the Canadian varietal control and wheat grading systems, their end-use certificate program, and the so called Canadian Wheat Access Facilitation Program for what they are—unfair hurdles for U.S. wheat growers who may wish to export to Canada. In any negotiations with the Canadian Government, the U.S. Trade Representative's position must be to demand full, effective market access and national treatment for U.S. wheat entering Canada and to demand that access for U.S. growers and their grains to Canada's transportation system be extended on the same basis it is granted to the CWB and Canadian grains. But, again as with the Article XVII WTO Complaint, we have cautioned the U.S. Trade Representative that addressing these non-tariff trade barriers will not alone be sufficient to remedy the unfair practices of the Board in the U.S. and in third country markets, and that pursuing this remedy must be part of their overall strategy to confront the Canadians on multiple fronts.

Lack of any movement by the Canadian Government and the Canadian Wheat Board to quickly agree to negotiate and engage in meaningful discussions which move the Board toward true reform, must be met with stiff resistance by our government and, should this occur, we will be demanding that the U.S. Trade Representative implement unilateral relief for U.S. wheat farmers.

Allow me to return briefly to our disappointment in Ambassador Zoellick not agreeing to implement tariff rate quotas at this time. There is clearly a need to immediately address the injury U.S. wheat farmers continue to suffer. Such injuries will continue for as long as the Canadian Wheat Board is allowed to engage in its unfair practices in the United States and third country markets. U.S. wheat farmers have suffered for the past decade. How much longer must they deal with the injuries caused by the Board before they see relief?

Having worked with the North Dakota Wheat Commission over the past decade on this frustrating, but resolvable, trade problem, I know how the Canadian Wheat Board operates when it comes to negotiations with the United States. And, unfortunately, the only thing they will respond to is direct action. The U.S. Trade Representative will have to bear down on them and force them with every possible tool to leverage the Board into discussing a meaningful and long-term resolution of this matter. Part of that strategy is forcing the Canadian Wheat Board and the Government of Canada to realize the pain—the economic pain—they will suffer if negotiations are not held in good faith and agreement is not reached on ways in which the Board's practices and policies will be reformed.

Perhaps the Ambassador's multi-pronged approach to pursuing the Canadian Wheat Board will convince the Canadian Government that this time the United States means business and that the issue is not going to fade away until it is fully addressed. I remain hopeful, but if the arrogant and defiant press releases and

statements issued by the Board since February 15th are any indication, I don't think it has yet gotten the message.

Thus, Ambassador Zoellick must be willing to soon revisit the issue of providing short-term relief to America's wheat farmers if the Canadians refuse to begin cooperating. And I mean true cooperation and negotiation, not the facade of cooperation and vaguely responding to queries, as the Board and the Government of Canada did in the Section 301 case.

We will continue to respectfully disagree with the U.S. Trade Representative on the legality of implementing tariff rate quotas. Certain trade-related issues fall outside of the existing international trade regime currently embodied in the WTO, yet clearly fall within U.S. trade laws such as Section 301. In such circumstances, it is neither within the scope nor competence of the WTO to resolve such issues.

The Canadian Wheat Board is a government-established and maintained anti-competitive monopoly that distorts the international wheat trade and harms U.S. wheat growers both in domestic and overseas markets. The non-commercial, predatory, discriminatory pricing in which it engages is a type of unfair, anti-competitive activity not covered by the WTO. There is no question that unilateral action by the U.S. on the basis of this type of price discrimination is permitted and justified under Section 301. This is a competition policy action and the WTO as currently constituted does not address competition policy.

Thus, the U.S. has no obligation to rely on the WTO in the particular matter raised in the Section 301 case. Indeed, trimming the issues at hand to those which are addressed under the WTO—subsidies, dumping, and/or violations of prior commitments with regard to state trading enterprises undertaken by Canada—may deprive U.S. wheat farmers of the opportunity to address the fundamentals of the matter and vitiate the rights of the United States to enforce its own laws in ways that are consistent with the WTO.

This problem has been ongoing for over a decade and our wheat farmers are suffering greatly at the hands of the Canadian Wheat Board. After turning to the Office of the U.S. Trade Representative for help by filing the Section 301 case, it would be a tragedy leading to great scepticism by U.S. wheat farmers if the U.S. Trade Representative remains insistent that while there is a violation of Section 301 that merited a clear affirmative finding of injury, this Administration will forego the most effective and immediate remedy because it assumes that a WTO panel might some day find against the United States on a matter never to date adjudicated by the WTO.

If that remains the case, I would plead with this Committee that any construction of a statute or treaty that results in a violation without a remedy must be fundamentally flawed and could not be a correct reading of the intent. Telling U.S. wheat farmers they have a right without giving them a remedy is unacceptable. All of the proposed avenues of remedy put forth by Ambassador Zoellick to date are applauded by wheat farmers, but the results of such actions are years away and America's wheat farmers need relief now. Failure to provide some short-term remedy will allow the continuation of the escalating injury. After years of competing against the unfair practices of the Board, U.S. wheat farmers require and merit interim, short-term relief in addition to the longer-term effort being currently initiated, even if the U.S. Government must develop a creative solution for a unique problem of Canada's making.

Mr. Chairman and Members of the Committee, I thank you for holding this timely hearing and would be pleased to answer any questions you may have.

Senator DORGAN. Mr. Hunnicutt, thank you very much.

Finally, we will hear from Mr. Miller. Mr. Miller, you may proceed.

STATEMENT OF JOHN C. MILLER, PRESIDENT, MILLER MILLING COMPANY

Mr. MILLER. Good morning, Mr. Chairman. My name is John Miller. I am President of Miller Milling Company, with mills in Fresno, California, Winchester, Virginia, and Sonora, Mexico. These three mills grind about 62,000 bushels of durum and hard red spring wheat each day. Miller Milling Company is also a minority owner of New World Pasta Company, the largest branded pasta company in the United States.

I am here to testify today on behalf of the 42 member companies of the North American Millers Association, NAMA, of whose board of directors I am a member. These companies operate 165 wheat, corn, oat, and rye mills in 38 States. Their collective production capacity of more than 160 million pounds each day represents 90 percent of the industry capacity. About 80 percent of that production is wheat flour.

U.S. millers buy Canadian durum primarily because the United States does not produce enough durum wheat of the quality our customers, U.S. pasta makers, require. This has been the case since we built our first durum mill in 1986 and is remains the case today. Competitive access to Canadian durum allows us to fulfil our obligations to supply U.S. pasta makers with the quality and quantity of semolina they require to satisfy U.S. consumers and compete with imports. Canadian durum is a necessary supplement to U.S. production of high quality durum, especially in years where adverse weather or farmer crop choices further reduce production of high quality durum.

If we did not have access to Canadian durum to supplement U.S. production, the following would occur in the short term. The limited supply of U.S. high quality durum would need to be blended with lower quality or non-durum flours to satisfy quantity demand. This would result in pasta quality that would be noticeably lower than current consumer expectations and less than the quality readily available in imported pasta.

Imported pasta as well as competing foods, such as rice and potatoes, would take market share and volume away from U.S. pasta producers. Also, pasta companies who tried to maintain high quality raw materials would be at a significant price disadvantage to imported pasta or competing foods. Demand for U.S.-produced durum wheat would decline.

In the longer term, production of both semolina and pasta would move offshore, where adequate supplies of high quality durum wheat are available at competitive prices. The mill our company recently completed in Sonora, Mexico, is an example of the kind of adaptation that would increasingly occur in response to limitations on our ability to source enough high quality durum in the United States. Once again, demand for high quality durum in the U.S. would decline and the owners and employees of Miller Milling Company would be damaged.

In the 20 years or so that I have been a durum miller, the attempt to prevent U.S. durum millers and pasta companies from having competitive access to Canadian durum production has become a nearly annual event. I have testified before about durum wheat and I have filled out lots of detailed questionnaires. In every case, my testimony and the data I have provided confirms that Canadian durum is offered to us at prices reflecting the price of durum in the U.S. market.

We attempt to make U.S. and Canadian sources compete for our business and terms of price, quality, service, and terms. On many occasions the only offer we have for durum in a particular delivery period is from Canadian sources. On other days the Canadians are unwilling to lower their prices to be competitive with U.S. offers. I do not perceive any continuing differences in buying from Cana-

dian or U.S. sources. They are all tough negotiators, trying to sell their durum for as much as they can.

My experience has been confirmed by the studies and investigations that have taken place over these many years, including the recent investigation by the U.S. International Trade Commission. If the Canadians are selling durum at less than market prices or better than market terms, I am not getting any of it.

In closing, let me say the North American Millers Association applauded the announcement by the United States Trade Representative in February that it will not impose restrictions on wheat entering the United States from Canada. At the same time, NAMA encourages the Trade Representative to seek more access to the Canadian market for U.S. growers. Free trade in both directions was the admirable goal of NAFTA and the realization of that goal should be a priority.

