

**Testimony of**  
**Mr. Gary Broyles**  
**President, National Association of Wheat Growers**

**Before the Senate Committee on Finance**

*Ongoing U.S. Trade Negotiations*

**On Behalf Of**

**National Association of Wheat Growers  
Wheat Export Trade Education Committee  
U.S. Wheat Associates**

**February 6, 2002**

Good afternoon, it's a pleasure for me to be here and I'm grateful for the opportunity to speak with you today on behalf of the entire wheat industry. Today I am representing the National Association of Wheat Growers, the Wheat Export Trade Education Committee and U.S. Wheat Associates.

My name is Gary Broyles. I raise wheat, barley, hay and red angus cattle on a farm near Rapelje, MT and currently serve as the President of the National Association of Wheat Growers.

I want to commend you, Mr. Chairman, on holding this hearing at this critical time for the wheat industry and all of American agriculture. We are at a time when many issues that will affect our future are in the hands of Congress and the Administration. American agriculture is awaiting a farm bill that will provide a blueprint for how we manage our business on a daily basis – we need your help in finishing this deliberation quickly. American agriculture has always been a strong supporter of Fast Track, now known as Trade Promotion Authority (TPA). We as producers need your help to shore up support for TPA and to provide this authority to the Administration. American is encouraged by the launch of the World Trade Organization (WTO) negotiations, and if Congress passes TPA we are hopeful for very aggressive action in the WTO as well as in negotiations to form a Free Trade Areas of the Americas (FTAA). Additionally, wheat producers are hopeful that the Administration will implement a Tariff Rate Quota (TRQ) on wheat from Canada in response to the Section 301 case against the Canadian Wheat Board (CWB). This action will go a long way in changing the perception that trade is not good for producers and that farmer always lose.

I want to focus on the Section 301 case against the Canadian Wheat Board and the WTO negotiation today.

The Section 301 trade case against the CWB is in its critical final stage. We believe this case fits closely with the overall strategy of U.S. wheat interests in ongoing trade and agriculture negotiations. I want to

thank you for your continued support in drawing the administration's attention to the importance of this issue.

As you probably know, one of the wheat industries' positions in the WTO agriculture negotiations is the elimination of state trading monopolies. This is crucial. It is part of the formal U.S. position submitted for negotiations in both the WTO and the FTAA. We must ensure that elimination of monopoly state trading exporters remains a high priority. Furthermore, the TPA legislation now before the Senate includes a clear negotiating objective to achieve more fair and open conditions of trade by "eliminating state trading enterprises whenever possible."

The perfect place to start working towards achieving this goal is the current Section 301 trade case against the Canadian Wheat Board. It provides the necessary means, tools and leverage to bring the CWB and the Government of Canada to the negotiating table; forcing them to enter into meaningful discussions to reform the blatantly discriminatory practices of the Board or face unilateral action under U.S. law for the damages and burden they have placed on my fellow wheat producers.

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 CWB 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 CWB is the world's largest exporter of wheat and its monopolistic powers allow it to engage in unfair pricing which distorts the world wheat market.

The CWB is more than a "farmers' marketing agency." It has publicly admitted that it has the ability to charge different prices in various export markets as part of its export strategy. The Board has such flexibility in adjusting its export prices because it is not required to commit financially to the full "acquisition price" of the wheat they purchase. In handling exports, the CWB relies on discounted price offers, bonus deliveries, delayed payments and other favorable contract terms in making its sales. None of these export subsidies are similarly available to U.S. farmers and grain companies which must compete on an open commercial market.

Much of the dispute over U.S.-Canada wheat trade has erupted over the definition of the term "acquisition price." 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 CWB would sell wheat to the United States at below Canadian farmers' cost of production, the 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 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 initial payment. This definition ignores the interim and final payments to farmers, the subsidized transportation system Canada provides, grading and inspection fees, and CWB administrative costs. Furthermore, 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.

As a result, 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 CWB restricts competition and as a state trading enterprise distorts trade.

