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# U.S.-Canada Wheat Trade Dispute

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## Summary

U.S. trade officials and northern-tier wheat producers have long expressed concerns that Canadian wheat trading practices — both import and export — are inconsistent with Canada's international trade obligations. The U.S. wheat industry has raised three general charges against the Canadian Wheat Board (CWB) and Canadian wheat trading practices. First, they contend that Canadian wheat trading practices, particularly the export practices of the CWB, are inconsistent with Canada's WTO obligations and disadvantage U.S. wheat exporters in Canadian and international markets. Second, U.S. trade officials contend that the Canadian government has certain rules and regulations in place that discriminate against imported grains at grain elevators and within Canada's rail transportation system. Third, U.S. northern-tier wheat producers have long argued that Canadian wheat entering the U.S. market was being supported by various subsidies and that these wheat imports have been harmful to U.S. producers.

Canadian officials claim that the CWB operates as a valid state trading enterprise (STE) under WTO rules. Canada maintains that its import practices and the CWB wheat export practices comply fully with international trade rules and its WTO obligations, and that Canada does not subsidize its wheat exports. In addition, U.S. wheat millers and pasta manufacturers have expressed a strong interest in maintaining their access to Canadian grain and oppose trade restrictions that might limit their access.

The allegations against Canadian wheat trading practices have led to a series of investigations by U.S. agriculture and trade authorities at various levels. First, the charge that Canadian wheat exports to the United States are aided by subsidies that disadvantage U.S. wheat producers has been investigated under countervailing duty and anti-dumping investigations by the U.S. International Trade Commission (ITC). The ITC, in its final ruling (October 3, 2003), imposed punitive duties on Canadian hard red spring (HRS) wheat imports, but not on Canadian durum imports. The ITC's positive ruling on Canadian HRS is being appealed under NAFTA provisions by the CWB and Canadian national and provincial governments. In addition, the Canadian government announced its intention to call for the formation of a WTO dispute settlement panel to review the ITC injury ruling. The North Dakota Wheat Commission has announced its intent to appeal the ITC's negative ruling on Canadian durum.

Second, charges concerning the trading practices of the CWB and the treatment of wheat imports by Canada are being pursued under a WTO Dispute Settlement Case (DS276). In its final ruling (April 4, 2004), a WTO Dispute Settlement Panel produced a mixed verdict that has left both parties dissatisfied. The United States has already announced (June 1, 2004) its intent to appeal the panel's decision. The U.S.-Canada wheat trade dispute remains contentious and both sides continue to pursue legal actions on both the ITC and WTO cases. This report will be updated as events warrant.

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## Issue Definition

The United States and Canada are both important producers, traders, and consumers of wheat. The two countries are joined with Mexico in the North American Free Trade Agreement (NAFTA), which calls for essentially unrestricted, duty-free wheat trade among the three nations.

Although U.S. wheat imports remain very small relative to domestic supplies, large U.S. imports of Canadian durum and spring wheat since the early 1990s have been a source of concern to U.S. northern-tier wheat producers, who claim that imports from Canada are subsidized and have a large negative impact on local grain prices. This situation is aggravated by the operations of the Canadian Wheat Board (CWB), which has been granted certain special market powers and financial guarantees by the Canadian government, according to U.S. grain producers and U.S. trade officials, and by certain Canadian import practices that appear to disfavor imported over domestic wheat. Canada maintains that Canadian grain import practices and the CWB wheat export practices comply fully with international trade rules and its WTO obligations.

Concern over alleged unfair trade practices has led to numerous investigations and charges by U.S. trade officials of the wheat trading practices of Canada and the CWB. The United States has pursued legal action on two fronts: countervailing duty and anti-dumping investigations of hard red spring (HRS) and durum wheat imports from Canada by the U.S. International Trade Commission (ITC) and a dispute settlement case (DS276) at the World Trade Organization (WTO) to review the trading practices of the CWB and the treatment of grain imports by Canada. This report provides background for understanding the U.S. and Canadian wheat trade disputes, as well as timelines, rulings, and other details for the ITC and WTO cases brought by the United States against Canadian wheat trading practices and the CWB.