Thank you for your time and the opportunity to testify today.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF JOHN C. MILLER, PRESIDENT, MILLER MILLING COMPANY

My name is John Miller. I am president of Miller Milling Company with mills in Fresno, California, Winchester, Virginia and Sonora, Mexico. Those three mills grind about 62,000 bushels of durum and hard red spring wheat each day. Miller Milling is also a minority owner of New World Pasta Company, the largest branded pasta company in the United States.

I am here today to testify on behalf of the 42 member companies of the North American Millers' Association (NAMA) of whose Board of Directors I am a member. Those companies operate 165 wheat, corn, oat and rye mills in 38 states. Their collective production capacity of more than 160 million pounds each day represents 90 percent of the industry capacity. About 80 percent of that production is wheat flour.

U.S. millers buy Canadian durum primarily because the United States does not produce enough durum wheat of the quality our customers, U.S. pasta makers, require. This has been the case since we built our first durum mill in 1986 and it remains the case today. Competitive access to Canadian durum allows us to fulfill our obligation to supply U.S. pasta makers with the quality and quantity of semolina they require to satisfy U.S. consumers and compete with imports. Canadian durum is a necessary supplement to U.S. production of high quality durum, especially in years where adverse weather or farmer crop choices further reduce production of high quality durum.

If we did not have access to Canadian durum to supplement U.S. production the following would occur in the short term. The limited supply of U.S. high quality durum would need to be blended with lower quality durum or non-durum flours to satisfy quantity demand. This would result in pasta quality that would be noticeably lower than current consumer expectations and less than the quality readily available in imported pasta. Imported pasta as well as competing foods such as rice and potatoes would take market share and volume away from U.S. pasta producers.

Also, pasta companies who tried to maintain high quality raw materials would be at a significant price disadvantage to imported pasta or competing foods. Demand for U.S. produced durum wheat would decline.

In the longer term, production of both semolina and pasta would move offshore where adequate supplies of high quality durum wheat are available at competitive prices. The mill we recently completed in Sonora, Mexico is an example of the kind of adaptation that would increasingly occur in response to limitations on our ability to source enough high quality durum in the United States. Once again, demand for high quality durum in the U.S. would decline and the owners and employees of Miller Milling Company would be damaged.

In the twenty years or so that I have been a durum miller, the attempt to prevent U.S. durum millers and pasta companies from having competitive access to Canadian durum production has become a nearly annual event. I have testified before about durum wheat and I have filled out lots of detailed questionnaires. In every case my testimony and the data I have provided confirms that Canadian durum is offered to us at prices reflecting the price of durum in the U.S. market. We attempt

to make U.S. and Canadian sources compete for our business in terms of price, quality, service and terms.

On many occasions the only offer we have for durum in a particular delivery period is from Canadian sources. On other days the Canadians are unwilling to lower their prices to be competitive with U.S. offers. I don't perceive any continuing differences in buying from Canadian or U.S. sources. They are all tough negotiators trying to sell their durum for as much as they can. My experience has been confirmed by the studies and investigations that have taken place over these many years, including the recent investigation by the U.S. International Trade Commission. If the Canadians are selling durum at less than market prices or better than market terms, I'm not getting any of it.

In closing, let me say the North American Millers' Association applauded the announcement by the United States Trade Representative in February that it will not impose restrictions on wheat entering the United States from Canada.

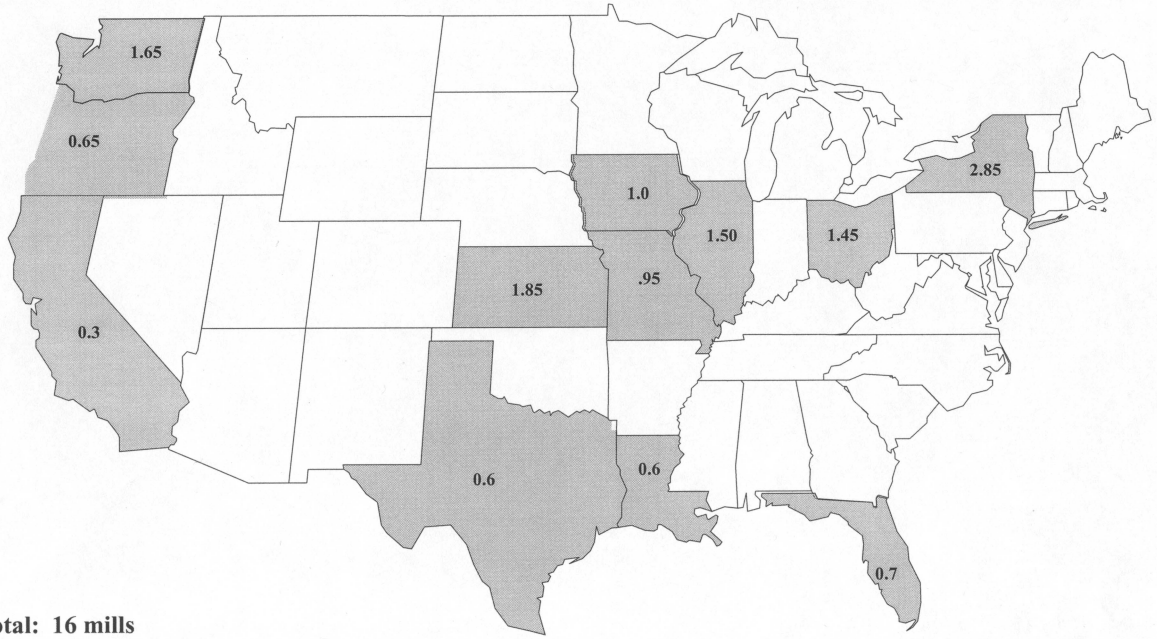
At the same time, NAMA encourages the Trade Representative to seek more access to the Canadian market for U.S. growers. Free trade in both directions was the admirable goal of NAFTA and the realization of that goal should be a priority.

Thank you for your time, and for the opportunity to testify today.

U.S. Flour Capacity Reductions Due to Mill Closures

2000 - 2002

(millions of pounds per day)



Total: 16 mills
14.1 million pounds per day

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
RE: FEDERAL REGISTER, VOLUME 66, NUMBER 246
DOCKET NUMBER 301.120

Dear Madam/Sir:

These comments are in response to the request for public comment on the wheat trading practices of the Canadian Wheat Board. The North American Millers' Association (NAMA) has 44 member companies operating 166 wheat, corn, oat and rye mills in 38 states and 150 cities. The aggregate production capacity of NAMA's membership is more than 160 million pounds of product daily, which is about 90% of the total U.S. capacity.

This letter includes discussion of the 301 petition, the reasons Canadian wheat enters the U.S., the likely effect of the remedy proposed by the petition and NAMA's recommendations for USTR actions.

301 Petition

The primary question before you is not the existence or operations of the Canadian Wheat Board (CWB). It is already the position of the United States Government that the monopoly powers of State Trading Enterprises (STE) should be eliminated and the STE placed at risk of profit or loss in the marketplace. NAMA strongly supports that position.

The primary question is what remedy, if any, should the U.S. seek as a result of the petition. The petitioners have requested tariff rate quotas be levied against wheat entering the U.S. from Canada. Let us consider that proposed remedy in light of USTR's request for comments regarding "appropriate action under Section 301 which could be taken in response."

The petitioners make two major claims about CWB sales:

1. The CWB engages in predatory pricing, and
2. The CWB delivers quality in excess of that specified in the contract.

1. Predatory pricing

A. Domestic sales

The report submitted to USTR by the International Trade Commission (ITC) states that *"Regarding contracted prices in the U.S. market during 1996/97 to 2000/01, reported Canadian Durum prices were above U.S. prices for all comparable months except one. For #1 CWRS/HRS wheat, price relationships were mixed with some Canadian prices equal to or above U.S. prices, and others below. Prices for #2 CWRS wheat were generally higher that those for #2 HRS wheat."*

If the price of Canadian wheat sold in the U.S. is nearly always higher than the price of comparable wheat from the U.S., that cannot be an example of predatory pricing. Therefore, granting the petitioners' proposed remedy or any other which restricts sales likewise cannot be considered "appropriate action."

B. Export sales

On the other hand, if the USTR believes the CWB has engaged in predatory pricing in overseas markets, the proposed remedy is even more inappropriate. It makes no sense to damage U.S. millers and their employees as a punishment for something in which they had no role and from which they did not profit.

2. Over-delivery of quality

The petitioners allege the CWB gives away protein for free, inferring such practice puts U.S. sellers at a disadvantage. In fact, according to the ITC report, both countries give away protein in small amounts. This is to be expected as buyers' contracts routinely specify financial penalties for under-delivery. In other words, it should be *expected* that over-delivery of quality occurs in nearly 100 percent of shipments. Further, the report states (page xxi) 65 percent of U.S. shipments over-delivered protein while only 54 percent of Canadian shipments over-delivered protein. If over-delivery of quality is expected, and the U.S. engages in it as much or more, then trade restrictions are not appropriate.