The Board has argued for the past year that the current 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, 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 CWB 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 CWB almost impossible to obtain.

However, 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.

When the Board cries out that this investigation is yet another attempt for 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 CWB to modify its unfair pricing practices led to the Section 301 petition. It is a sound petition, that is supported by the National Association of Wheat Growers, the Wheat Export Trade Education Committee, U.S. Wheat Associates, state wheat commissions and grower associations in Arizona, California, Colorado, Idaho, Minnesota, Montana, Nebraska, North Carolina, Oklahoma, Oregon, Kansas, South Dakota, Texas, Washington and Wyoming. In addition, we are supported by the National Farmers Union, American Farm Bureau Federation, North Dakota Farm Bureau, North Dakota Farmers Union, North Dakota Grain Growers Association, North Dakota Grain Dealers Association, U.S. Durum Growers Association, and others.

The language of Section 301 was intended by Congress to provide the President with "negotiating leverage" to "insure fair and equitable conditions for United States commerce" and "to eliminate barriers ... and ... distortions ... on a reciprocal basis." Further, Congress, in debating the bill, argued that "foreign trading partners should know that [the United States is] willing to do business with them on a fair and free basis, but if they insist on maintaining unfair advantages, swift and certain retaliation against their commerce will occur."

I would like to comment briefly on why North Dakota chose the Section 301 process to initiate our fight against the unfair trade practices of the Canadian Wheat Board. The Section 301 investigation was the most prudent step to take at this time as it offered several attractive advantages. First, it provides the opportunity to address the fundamental operations of the Board in all its manifestations. Second, the investigation must be conducted within a time frame that increases the possibility of a quick resolution of the problem. And, third, if the foreign country conducting the unfair and discriminatory practices refuses to engage in negotiations to resolve the dispute, the United States may take unilateral action. This last provision is indeed what makes the Section 301 process so controversial with foreign countries.

This case is not an attack on Canadian wheat farmers. It is, however, verification of what many of you already know about the CWB price undercutting and its negative impact on U.S. producers. The Canadian Wheat Board's activities distort trade. Canadian wheat growers need to be aware that this monopoly marketing desk is not maximizing returns to Canadian producers.

This case is also not a threat to the U.S. milling industry's supply of wheat. We have been disappointed that millers and the North American Millers' Association chose not to support, or at least stay on the sidelines, in the investigation. Their argument that they need access to Canadian wheat for quality purposes was shown to be false throughout the investigation. The web of influence of the CWB is vast and NAMA's position has proven this. Rest assured, any action we have asked the U.S. government to take against the Canadian Wheat Board - even the imposition of tariff rate quotas - will not threaten their access to sufficient quantities of quality wheat.

Let me now bring you up to date on the status of the Section 301 investigation. The petition was filed on September 8, 2000 and the U.S. Trade Representative accepted the petition and initiated the investigation on October 23, 2000. The Section 301 Committee established to conduct the investigation then requested public comment on how the investigation should be conducted and in April of 2001 formally instructed the U.S. International Trade Commission (ITC) to conduct a Section 332 general fact-finding investigation into the competitive conditions of wheat trade between the United States and Canada. Under this Section 332 investigation, the ITC held a public hearing on June 6, 2001 at which numerous Members of Congress testified, as well as a panel of witnesses organized by the U.S. wheat industry. Interested parties were also able to file substantive briefs with the ITC during their investigation.

Nevertheless, when the ITC provided the final report in its Section 332 investigation to the U.S. Trade Representative, it was immediately clear that U.S. wheat farmers had won. Among the report's findings are:

- U.S. exports to eight critical foreign markets that were the subject of the investigation are down over the last five years, primarily due to Canadian activity;
- The Canadian wheat market is essentially closed to U.S. wheat exports;
- The Canadian Wheat Board has a competitive advantage in contracting for sales of durum wheat for future delivery. This has precluded the development of a viable futures market on U.S. grain exchanges; and,
- The Canadian Wheat Board benefits from substantial transportation preferences.
- The major difference between U.S. and Canadian wheat industries is the middleman sector. In the U.S., the middleman consists of numerous producer cooperatives, and small and large grain trading companies (competition determines market values.) In Canada, the middleman sector consists of the CWB, which is empowered with monopsony and monopoly power.
- ITC report estimates a \$6/ton advantage on rail freight to the U.S. and third country markets. This advantage is solely due to government guarantees on car allocation and revenue caps on rail rates. (A situation, no commercial grain company in the U.S. can counteract other than through reduced price offers and ultimately reduced producer prices.)
- CWB claims they have no preferential access to railcars. Independent reports and the ITC investigation show differently.