## Background

**Hard Wheats and Durum Introduced.** HRS is one of three classes of hard wheat, the other two classes being hard red winter (HRW) and hard white (HW). Hard wheats are high in protein and gluten content, making them well suited for milling into bread flour. HRS tends to have higher protein and gluten content than either HRW or HW. As a result, HRS wheat is especially valued for blending with lower-protein wheat to be milled into premium bread flour. Durum also qualifies as a type of hard, high-protein wheat, but its end use separates it from other types of hard wheats. Durum is highly valued because it is the sole wheat class that can be milled into semolina, a coarse meal that can be processed into various pasta products such as macaroni, spaghetti, and vermicelli. As a result, both HRS and durum tend to have significant price premiums over other wheat classes in most markets.

Canadian production of HRS and durum wheat occurs primarily in the prairie provinces of Manitoba, Saskatchewan, and Alberta (see **Figures 1** and **2**).

**Figure 1. Major Production Areas for Canadian Spring Wheat**

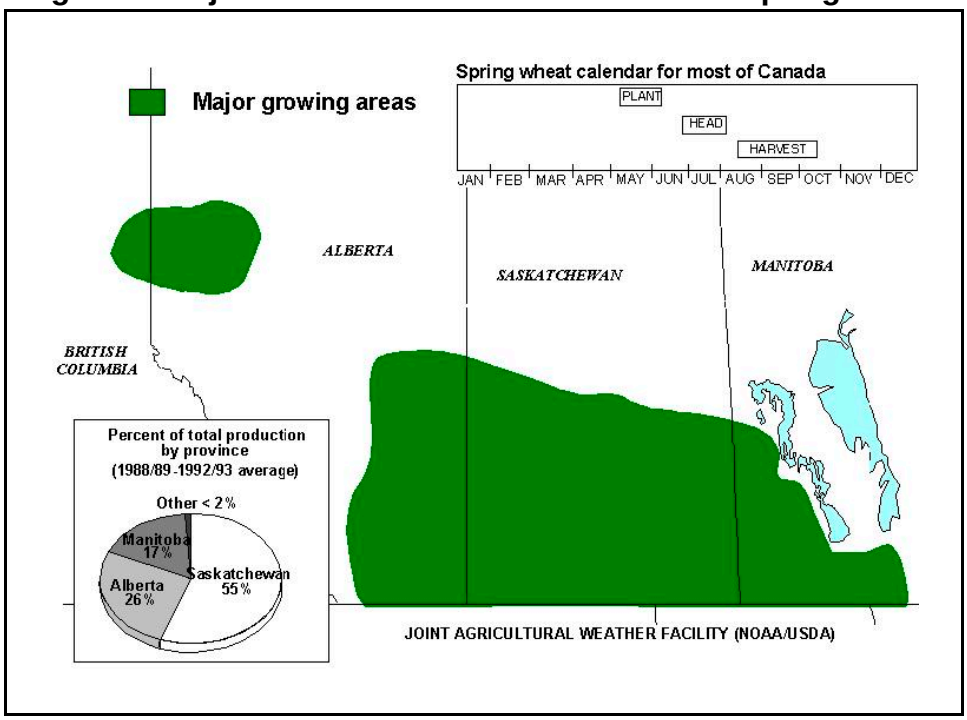
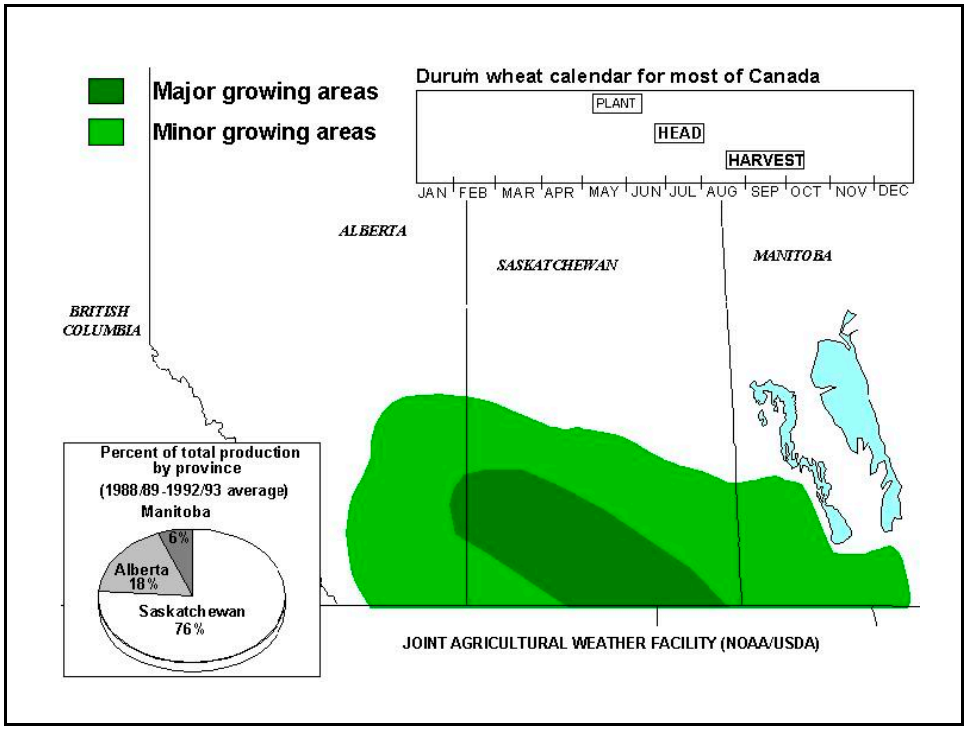