Reasons Canadian wheat enters the U.S.

The most important reason U.S. millers occasionally buy wheat from Canada is due to insufficient production here in the U.S. That may seem counterintuitive given the tremendous productivity of U.S. producers. However, for the two classes of wheat in question, it is undeniable. In 15 of the last 15 years, U.S. durum production was insufficient to meet total usage.

That would be true even if every bushel of durum were of milling quality (grades No. 1 or No. 2 Hard Amber Durum). However, recent data published by the Cereal Science Department of North Dakota State University for the North Dakota Wheat Commission, Montana Wheat and Barley Committee and U.S. Wheat Associates show that the portion of the 2001 crop that was of milling quality was 49 percent. While this was an improvement from the 2000 crop of which only 43 percent was milling quality, the total crop size was 25 percent smaller. These data are available at http://www.ndwheat.com/wi/durum/cropqual/quality__report.asp.

Effects of restrictions on wheat trade

As a practical matter, restricting shipments of wheat to the U.S. would be a counterproductive remedy. If USTR implements the proposed remedy, the wheat it prevents from entering the U.S. would simply be diverted to overseas sales, displacing U.S. wheat sales to markets about which the petitioners care so much. That would also have a depressing effect on the world wheat market to the detriment of growers.

Wheat milling in the U.S. is a very mature industry. Despite that maturity, market forces have resulted in the permanent closing of mills comprising more than 8.0 percent of the industry capacity in the last year. Restrictions would have the immediate effect of further damaging U.S. companies, not because of market forces but rather because of government intervention. It would also make the U.S. an even more attractive target for highly subsidized imported pasta to the detriment of growers.

The United States Government should not take actions which make mill employees collateral damage in a dispute in which their employer had no role.

Recommendations

First, USTR should press negotiations in the World Trade Organization for the elimination of the monopoly powers of STE.

Second, NAMA believes there has not been sufficient progress in opening the Canadian market to delivery by U.S. growers. Due to simple supply and demand considerations, Canada is not likely to ever be a major market for U.S. wheat. However, in those years when market conditions are more favorable to such shipments into Canada, that trade should occur freely without restriction.

To that end, NAMA makes the following recommendations. Note that each of these recommendations was made by the 1995 Canada-United States Joint Commission on Grains but to varying degrees have not been fully implemented.

A. Varietal control

Canada has a system of varietal control for wheat classes. This restricts the ability of U.S. growers to deliver non-approved varieties into the Canadian marketing system. The Commission recommended "Canada examine the issue of non-registered varieties of grain with the intent that such varieties when grown or received are priced to market value, and that registered and non-registered varieties from U.S. and Canadian producers can be received, handled and transported in the Canadian system in a manner that ensures varietal integrity." NAMA supports this recommendation.

B. Infrastructure

n recommended "both countries pursue the long-term goal of providing reciprocal access to the other's grain transportation and handling systems." NAMA supports this recommendation.

C. Grading and regulatory regimes

The Commission recommended "the grain inspection authorities in both countries standardize their methods and develop a common basis for the science of measurement." NAMA supports this recommendation.

D. End-use certificates

Canada requires that U.S. wheat be accompanied by an end-use certificate as a means of ensuring that varietal controls are maintained. The U.S. also requires end-use certificates for imported wheat from Canada to prevent that grain from being re-exported with the benefit of programs supported by the U.S. government. As the commission reported, end-use certificates have little functional usefulness, raise costs and are a visible irritant to wheat trade. Since the Commission reported that the U.S. will continue its end-use certificate requirement so long as Canada does, NAMA recommends the elimination of end-use certificates by both the U.S. and Canada.

Summary

U.S. millers occasionally buy Canadian wheat for specific milling or baking properties and to supplement the insufficient U.S. crop. This is consistent with NAFTA, the purpose of which was to facilitate the flow of goods and services. To punish participants in that commerce would not be appropriate.

We encourage USTR to reject the petition and its proposed remedies, and look to NAMA's recommendations as possible appropriate actions.

Thank you for your consideration of these views.

Sincerely,

BETSY FAGA
President, North American Millers' Association

NAMA NEWS

THE NORTH AMERICAN MILLERS' ASSOCIATION SUPPORTS CONTINUED FREE TRADE IN WHEAT BETWEEN THE U.S. AND CANADA

WASHINGTON, D.C.—January 3, 2002—The North American Millers' Association (NAMA) is encouraged by the report released by the U.S. International Trade Commission (ITC)—*Wheat Trading Practices: Competitive Conditions between U.S. and Canadian Wheat*, which supports continued free trade in wheat between the U.S. and Canada. The report was requested by the U.S. Trade Representative (USTR) in response to a petition filed by the North Dakota Wheat Commission alleging Canadian Wheat Board (CWB) prices unfairly undercut the market. As a remedy the petitioners have asked the U.S. government to restrict shipments of Canadian wheat to the U.S.

"If the petitioners are alleging predatory pricing in overseas markets, they should challenge the monopoly powers of the CWB through the World Trade Organization negotiations, and we would support them. However, since U.S. millers have no knowledge of, nor stake in, those sales it makes no sense to damage them as a response to a problem in which they had no role," said NAMA chairman Bernard J. Rothwell III.

"On the other hand" Rothwell continued "if the petitioners are alleging predatory pricing in the U.S., the ITC report clearly states the price of Canadian durum sold in the U.S. was actually higher than the price of U.S. durum in 59 of the last 60 months. If U.S. millers have to pay a higher price to get Canadian wheat, that surely can't be considered predatory pricing."

NAMA encourages the U.S. Trade Representative to decide the case on its merits and not impose restrictions on free trade in wheat and wheat products between the U.S. and Canada.

U.S. millers occasionally buy Canadian wheat for specific milling or baking properties and to supplement the U.S. crop. The durum crop was insufficient to meet demand in 15 out of the last 15 years. The hard red spring wheat crop was insufficient in 12 of the last 15 years.

NAMA has 44 member companies operating 166 wheat, corn, oat and rye mills in 38 states and 150 cities. The aggregate production capacity of NAMA's membership is more than 160 million pounds of product daily, which is about 90% of the total U.S. capacity.

Hill Contacts: For a list of NAMA members go to http://www.namamillers.org/a__mbr.html.

For a list of the cities and states where mills are located go to http://www.namamillers.org/a__mill.html.

Media Contacts:

For background information go to http://www.namamillers.org/is__briefs.html.

For talking points go to http://www.namamillers.org/is__301talkingpoints.html.

For a bio on Bernard J. Rothwell III go to http://www.namamillers.org/is__Rothwell.html.

Senator DORGAN. Mr. Miller, thank you very much.

Mr. Miller, let me start with a question for you. You have a different set of interests, obviously, than those who have presented testimony preceding you.

Mr. MILLER. Senator, might I interrupt? Actually, I think between us we have more in common than we have in difference.

Senator DORGAN. I understand, but if you were able to access Canadian durum in unlimited quantities at 50 percent of the acquisition cost, you would not be here complaining, would you, if it would enhance your profitability? You are not concerned about the conditions under which the grain comes across, whether it is fair to a producer in the U.S. or not. You are interested in availing yourself of a supply of the grain that you want at the cheapest possible price; is that not the case?

Mr. MILLER. In the short term I would agree with that. In the longer term, we have concerns about the instability of supply from Canada, partly because of political considerations. But in the short term I would say that is correct.

Senator DORGAN. Mr. Fisher, Mr. Miller seems to say that the problem of Canadian imports is your fault, the American farmer's fault. What is wrong with that argument?

Mr. FISHER. Well, sometimes there are circumstances which might make one have to do a little more research. But the research has been done and I think that the charts that are depicted or depict the situation with supply and availability—and I have some other statistics that run a little deeper than what the charts might explain. I find it ironic that in the years when—often in the years when we find the heaviest importations of Canadian that we actually have the greatest availability of U.S. supplies. That is a problem for me to understand, the dependence.

So a lot of the analysis that has been performed by economists, independent economists at NDSU and other places, would suggest that the imports are neither necessary nor always of the highest quality. That is borne out by some of the import documents.

Senator DORGAN. Mr. Miller makes the point, and I will concede the point, that you have common interests in some respects, but with respect to the origin of the grain, the miller cannot be very interested in whether a producer in North Dakota is a victim of unfair trade circumstances in my judgment.

But the purpose of this hearing is really to discuss USTR's judgment that Canada is violating certain elements of trade laws, but there shall be no penalty for it at this point. We will instead begin considering longer term issues, and that is of great concern to me because, as I indicated, farmers are trying to survive in the short term and negotiators are trying to negotiate in the long term. The long term for us has been at least 10 years now, with very little result.