- ITC could find no clear explanation for the difference in rail deductions, especially when comparing rates from similar locations for durum and hard red spring wheat. (This difference amounts to a \$.15 to \$.18/bushel advantage on delivered Minneapolis values for durum.)
- CWB has greater potential and flexibility to underprice its rivals since it is only required to make the initial payment (guaranteed by the government). Legally, no further payments are required. Thus, the CWB has no break-even floor below which it cannot price. The freight calculation provides another cushion: the difference between actual freight charged or costs incurred and deduction taken from producer payments, it is alleged, used to reduce selling prices for wheat.
- Although the CWB states it is a "commercial entity", it is immune from the usual commercial threats to a corporation's survival.
- Varietal registration and kernel-visual-distinguish ability (KVD) system administered by the CWB and other arms of the Canadian Government, have had the practical affect of virtually excluding U.S. wheat shipments to Canada. Although the position of the Canadian Government is that U.S. wheat can "freely enter Canada," Commission staff interviews indicated that U.S. exports are difficult, burdensome, and infrequent. The excessive paperwork and regulatory review by Canadian officials that require carefully orchestrated on-site inspections by the CGC to prevent "commingling" effectively create a prohibitive non-tariff barrier to U.S. milling-grade wheat.
- Government backing of financing gives the CWB a 3 to 24 percent cost advantage over what a private borrower (commercial grain trader) would have to pay for financing.

Several statements from the ITC report highlight these problems. For example, the ITC report states:

"... 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 Minneapolis Grain Exchange is partly related to the presence of the CWB."

"Market power is only one of the CWB's notable structural characteristics. As shown ..., 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 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."

"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. ....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."

The ITC report includes some attempts at pricing comparisons between U.S. and Canadian spring wheat and durum sales, but it is of questionable value because the CWB refused to provide specific pricing data. Though this is a major limitation in the ITC report, it continues to make clear that the Board hides behind a veil of secrecy and refuses to cooperate. The Board does not want to release pricing data. This is because the CWB 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. The Board has every incentive to engage in anti-competitive activity because it seeks to maximize sales volume rather than revenue. It is exempt from Canadian competition law, and has monopoly control over the only major crop alternative to wheat. Given the fact that the Board has refused to release such pricing information in this and all past investigations the Section 301 Committee has been asked to apply adverse, or negative, inferences against the Board when considering pricing information.

With the release of the report last month, the ITC's portion of the investigation concluded. The matter again rests before the U.S. Trade Representative. The Section 301 Committee has again invited the public to comment upon whether any action should be taken against the Canadian Wheat Board, the amount of damages or burden its practices have inflicted upon U.S. commerce, and suggestions for proposed remedies.

As I previously mentioned, the Section 301 investigation provides the leverage to bring the Canadian government and the CWB to the negotiating table over their unfair trade practices and the existence of a state trading enterprise in a free trade area. However, a Section 301 case is a hybrid animal involving both regulatory and political elements. While the ITC report indicates that we have obtained ample evidence regarding the Board's practices, political action will be needed to ensure that the Trade Representative issues a final determination in our favor on February 15, and recommends to the President that action be taken against the Board.

While the wheat industry has historically been very supportive of free and liberalized trade, past failure to address this trade problem has undermined farmers' support for future trade negotiations. It is only right and just that producers expect a fix to the inequities in the Canada-United States Free Trade Agreement by addressing the continuing trade distorting practices of the Canadian Wheat Board. Addressing this issue will strengthen grassroots support for trade negotiations.