**Figure 2. Major Production Areas for Canadian Durum Wheat**



Most U.S. HRS and durum wheat production occurs in close proximity, just south of the Canadian border in the north central states of Minnesota, Montana, and North and South Dakota (see **Figures 3** and **4**).[1]

**Figure 3. Major Production Areas for U.S. Hard Red Spring (HRS) Wheat**

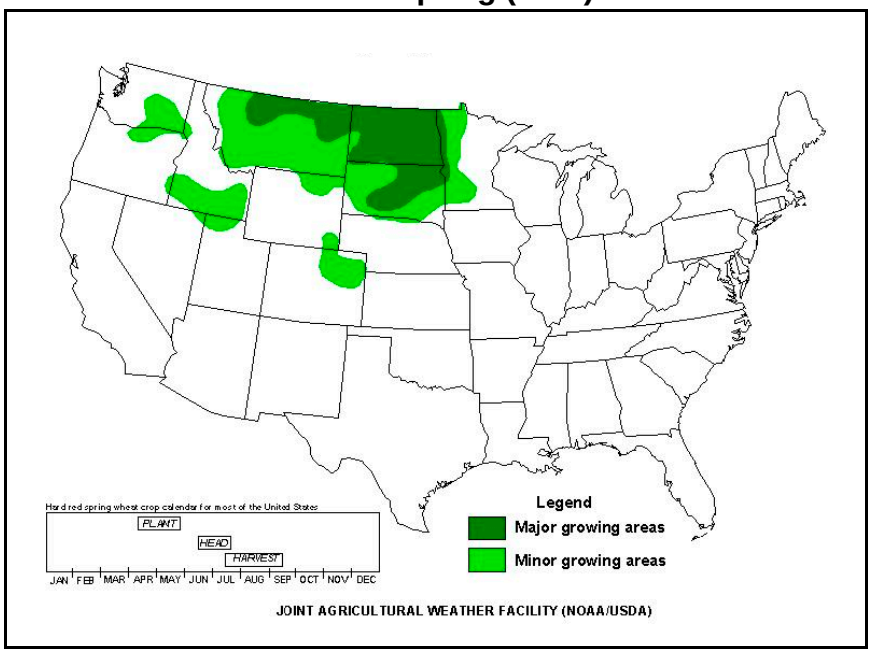
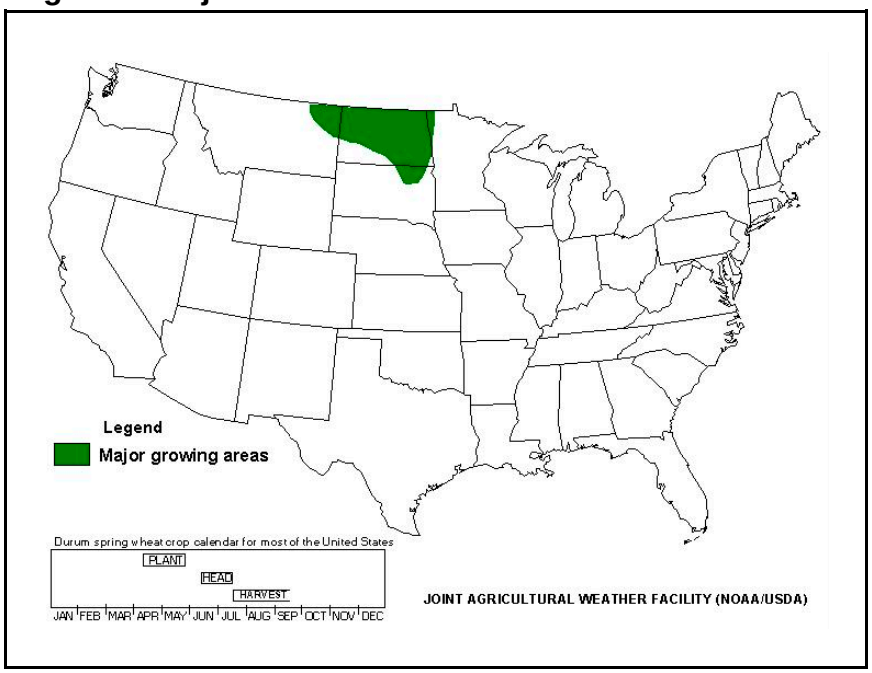