Mr. Broyles, let me just observe to you, I may be wrong about this and if I am I should apologize before I say it, but, having voted against the U.S.-Canada Free Trade Agreement, having voted against NAFTA, I recall that it was a pretty lonely time back then because we did not have much support, those of us who believed this was going to create unfair trade circumstances, negotiate away Section 22 and the various enterprises, weaken 301, and a whole series of things—we did not have much support from anybody, certainly not commodity groups. Farm organizations, they just put on their bathing suits and jumped in the pool and said: Yeah, let us approve this.

So 10 years later, in retrospect I think most of us understand at this point we set ourselves up in some ways. In your testimony, I

do not have a page number, but you talk about a May 1992 event and it is central to the point I am making about all of the groups that were absent in trying to fight these things when we had the fight.

In May of 1992, believing the Canadian Wheat Board was continuing to offer wheat exports below the cost of acquisition, we requested a dispute resolution panel under the provisions of the Canada–U.S. Free Trade Agreement. The panel in its final report determined that the acquisition price is defined to include only the initial payment, that is the GRP payment in Canada, only the initial payment.

I alluded to that earlier with the Trade Ambassador. That was an agreement that was made between Ambassador Yeuter and the Canadians. Until a hearing was held in 1992 or '3, that remained undisclosed to the United States Congress. Even when those of us in Congress, myself especially, inquired about it, the USTR denied it. It turns out that that denial, of course, was not accurate at all. They lied to the Congress.

But in this action is where we discovered that a separate agreement, previously undisclosed to U.S. farmers and to the U.S. Congress and to the Wheat Association and others, a separate agreement said, oh, by the way, the judgment of whether trade is fair or unfair shall be evaluating whether it is sold into our marketplace at below the acquisition cost, and by the way the acquisition cost shall include only the initial GRP payment.

In other words, they cut away a portion of the cost of production and said, that is the basis on which we will evaluate whether this is fair.

I have not asked you a question. I have said that only for therapeutic reasons, because it was so frustrating to see most organizations abandon the good fight on behalf of producers, saying let us stand up for producers so that there are remedies available here when we confront the problems of unfair trade.

But your statement is a good statement, Mr. Broyles. I think on behalf of producers what you are saying is we need more than sympathy, we need a remedy. Is that not the case?

Mr. BROYLES. Yes. And by the way, I share your therapy with that statement. I was not a part of the National Wheat Growers at that point in time, but we have laid out this as a chronology. It is certainly part of our disappointment. It is certainly more than sufficient evidence to the stonewalling that has taken place and, to be honest with you, I think we just good schnookered really good back there.

Senator DORGAN. We will be debating, we will be debating trade again within the next month or two, and most of the commodity groups and farm organizations will say to us: Why do you not pass fast track and why do you not let them negotiate an agreement, them the trade negotiators, negotiate another agreement, and they can do that pretty much in secret, and bring it back here and put your handcuffs and because you are not allowed to offer any changes to it under any circumstances.

I am guessing that when we have that discussion within the next couple of months that most of the organizations whose members are injured by what we have seen in the last decade will regret-

tably not join me in the fight against fast track. I did not believe President Clinton should have it. I do not believe President Bush should have it.

Let me just ask one other question and I am going to ask Senator Burns to ask questions or to inquire. Mr. Fisher, you have been at this almost as long as I have, I guess. This started—I, as I said, had a hearing in the Ways and Means Committee of the U.S. House almost 10 years ago, almost immediately after the U.S.-Canada Free Trade Agreement. Just prior to the agreement, there was very little durum, for example, coming into our country from Canada, just a trickle of durum coming in.

I guess I would ask you and Mr. Miller, if it is the case that the millers need access to that Canadian marketplace and that we actually do not produce what they need in sufficient quantity and therefore that is why they have accessed it for, Mr. Miller said, some 20 years, why was it not the case that just prior to the U.S.–Canada Free Trade Agreement that there was substantial durum coming into this country from Canada?

Mr. FISHER. Mr. Chairman, I think that, first of all, I will hold up the chart again that I think supports your statement certainly that prior to the implementation of the CUSTA agreement there was virtually no durum moving into the United States. I have actually been monitoring those numbers since 1982 and there was none in that time frame.

So I think that the two are related. As you know, the tariff that existed at that time, which was some 21 cents on a bushel, began to decline in 10 percent increments over that time frame, and we saw the escalation follow that pattern.

We have—I think this whole theory of the self-fulfilling prophecy has a lot of credibility. It is something that the producers, the U.S. durum growers, came up with, that there is a deliberate attempt on the part of the Canadian Wheat Board to demoralize the industry and the producers and to replace them in their own domestic market. Certainly, with all due respect to the millers and to Mr. Miller, he and I do truly agree on a lot of these things, that we are better off having a strong U.S. industry, and I think that is why they have the support for the long-term goals of remedying the situation to the extent that it would affect the longer term aspects.

I think they are rather protective of the cross-border movement at this point.

Senator DORGAN. Senator Burns.

Senator BURNS. I want to kind of go down that track, too. Mr. Miller, I read your testimony. I did not hear it. Thanks for coming today. I am not going to beat up on you too bad.

Your three mills grind about what, 20 million bushel a year, something like that?

Mr. MILLER. Give or take.

Senator BURNS. That is almost a fifth of the total production in the United States. But what is the total domestic, what demand do you think there is for durum wheat in the United States?

Mr. MILLER. 85, 90 million bushels a year, something like that.

Senator BURNS. The thing about it is, I have said this for a long time: There ain't nothing wrong on the farm excepting the price.

Mr. MILLER. Can I answer that, Senator?

Senator BURNS. Yes.

Mr. MILLER. It is a little bit back to my friend Neal, you know, who, we have been in these fights for many years and I know that Neal understands very well the difference in quality grades between 1, 2, 3, and 4 hard amber durums, and in fact earlier this week we were together at the Pasta Association meeting talking about strategies to try to increase the amount of research and support for funding for diseases in durum and that sort of thing. I think Neal in his passion perhaps forgot what he has heard a dozen times, and as I think he knows, too, because North Dakota actually owns a durum mill that competes with our mills. The State itself is involved in the business, so they know very well as well.

All of the durum produced in the United States is not necessarily acceptable or usable to make pasta.

Senator BURNS. Well, I am aware of that. I know that.

Mr. MILLER. To say that we have adequate supplies because we have 85 million bushels produced in a year when we consume that misses the point that, even if you accept 2 hard amber durum as the milling quality, you are still in the last several years less than 50 percent of the crop available for U.S. durum millers.

Senator DORGAN. If you will yield on that point, tell us about the 1980's, then? How were you able to access the supply of durum in the 1980's without accessing the Canadian supply?

Mr. MILLER. I am not an ag economist and I am not a statistician. My recollection of that period was that, first of all, we did not face some of the disease issues that perhaps we face in North Dakota at this time. The production areas of North Dakota have shifted dramatically in the last 15 years as a result of some of the problems of disease in North Dakota.

Senator DORGAN. The disease issues are of relatively recent vintage. That does not answer the question of 1990, 1992, 1994. But thank you.

Senator BURNS. I guess the point I am getting to is this: we are trying to get, Mr. Miller, we are trying to get our share of the consumer dollar back to the farm. That is where it is at. We do not mind you going out there and grinding, and you can buy it wherever you want to. I just want—in other words, what you strive for is quality, quantity, and delivery date. Those are the three challenges that you have to stay in business.

Mr. MILLER. Fairly said.

Senator BURNS. Is that not so?

Mr. MILLER. Fairly said.

Senator BURNS. That is simplified. Now, you have got to deal with me on a fourth grade level because that is about as far as I got. But the point I am making is that if I could come in there and guarantee you delivery date, quality, and quantity—what did you give for the last—do you know what the market was on your durum the last time you wrote a check to buy durum on the open market?

Mr. MILLER. I bought durum yesterday. Yes, sir, I know what I paid for it.

Senator BURNS. How much was it?

Mr. MILLER. Okay, fair enough. I think we paid yesterday, obligated ourselves for wheat that will be delivered some time in the future, $4.75 a bushel basis Minneapolis. And we bought one hard amber durum.

Senator BURNS. What do you mean, "basis Minneapolis"?

Mr. MILLER. Meaning delivered. So that if we then move that to Winchester, Virginia, or some other location, we will incur additional freight cost to get it there. But delivered into Minneapolis basis, about $4.75 a bushel.

Senator BURNS. You have a plant in Winchester, you have got one in California?

Mr. MILLER. Fresno, and one in Mexico.

Senator BURNS. Why would you pay Minneapolis basis?

Mr. MILLER. Most of the durum that is moving, most of the northern tier durum that is moving in the United States moves either through Minneapolis or close to Minneapolis. So Minneapolis has become a reference point for pricing of durum in the United States. That does not apply to durum produced in Arizona, California, Mexico, but most of the northern tier Canadian and U.S. durum is priced in a reference point to Minneapolis.