We need the support of Congress in this effort to put an end to the market distortions that result from the activities of the Canadian Wheat Board. We need your support to resolve the fundamental problem existing between the United States and Canada on wheat -- the continued existence of a state-run monopoly marketing board in a free trade area. Early resolution of this problem can assist in ensuring success in negotiations for free trade agreements and in the next round of WTO negotiations.

The following is a review of remedies we are requesting to address the unfair trade practices of the Canadian Wheat Board. We have recommended to the Section 301 Committee that the overall negotiating objectives of the U.S. Government be as follows:

- The export monopoly of the CWB must be eliminated. The Board should export wheat on commercial terms in competition with other exporters of grain.

- The supply monopoly of the CWB must also be eliminated. The Board should acquire its wheat in commercial competition with other exporters and processors.
- Full market access and national treatment for U.S. wheat entering Canada must be demanded. The current system is designed primarily to perpetuate both the supply and export monopoly of the CWB.
- Full transparency of CWB operations must be achieved.
- If there is a transition period towards full elimination of the supply and export monopolies, the Canada-United States Free Trade Agreement "acquisition price" definition must be changed to a percentage which represents the full cost of the grain minus the percentage of the prior year's crop costs accounted for by the CWB's administrative costs.

These are the long-term objectives being sought in the Section 301 investigation. Our particular focus is to break the state-run monopoly, and subject the Board to market discipline. However, America's wheat farmers must survive in the short-term in order for these long-term goals to be of any meaning. Thus, we have requested that tariff rate quotas be established against Canadian wheat. The purpose for this is two-fold. First, if the unreasonable, discriminatory and burdensome practices are not immediately resolved by this investigation, the United States should without hesitation retaliate to protect U.S. farmers. The Government of Canada and the CWB should know that if they do not come to the negotiating table in a good faith effort to resolve this long standing dispute, then the U.S. government will act unilaterally. Second, as Canada accepts change, implementation of these tariff rate quotas will be necessary in order to maintain some order as the wheat market adjusts and the Board eases into true free trade.

We have recommended the following TRQs:

Durum Wheat (in thousands of metric tons):	
<u>Quantity</u>	<u>Tariff</u>
0 - 300	NAFTA rate
300 – above	\$50.00/ton

Other Wheat (in thousands of metric tons):	
<u>Quantity</u>	<u>Tariff</u>
0 - 500	NAFTA rate
500 - above	\$50.00/ton

These tariff rate quotas would be put in place during two crop years and then adjusted or eliminated in subsequent years as fundamental reforms of the CWB are implemented. The North Dakota Wheat Commission has focused on the longer-term goal, which is the breaking up of the monopoly. At times, and with some criticism and political risk, it has resisted pressure for only short-term relief. A short-term gain is not necessarily a win, and that is how we view the tariff rate quota. It needs to be there to protect farmer interests, but it is also important leverage to finally bring true reform to the Canadian Wheat Board. It has become abundantly clear that the Board is not going to alter its practices or policies without a push. They have not cooperated with any effort to resolve this matter in the past ten years. So, if Canada fails to see the light this time, the tariff rate quotas will be the stick that the U.S. government can use to bring them to the negotiating table while also helping U.S. wheat farmers survive in the short-term until the longer-term goals can be achieved.

The longer-term goal of eliminating monopoly state trading entities is part of a broad list of goals developed by the U.S. wheat industry before the WTO ministerial in Seattle. As you know, a round was not launched until the most recent ministerial in Doha, Qatar. However, the industry's goals have remained the same and we feel very positive about the outcome of the recent ministerial and the agreement to launch a comprehensive round of negotiations that will build on the significant progress in agricultural trade achieved in the Uruguay Round.

I will summarize the U.S. wheat industry's goals for the new round of negotiations. I have also attached the full document to my testimony.

