

**Prepared Statement of Charles A. Hunnicutt  
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before the  
Senate Committee on Commerce, Science and Transportation  
Subcommittee on Consumer Affairs, Foreign Commerce and Tourism  
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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 non-commercial 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 15<sup>th</sup>, 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 15<sup>th</sup> 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.