Senator BURNS. Okay. I can remember, I go back to old fuel oil days when everybody said everything is basis Tulsa. Remember those days? That is how we priced our gasoline all over the country. We priced it that way.

But anyway, and we still do winter wheat. When we sell cash wheat, we always have winter wheat off of the Kansas City market and spring wheat off Minneapolis, and less our delivery and that type of thing. Of course, we are also faced with a captive shipper thing that me and Mr. Dorgan are also involved with.

Now, whenever you sell your pasta or your flour that makes your pasta, if I could come down there and just absolutely guarantee you, guarantee you quality, quantity, and it would be clean, and delivery date, is it worth more than four dollars a bushel?

Mr. MILLER. If you removed all of the risk of execution and financial risk of delivery and every other thing, if you became a profoundly perfect deliverer, yes, you would probably gain a premium in the market to shippers that, no matter who they are, we entail some risk. I will give you an example. Part of the reason I think that we frequently pay more for U.S. wheat is that we are more secure in the logistics streams of wheat coming out of North Dakota and Montana than we are from Canada. It is a single railroad move rather than multiple railroad moves. The delivery stream is probably shorter.

And with U.S. deliverers we are able to negotiate, I might say, more advantageous terms for ourselves in terms of specific quality factors and delivery terms than we are from Canada. So the majority, the vast majority of wheat that we buy, comes from the United States, and for the reason——

Senator BURNS. I would assume that, yes.

Mr. MILLER. For the reason that, all things equal, the other factors are more desirable from the United States.

Senator BURNS. What would that be worth to you? Have you ever done your cost accounting——

Mr. MILLER. Every shipper that we have has a different——

Senator BURNS. Look, I am talking about production off the farm. I am talking about production off the farm. That is where we are lacking.

Mr. MILLER. That is a theoretical that I have never really had to consider. If God delivered durum, he would get a premium because it would be perfectly secure and safe and he would control all events. But that is not the world we live in. There is risk and other factors in everybody that sells us durum, some more than others by location or financial stability or their ability to control quality. So you have to make an individual decision in each case.

Senator BURNS. Well, what I am saying is that I am going to deliver you quality, quantity, and on the day that you want it, and there are certain risks for me, me as a producer. What I am trying to do, I am trying to filter another 30 cents a bushel to the farmer, is what I am trying to do. There are farmers that want to take responsibility for that; did you know that?

Mr. MILLER. If you can raise the price of all the products that we compete against as well——

Senator BURNS. Wait a minute, wait a minute. I see what you—I understand markups.

Mr. MILLER. Well, no, not markups, but markets. For example, if I pay you 30 cents more a bushel for durum than my competitors are paying for durum, either in the United States or in foreign countries, well, I will quickly be out of the business. Additionally, if all durum, if all durum millers and pasta producers had to pay an elevated price for durum relative to competing crops—rice, potatoes, other things—then as an industry we would decline.

So it is a theoretical question, could we absorb an artificially high durum price in North Dakota relative to the rest of the world? The answer to that is clearly no.

Senator BURNS. Nothing against the North Dakota farmers, but I am more concerned about my Montana folks.

Mr. MILLER. Jerry Thusen's a good friend of mine and I think Jerry would agree with me on this instance, anyway.

Senator BURNS. I bet he would.

Well, we are just trying to work our way through this thing——

Mr. MILLER. May I make one point?

Senator BURNS. Yes.

Mr. MILLER. We agree on so many things and our association has taken a position on the Wheat Board, and we agree that the U.S. is not allowed to be competitive—I mean, I as a flour miller am not allowed to be competitive in a lot of parts of the world because of artificial government-supported subsidies and non-tariff trade barriers in many countries. We agree absolutely with them on this issue—free trade, exporting even of pasta. We export no pasta virtually out of the United States because we are not allowed to compete against foreign producers who have subsidies and trade barriers.

What we are saying in this instance perhaps is in your solution you may actually kill the patient. The medicine may kill the patient here. If you cut off our access arbitrarily to Canadian durum, you will be damaging the best customer that you actually have, the one that is most dependent on your supply, the one that is here every single day trying to buy your wheat. We are saying, in your

search for a solution to the broader issues that you are dealing with, many of which we agree with, do not take one little instance here and say, well, we are going to stop Canadian wheat from coming in or we are going to make it artificially high so it is unavailable.

You will in effect then damage the very customers who you are so dependent on. That is our plea.

On the other issues, the Canadian Wheat Board is a state trading enterprise and all those things, first of all, they are way over our head. We are just flour millers and stuff. That is for others smarter to talk about. But we are not here to defend the Wheat Board. We are here to say we really do have to have access to this.

For whatever reasons and since however long—you have been going back to the eighties, Senator—the fact of the matter is that they do not produce enough to satisfy our demand, and a restriction on it will damage us, and I do not think that is your intent.

Senator BURNS. It is not, it is not. I am just trying to figure some way that we can, in the marketing apparatus, somewhere that—you know, we used to live a long time ago, Mr. Miller, in all my experience with agriculture, we always lived within about 15 to an 18 cents out of every consumer dollar getting back to the farm and ranch. Now we are around a dime or less.

Now, we know where our money is going. It is just how we recover that.

You are right, you are exactly right. We have got to be very, very careful we do not kill the patient. I would agree with you wholeheartedly on that. I am sort of a free trader myself. I think we can go out and compete. But we cannot compete with one arm tied behind, and especially whenever we have a limited amount of folks that are actually in the business of buying our product and understanding the psychology of the market.

So you can see where we have become very despondent. I will tell you what we do. We grab for straws and sometimes they are the wrong straw, and we are all guilty of that, as you well know.

Senator DORGAN. Let me say first of all, this is about trade. It is about trade, and it becomes a self-fulfilling prophecy if an industry in this country buys from abroad in a manner that reflects unfair trade and that injures our domestic industry and then comes to us and says, oh, by the way, the domestic industry is not able to supply the quantity we need. So this is about trade, the fundamentals of fair trade.

I understand the issue of what percent of the food dollar goes to the farmer and so on. But this is about a question of will we have a durum industry left in this country if, Mr. Miller, you have the opportunity to buy from an exchange in this country at posted prices or buy from a monopoly in Canada called the state trading enterprise, the Canadian Wheat Board, at secret prices, who say to this country, it is none of your business what Mr. Miller did with us, we have no obligation to tell you, and you have no obligation to see it.

So that is the issue here.

Now, Mr. Fisher, why do you not tell us about the issue of whether we can supply durum for our millers in this country.

Mr. MILLER. Before that, could I just respond to the one thing that you said?

Senator DORGAN. Yes.

Mr. MILLER. Again, I think passions overcome Mr. Fisher, in that I am chairman of the Minneapolis Grain Exchange and the reason that the durum contract on the Minneapolis Grain Exchange failed was that the producers have not used the contract. Consequently it had no liquidity, consequently the contract—it had no volume and it failed.

It was not because the industry did not attempt to use it. The industry, millers and pasta makers, are the ones that pushed the durum contract in the first place. It was in fact the producers and the resellers that they represent that actually did not participate in that contract and that is why it failed.

Senator DORGAN. Yes, well, Mr. Miller, our producers have been busy getting clobbered by unfair imports from Canada and that is what the hearing is about.

Mr. MILLER. I understand. I just wanted to correct what——

Senator DORGAN. I understand. It is just that our producers have been a little busy trying to defend themselves against unfair trade for about 10 years.

Mr. Fisher.

Mr. FISHER. Mr. Chairman, I guess I have a couple of comments there. One is on the liquidity issue at the Minneapolis Grain Exchange, and Mr. Miller is a member of the board, I believe, there, so——

Mr. MILLER. Chairman.

Mr. FISHER. I think still chairman.

I do not claim to have any more knowledge than he does on that, certainly. However, I think that the actions of the Canadian Wheat Board did reduce the ability of anyone to make a conscious effort at using the contracts there, that everyone has been disadvantaged by that.

A couple of other points I think that need to be made. Again, I do not want to overdo it on charts, but this particular chart shows U.S. durum acreage and production over the long haul. Up until the time when we had the reduction in the tariff at the border or the implementation of the Canada–U.S. Trade Agreement, we saw price response or producer response to price increases and we saw an uptrending durum industry in the United States—a better ability to supply those domestic and export needs.

After that time frame, we saw a relatively flat picture and I submit that that is largely due to a blunting of those price signals as Canadian penetration increased. Now, that is not entirely the reason, but I think definitely the case can be made for that scenario, that we have taken the price incentives out of those good years, as our producers would say, and flattened since CUSTA their ability to really read clear market signals. We made some reference to that in the earlier testimony, so I will not belabor that.