The U.S. wheat industry identifies the elimination of monopolistic state trading exporters and all direct export subsidies as top priorities. We also support the disciplining and elimination of trade distorting domestic support programs. Market access must be improved by reducing agricultural tariffs and eliminating price band systems. Sanitary and Phytosanitary (SPS) problems and problems related to trade in products of biotechnology must be aggressively pursued and any decisions should be made on a sound scientific basis. U.S. food aid and export credit guarantees must be staunchly defended as legitimate programs. And finally, negotiators should fully utilize private sector advisory committees to maximize the level of input from U.S. producers. This final goal will assist in the much needed effort to solidify support among the agriculture community for further trade negotiations.

We recognize that this list is long and optimistic, but since wheat is an export dependent commodity our options are limited to one – be fully engaged in efforts to make world trade freer and fairer. We export nearly half of all wheat produced making unfettered access to the worldwide market absolutely imperative. One important component in achieving our goals and ensuring our future success is Trade Promotion Authority. I would like to commend this committee on expeditiously approving a TPA bill in a bipartisan fashion that, coupled with hard work from our negotiators, will enhance our opportunities to sell U.S. quality wheat around the world.

We are also pleased that in the Trade Adjustment Assistance bill you have recognized the special circumstances faced by farmers, ranchers and independent fishermen. It is critical that structures be in place that provide assistance and technical support before farmers are forced out of business.

The U.S. wheat industry believes that Congress should grant TPA to the President that is unencumbered by environmental or labor provisions. TPA is a tool that gives the United States the opportunity to remove foreign barriers to trade and opens markets for American exports.

As you are well aware the last Fast Track legislation expired in 1994 and now the Administration is seeking its renewal. The vote in the House, in conjunction with the diligent work of this committee will hopefully carry momentum to a vote in the full Senate as soon as possible.

Our competitors and trading partners are not willing to come to the table and negotiate good deals if they know that all 535 members of the U.S. Congress have the right try to amend the agreement. They look to the Administration to have the authority to speak with the support of Congress.

Granting this authority would send a strong signal to our trading partners that the U.S. is committed to maintaining its leadership role in promoting free and fair trade around the world. TPA will make our trading partners more willing to make politically difficult decisions to dismantle trade barriers and open domestic markets to U.S. products. The chance to resolve on going problems will be enhanced.

TPA should be structured in such a way that ensures our trading partners will not refuse to come to the negotiating table to discuss market-opening issues.

Without TPA our competitors continue to gain the upper hand in international markets. For Example:

- ◆ The European Union has achieved an interim trade agreement with Mexico and moved toward formal negotiations for trade agreements with Chile, Argentina, Brazil, Paraguay and Uruguay.

- ◆ FTAA negotiations have begun, but other countries in the hemisphere continue to insist that without TPA they will be hard pressed to make politically difficult decisions to open markets.
- ◆ Canada is capitalizing on the competitive advantage provided by their free trade agreement with Chile. Canada is accelerating efforts to negotiate preferential access to markets in Northern Europe and throughout South America. Canada continues to hold its agriculture sector outside the terms of these agreements to maintain its protectionist supply managed practices.
- ◆ Mexico is expanding its free trade arrangement with Chile and continuing to negotiate trade agreements with countries in Central and South America, Japan and the European Union.
- ◆ Argentina as a member of the South American trading block MERCOSUR, receives preferential treatment in exporting wheat to Brazil, one of the largest wheat importers in the world.
- ◆ Market Access -- tariff levels at 50 percent to 5 percent U.S. producers face tariffs as high as 100 percent while ours average less than five percent.
- ◆ Export Subsidies -- the U.S. accounts for 2.2 percent of the world total while the EU accounts for 90.3 percent.

Members of the committee, U.S. wheat producers and American agriculture are dependent on export markets. We need every tool we can get to make the markets work for us and you can provide some of those tools. With a positive outcome of the 301 case producers will be more inclined to think that the rules do work. With a good TPA bill the Administration, working in partnership with Congress, will be empowered to hold tight and negotiate market opening agreements. We are all in this together. The wheat industry stands ready to work 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 answering your questions.