The other issue at hand here is the TRQ levels. Those that were proposed in the Section 301 and the remedies, the seventh remedy that Ambassador Johnson referred to, were at a level sufficient to allow the current trade in durum to continue. So there was no attempt on the part of producers, while sending a strong signal to the

administration, while sending a stronger signal to the Canadian Wheat Board that this administration here was serious, producers were serious, it did not intend to restrict Mr. Miller or any other miller's ability to access Canadian durum at that point.

It would in extreme cases certainly have done that and inflicted——

Senator DORGAN. It would require them to pay more. I am the one who said that they ought to ship it to Newfoundland. But my point is, Mr. Miller, a tariff rate quota will not prevent you from accessing Canadian grain. It will simply require that you pay more. You do not want to do that. If I were a miller I would not want to do it.

But our point is about fair trade and that is why we are trying to get some remedy here. Getting this remedy is not in your interest. I understand that.

Mr. MILLER. In the short run, yes, we would pay more, and in the short run we would compromise quality. In the longer term——

Senator DORGAN. Why would you compromise—wait a second. What do you mean, you would compromise quality?

Mr. MILLER. We would not be able to compete with people that were not dependent on northern tier durum if we were paying a price that was artificially high relative to them. For example, Italian and Turkish pasta companies would not be limited in their access or forced to pay a higher than world durum prices. Consequently, they would have a price advantage over us and they would exploit it.

Our mill in Mexico would become even much more active in shipping semolina into the United States because it would then have a price advantage relative to mills that are dependent on northern tier durum. Our mill in California, which is not dependent on Canadian or North Dakota durum, would have a price advantage and it would become a larger volume shipper.

That is why I say that the medicine may kill the patient. If you try to artificially maintain a North Dakota durum price that is not market competitive with world prices or either other prices available in North America, you will shift production of pasta away from areas that are tributary to northern tier durum.

In the short run, you are correct, you would see the spike. In the longer run, the marketplace will cause us to accommodate that.

Senator DORGAN. You talk about killing the patient. I tell you what is going to kill—your companies I am sure are very interested in the new global economy, accessing foreign markets, moving your goods around the world. I tell you what is going to kill this global economy. It is that governments refuse to stand up and exhibit a little backbone when you see unfairness in trade.

If you are not willing to correct problems, ultimately the people who are out demonstrating out here today and elsewhere with respect to this trade issue are going to get the upper hand, because they are going to say, and producers will agree, that even when there is fundamentally unfair trade no one is willing to stand up and do anything about it.

My point is, and I do not want to dwell on this, my point is your interest is different than the farmers who are victims of unfair trade. You would like to access the best quality durum you can for

the lowest price, and if it comes in under the guise of unfair trade that is fine with you. It does not matter to you because it does not affect you. It affects a group of producers, and that is the point of this issue.

Now, Mr. Fisher, are you trying, as Mr. Miller seemed to suggest, to get a premium or unfair price for northern tier durum? Is that what you are doing?

Mr. FISHER. Mr. Chairman, we are not trying to extract a premium price different than anywhere else in the country. It is interesting. I have a letter from Southwestern Durum Producers who, in the desert area of Arizona and California, say that they would for a little bit of a premium—and that would affect the whole market, not just northern—they would be very ready to increase production in the Southwestern United States. They have come from about 30 million production down there to 16 million, just enough to maintain rotational needs.

I also would submit that there are two patients in this hospital. One is the producer, the other the processor, and I think we have to be careful that we take care of livelihood and the wellbeing of both of them.

Senator DORGAN. I know what is killing the patient at the moment. I mean, the fact is our farmers are going out of business hand over fist in North Dakota and being victims of unfair trade and seeing price collapse in these grains is causing these people to be patients that are not surviving.

So we need to have a remedy here, and I think the purpose of this discussion is to describe support for the announcement that we have finished an investigation, Canada is guilty of unfair trade, but also to establish pressure for a remedy.

Senator Burns.

Senator BURNS. I would like to get some kind of an observation from either one of you or all of you. How much in our exports, how much is the strong dollar really hurting us as far as exporters are concerned here in the United States? Mr. Broyles?

Mr. BROYLES. Just like the rest of us, I am not an economist. But I will tell you what, since the dollar has gotten very strong, I think it is very healthy for our economy as a whole, but for those of us in the wheat industry that are dependent upon shipping 50 percent of our crop to another country, it has hurt us a lot. I think it is well documented by our decrease in market share, export market share around the world.

I would like to reiterate what the chairman has said. This is not against trade. It is a matter of fair trade. It is a matter of price discovery. Certainly the millers will have access to Canadian grain, but it will be at a discovered price, a price at which there has been market risk involved by the merchandiser in Canada, not a case where they are able to secure the entire production up there and just get rid of it, just dump it on our market.

I think when that happens we will see the durum industry and the spring wheat industry recovering in the United States. It does not mean that we are not able to bring it in from Canada, but it means it will come in at a discovered price, and that is what we need.

In this time of globalization, the place for an STE no longer exists and it cannot exist in this globalized trade, and we must do what it takes right now. I will tell you that the wheat industry, and as a representative of that, we intend to keep Congress and the administration's feet to the fire until something is resolved here, and I hope we come back in six months and we can see that there has been some significant steps taken place, and if there has not we will continue to holler about it until it is done.

Senator DORGAN. We will have another hearing in six months.

Senator BURNS. Anybody else want to comment on the strong dollar? It is an advantage to Mr. Miller.

Mr. MILLER. We do no exports, sir.

Senator BURNS. I know, but you buy on a foreign market and that strong dollar is pretty advantageous to you; is that not correct?

Mr. MILLER. If there is an advantage to buying Canadian wheat because of the strong dollar, we do not get it because we buy at the Canadians' to us price relative to the U.S. market.

Senator BURNS. All right.

Mr. HUNNICUTT. Senator, the only thing I would say, and I may be saying the same thing Mr. Broyles just said in a different way, and that is I think there has been a lot of work recently that demonstrates that exchange rates have a differential impact on agricultural commodities than they have on the manufacturing sector, and that could be an issue here. That issue, however, is separate from the impact of the activities and the pricing practices of the Canadian Wheat Board, which, regardless of the impact of the exchange rate, would still be injuring U.S. growers in terms of its effect on the U.S. in third country markets.

Senator DORGAN. I want to thank all of those who have testified today. We appreciate your testimony. I have to run out. I have to be somewhere at 11:45.

Senator BURNS. I want to go to lunch. I have never missed a meal and I am not going to start now.

Senator DORGAN. A good Montanan.

But let me thank all of you. We will leave the record open for other testimony for two weeks and this hearing is adjourned.

[Whereupon, at 11:42 a.m., the Subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF THE NORTH DAKOTA WHEAT COMMISSION

The North Dakota Wheat Commission ("NDWC") appreciates this opportunity to provide additional information for the hearing record on the issue of the recently concluded U.S. Trade Representative's ("USTR") investigation of the Canadian Wheat Board ("CWB" or "Board") under Section 301 of the Trade Act of 1974.

During his testimony on April 19, 2002, Mr. Neal Fisher, Administrator of the NDWC, referred to numerous charts submitted to the Committee. Enclosed, at Tab 1, is a brief description of each chart as well as a summary of the significance of what each chart reveals in terms of the drastically negative impact of the CWB's unfair practices on U.S. and North Dakota wheat producers. These additional descriptions should assist in further illuminating the damage and injury being inflicted upon U.S. wheat producers by the Board.

In December of last year, the U.S. International Trade Commission ("USITC") published its Section 332 report on competitive conditions between U.S. and Canadian wheat. That report provided strong support for the allegations of CWB predatory activity detailed by the NDWC. Yet, despite the findings of this report, the U.S. Trade Representative failed to implement the modest tariff rate quotas on durum and hard red spring wheat proposed by the NDWC—ones that would have allowed most Canadian tonnage to enter duty-free.

The failure to enact tariff rate quotas on durum and hard red spring imports from Canada is costing U.S. farmers lost domestic sales and lost income every day. We have run the USITC's own COMPAS model with current wheat data and the results indicate that the tariff rate quotas would have increased durum revenue by up to 19.6 percent and hard red spring wheat revenues by up to 13.4 percent. This would have translated into $144 million in additional revenue and $57 million in additional income in 2002 for the long-suffering producers of these classes alone.

The failure of USTR to adopt the NDWC proposal has already cost U.S. farmers more than $43 million in lost sales to date in 2002, and more than $17 million in lost farm income (based on 2000 data for income and returns updated to reflect current price levels). Currently, Canadian wheat imports are running well ahead of last year's pace, prices remain extremely low by historical standards, and U.S. wheat producers continue to earn far less than they should and far less than they would had the U.S. industry's request for tariff rate quotas been heeded. Had these tariff rate quotas been in place for the time period 1996 to 2001, based on the USITC's COMPAS model and using the 2002 percentage figures referenced above, our wheat farmers would have received additional revenues in the area of $427 million for durum, and $919 million for hard red spring wheat. Clearly, the unfair activities of the CWB have driven down wheat prices, and drastically impacted U.S. wheat producers.

Reported USITC Pricing Data Are Inadequate for Meaningful Price Comparisons

The USITC's efforts in conducting the Section 332 investigation concerning the competitive conditions between U.S. and Canadian wheat and in preparing the final report released last December were helpful. The report and testimony in this hearing confirm a lot of what America's wheat producers already know—that the CWB is insulated from commercial risk, benefits from subsides and special privileges, and has a competitive advantage due to its monopoly control over a guaranteed supply of wheat. But, unfortunately, due to factors outside of the USITC's control, the investigation came up short when attempting to conduct a pricing analysis.

The Section 332 investigation by the USITC uncovered a plethora of examples where the Board causes injury to competition and gross market distortions in U.S. and foreign wheat markets. Where these and all past investigations of the CWB have not been as fully informative, however, is in regard to the long-elusive goal of establishing definitive price comparisons. While the USTR assumed responsibility for soliciting pricing data from the CWB through its questionnaire, the USITC was

responsible for collecting other data and for compiling a comprehensive report. And while the USTR shared the CWB questionnaire response with the USITC (*See* USITC Report, Chapter 1, p. 3, footnote 7), it is apparent from both the tables and the text in its report that the USITC failed to benefit from the access to and information contained in the CWB submission. Furthermore, Mr. Rogowsky has confirmed that the USITC did not separately attempt to obtain data from the Board. Stonewalled again, the USITC resorted to making the best of data gathered from purchasers which in itself is sparse and woefully inadequate to derive meaningful price comparisons. Furthermore, the USITC was apparently unable to reconcile the purchaser data, by adjusting pricing values for protein differences and other differing financial terms of sale, in a fashion that might allow adequate comparisons. The CWB's provision on a non-commercial basis of futures contracts alone is a substantial difference.

The crux of the USITC's problem is that the largest single seller of wheat in the world, the CWB, has sole control of the data that would allow appropriate "apples-to-apples" price comparisons that would address the full nature and extent of the Board's price discrimination and predatory pricing, and their consequent impact on U.S. and world wheat markets. Differences in the terms of sale and the product actually delivered are quantifiable and have a direct and measurable impact on the market price and decisions made by purchasers. These are not the non-price differences typically ignored in USITC underselling comparisons. Rather by all accounts, including those of the CWB itself, the market sets values for protein levels and terms of trade, including forward contracts exclusively available from the CWB. As demonstrated in numerous NDWC filings during the course of the Section 332 investigation and on the CWB's own website, the Board compensates its farmers based on the protein levels of the deliveries they make to the CWB, with specific compensation levels, by wheat class, for each 0.1 of a percentage point of protein content.

It must be noted that from the outset of the Section 301 investigation, over-delivery of protein and the non-commercial offering of futures contracts were among the core elements underlying the predatory price discrimination engaged in by the CWB. Lacking the necessary data, the USITC instead furnished unadjusted price series that were not adequate for the very purposes of the investigation. Those data in many instances seem to indicate higher pricing by the CWB in the U.S. market. This is not surprising, however, given the failure of the Board to provide the data actually necessary for the task. Thus, the unadjusted pricing data taken on their own reveal nothing concerning the presence or absence of the unfair anti-competitive actions which were at issue in the investigation.

The USITC report itself is replete with statements which highlight the inadequacies of the pricing data. For example:

- "Data were not sufficiently available to analyze protein over-delivery in U.S. and Canadian Durum export contracts." (Executive Summary, p. xviii, footnote 7);
- "Moreover, the Commission was unable to directly compare prices of individual contracts for corresponding U.S. and Canadian wheat products without more detailed knowledge of differences in individual contract pricing structures, even if the purchases occurred in the same month or if deliveries occurred in the same month." (Chapter 4, p. 22);
- "Most price data were reported on a cost-plus-freights (c&f) basis onward to the facility, as requested by the Commission, but some prices were reported freight-on-board (f.o.b) basis from the point of origin and numerous 'c&f' prices, particularly the contracted prices, were reported relative to the U.S. 'gateway' point rather than onward to a firm's facility. In such cases, without more detailed knowledge of price-component breakouts for individual contracts, it would be difficult to correlate delivered 'price adjustments' with differences between contracted and delivered prices and characteristics." (Chapter 4, pp. 21–22); and,
- "Too few observations on the average transportation costs between principal Canadian purchase points and final U.S. destinations were reported by firms to be considered a representative sample of the transportation costs of Canadian wheat purchases." (Chapter 4, p. 11, footnote 7).

In addition, the USITC's data coverage is exceedingly modest compared to the full coverage that might have been achieved with the assistance of the CWB. Eighteen purchasers provided 785 individual contracts for the various months. (*See* USITC Report, Chapter 4, p. 21). This provides only about 9 percent of the full set of observations for the five year period of the investigation. (A potential full set of observations would have covered 18 firms x 60 months x 8 wheat class/grade categories,

for a total of 8,640 observations). The quantity of wheat represented by the USITC purchaser data set is only 26 million bushels of Canadian wheat, around 8.5 percent of the wheat imported from Canada over the five year period of investigation. These facts raise inevitable questions concerning the sufficiency and adequacy of the USITC's purchaser data set. Furthermore, purchasers have made clear they do not believe it is in their short-term interests to assist the USITC in accumulating data that may be used to limit their access to unfairly low priced Canadian wheat imports.

Inadequacies with the USITC data extend beyond the problem of sufficient coverage. The USITC report cites contract prices by class/grade and average delivered prices for each month of the period of investigation. Instead of calculating price adjustments to reflect the over-delivery of protein and other characteristics, the USITC reported only the relative frequency and level of over-delivery. This information conveys nothing about the effect of over-delivery on pricing. Furthermore, the USITC did not compare contracted and delivered prices, because many prices were reported to it on an F.O.B. basis from the point of origin instead of the cost-plus-freight onward to the facility. The USTR questionnaire to the Board would have addressed this problem. Additionally, many of the cost-plus-freight contracted prices were reported relative to the U.S. gateway point rather than onward to a purchaser's facility. The USITC has acknowledged that these shortcomings prevented it from correlating "delivered price adjustments with differences between contracted and delivered characteristics and prices." (*See* USITC Report, Chapter 4, p. 22).

Variations in contract structure prevented the USITC from making comparisons of monthly contract prices. For instance, when purchase prices are specified relative to a futures market, then price differences will necessarily reflect the choice of the futures contract month. (*See* USITC Report, Chapter 4, p. 22). The USITC did not have information for individual contracts, and hence simply plotted points. This approach failed to account for the noncommercial provision of long-term contracts by the CWB, a significant trade-distorting practice that the USITC report confirmed.

The USITC reported the share of shipments with over-delivery of protein, and sorted them by magnitude. The USITC noted that most were within 1.5 percentage points of the contracted amounts. The CWB, however, compensates its farmers on the basis of tenths of a percentage point. The 1.5 point margin aggregates 15 discrete levels of payment in Canada; one may presume such differences to have real significance in the U.S. market rather than dismissing them as inevitable. The USITC's delivered price comparisons, thus, do not reflect protein over-delivery. Nor do they reflect dockage, test weight, or vitreous kernel count.

Also, while the data are not statistically significant given the volume of both U.S. and CWB wheat contracts to third country markets, the USITC report was able to determine that "a higher frequency of protein over-delivery in the higher ranges was found for the CWRS wheats." (*See* USITC Report, Executive Summary, p. xviii). On a percentage basis, the data available to the USITC revealed that "67.1 percent of available contracts for the Canadian wheat reported over-delivery . . . ." (*See*, USITC Report, Chapter 5, p. 15). While the exact percentage is deleted in the public version of the USITC report, it appears that a significant percentage of the CWB contracts for CWRS had protein over-delivery of 0.8 percent or more. (*See* USITC Report, Executive Summary, p. xviii). This amount of a protein over-delivery beyond what the contract specifies is significant because it more than accounts for standard differences in testing and sampling error that can be plus or minus 0.2 percent. It is obviously intentional over-delivery at 0.8 percent.

The frequency of price measurements is critical for appropriate comparisons, especially for commodity items with large markets and many transactions. The USITC has encountered this challenge in other investigations of commodity items. For instance, in *Softwood Lumber from Canada* (USITC Investigation Nos. 701-TA–414 and 731-TA–928), much of the pricing data was collected and/or submitted not merely on a quarterly basis, but also on a weekly and even daily basis. Averaging over longer periods obscures what is actually occurring in head-to-head competition. The best analysis requires comparisons of product offerings that are identical or very similar in specification, location, and timing.

The CWB was purposefully misleading in its public pronouncements and filings during the Section 301 investigation. It confused appropriate comparisons by offering only annual averages and ignoring differences in delivery attributes and terms. The Minnesota Grain Exchange ("MGE") offers detailed data that reveals what otherwise lies hidden in longer term averages. Tab 2, attached, graphs the MGE's one-week forward contract price for spring wheat on a weekly basis for 2001. Each week shows a significant range of prices between the high and low of approximately three to five percent. The week-to-week variation is also significant. Thus, underselling comparisons between pricing just a week or two apart would often prove meaning-

less or misleading. The CWB knows this well and intentionally made appropriate underselling comparisons impossible during the investigation.

Finally, it should be highlighted that absolute proof of underselling is not required for the CWB's unfair trading practices to cause injury. As discussed below, the CWB's compensation practices have significantly increased and distorted the amount of Western Canadian acreage in high protein wheats, including durum. Thus, the CWB year-in and year-out does the only thing it has the incentive to do and is expected to do—sell this over-production in the U.S. and third country grain markets, employing price discrimination, rail subsidies, government guarantees, and other subsidies and preferences. The Canadian wheat industry, including but not limited to durum wheat, is producing more than it would absent these unfair, anti-competitive practices. Its prime competitor, the U.S. wheat industry, has been made smaller and poorer as a result. The systematic and durable nature of this harm is evidenced in the ability of Canada to maintain and expand its share in the U.S. and third country wheat markets, while the share of U.S. growers declines. While underselling is not a prerequisite for this scenario, persistent CWB price discrimination and over-delivery on specifications coupled with the unremitting efforts by the Board to hide its detailed shipment-specific data (on prices, wheat characteristics, and delivery terms) indicate that it is present.

Quality, Quantity and Protein: The Argument of the North American Millers' Association Is Seriously Misleading

Despite their argument throughout the Section 301 investigation, resolution of this trade matter is not a threat to the U.S. milling industry's supply of wheat. Their argument that they need access to Canadian wheat for quality purposes was shown to be false throughout the investigation. The NAMA's position during the investigation, and at the April 19 hearing, is without a doubt a self-serving commercial position because U.S. millers know they can buy their wheat cheaper from Canada. While they are correct in stating that the U.S. wheat industry and U.S. millers agree on about ninety percent of issues of combined concern, the NAMA's stance on this issue is becoming an affront to U.S. wheat producers. On the one major issue of concern which affects the very livelihood of our wheat producers, and which if not resolved will continue to affect the already declining production of U.S. wheat, the NAMA sides with the CWB—the very entity that has been found to be causing injury to U.S. wheat producers.

Despite an official NAMA position paper which calls for an end to discriminatory and distorting trade practices and state trading enterprises in agriculture, the NAMA and its member millers are afraid to bite the hand that has been feeding them underpriced wheat for the past decade. Despite our assurances that any action we would ask the U.S. government to take against the Canadian Wheat Board—even the imposition of tariff rate quotas—would not threaten their access to sufficient quantities of quality wheat, they have chosen to sacrifice the long-term benefits that they would gain from true reform of the Board, and free and fair trade, for the short-term benefit of cheap, underpriced Canadian wheat. And the irony, if nothing is done, is that U.S. millers and exporters will continue to become increasingly dependent upon a foreign government monopoly for the supply of their principal raw material.

The hypocrisy of the NAMA argument that they must have access to Canadian wheat since there is not a sufficient quantity of quality U.S. durum can be further highlighted. Assuming, for the sake of this argument, that their line of reasoning is true regarding the relationship between U.S. durum production and necessary durum imports from Canada, one could then also presume that U.S. retailers buy pasta from Italy, Turkey and other sources because U.S. pasta manufacturers do not produce enough quality pasta at a price that consumers are willing to pay. Is this correct? Of course not. And just as there are foreign government subsidies affecting the import of pasta, so too are there subsidies and special government-granted privileges that lead to the import of Canadian durum and hard red spring wheat. Those subsidies and privileges were highlighted by the USTR in the affirmative finding of February 15, 2002. Duties have been placed on imports of pasta to allow U.S. pasta manufacturers to more readily compete. This suggests that a similar duty or tariff rate quota on durum imports would help U.S. farmers to better compete and, in doing so, there would soon be available a more plentiful supply of high quality U.S. durum.

Nevertheless, the NAMA and the CWB continue to claim that U.S. durum and hard red spring wheat are not competitive in quality and/or is not provided in the quantity and quality desired by the customers. The U.S. wheat industry demonstrated throughout the Section 301 investigation that this is a distorted argument that ignores how markets actually work. The NDWC's economic expert undertook

an analysis and prepared a brief report entitled "Do Normal Market Forces Explain U.S. Imports of Canadian Durum Wheat?" (This was submitted to the USTR with our May 10, 2001 filing, and we are attaching it for your review at Tab 3). The CWB has long contended that its exports to the United States were driven by market forces, such as higher U.S. prices and allegedly higher Canadian quality. Our experts used a simple model, consistent with economic theory to test this hypothesis, and used the best available data. The results did not support the Canadian argument. In fact, the tests indicated a disturbing negative correlation between relative U.S. prices and Canadian wheat exports. Thus, it becomes clear that U.S. millers' support the lack of quality/quantity line of argument solely to advance the economic benefits they receive by purchasing unfairly priced Canadian wheat.

Wheat classes are traded as commodities, but they have distinguishing grade and non-grade attributes like protein content, test weight, moisture content, dockage, vitreous kernel count, circumstances of delivery, etc. which are specified in contracts. In virtually all instances, these attributes for any specific wheat class are subject to price premiums and discounts as the processor attempts to achieve the desired performance parameters in the most cost effective fashion by blending wheat from various sources and making other adjustments. U.S. wheat competes head-on with the wheat classes sold by the CWB. The Board can mask its price discrimination by offering on a non-commercial basis extra protein, greater cleaning, or even the security of what amounts to a privately arranged forward contract, in markets such as those for durum where such contracts are not commercially provided. In each case, the CWB manipulates quality attributes provided versus those specified in the contract to make its price more attractive.

Furthermore, the Board's off-budget subsidies from the Government of Canada have necessarily increased the overall size of Canadian wheat crops by artificially reducing costs and prices below competitive levels. This standard effect of subsidies has been exacerbated by the CWB's protein compensation policy, which has according to the Board's own studies resulted in the excess planting of high protein wheats in Canada. (*See* Gord Flaten, David Przednowek, and Don Flaten, "Protein Profits in the Market Place: Watch for the Signals," www.cwb.ca/publicat/profits/index.htm at 1–19. *See also* a joint study by the Manitoba Rural Adaptation Council Inc. and the CWB, "MRAC Study: The Market Competitiveness of Western Canadian Wheat," www.cwb.ca/publicat/mrac/index.htm (January 1999)). (We have attached these studies to this submission for ease of reference. *See* Tabs 4 and 5).

The USITC Section 332 investigation developed helpful information on the reasons behind many U.S. millers' use of Canadian wheat. In the end, NAMA's continuing support of the CWB can be explained by their dependence on the Board as a supplier. NAMA's economic rationale and testimony before this Senate Committee do not square either with the way markets behave or with obvious miller interest in dismantling the monopoly power of the largest single player among suppliers.

The U.S. Census Bureau has been collecting data on the quality parameters of imports from Canada for the last several years, since the Record of Understanding between the Governments of the United States of America and Canada entered on December 1, 1998. Data on the quality of Canadian red spring wheat and durum imported during the 1999 and 2000 calendar years confirms that a large share of imports are of less than optimum quality.

Data is now available on imports from Canada for the 2000–2001 crop year and the numbers continue to show that quality is not the driving force behind Canadian sales to the United States. (*See* Tab 6). Only 21 percent of the red spring wheat imported during this period is No. 1 grade, and only 29 percent of spring wheat imports had a protein content greater than 14.2 percent, while 27 percent had a content of 13.5 percent or less. In the case of durum, the Census Bureau data shows that 50 percent of imports were lacking in one or more of the factors needed to meet top milling bid requirements. In the U.S. durum market, milling requirements generally are No. 1 grade; minimum 88 percent hard, amber vitreous kernel content; and, minimum 13 percent protein content. The U.S. Census Bureau data illuminates that it is CWB price offers and its forward contracting ability, and not quality per se, that are the key factors behind sales into the United States, which is a net exporter of identical classes of wheat.

All of the data and evidence submitted during the Section 301 investigation point to one conclusion: U.S. quality and quantity shortages are not the impetus behind imports of Canadian wheat. The CWB offers other attractions to customers such as price discounts and longer-term contracts with which it is impossible for the U.S. free market system to compete. The CWB is only able to engage in such tactics because of its exclusive procurement and export rights, and other inequities such as transportation subsidies.

We hope this additional statement clarifies and responds to the issues and questions which arose during our panel's testimony at the April 19, 2002 hearing. Should you need any further information please do not hesitate to contact us or our counsel.*

○

*The charts, tables and memorandums referrred to, in this prepared statement, have been retained in Committee files.