**Figure 4. Major Production Areas for U.S. Durum Wheat**

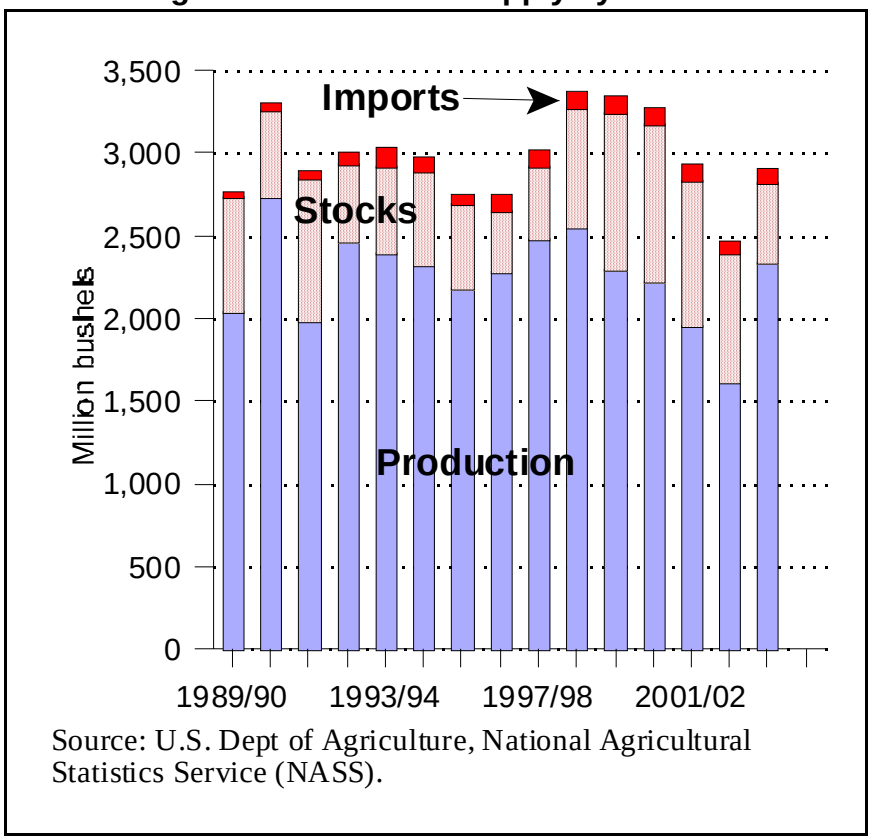



[1] USDA, WAOB online maps for major U.S. and Canadian production regions for durum and HRS are available at [http://www.usda.gov/oce/waob/jawf/profiles/mwcacp.htm].

**HRS and Durum Wheat Trade.** The United States is the world's leading exporter of wheat (totaled across the major wheat classes). Canada is the world's leading exporter of HRS and durum wheat. However, these two classes of wheat are also important to the U.S. wheat sector. Since 1986, these two classes have accounted for nearly 30% of U.S. commercial wheat export volume (25% share for HRS and a 4% share for durum) and an even higher share of wheat producers' market returns (since they have significant price premiums over other wheat classes in most years).[2] U.S. and Canadian HRS exports are critically important to international wheat markets since together they represent the world's primary source of high-protein wheat — a key ingredient in the production of leavened bread.

U.S. imports of wheat and wheat flour are historically small, averaging about 3% of total U.S. supplies each year, and are generally related to specific end-use needs (see **Figure 5**). Most U.S. wheat imports are durum and HRS wheat from Canada.

**Figure 5. U.S. Wheat Supply by Source**

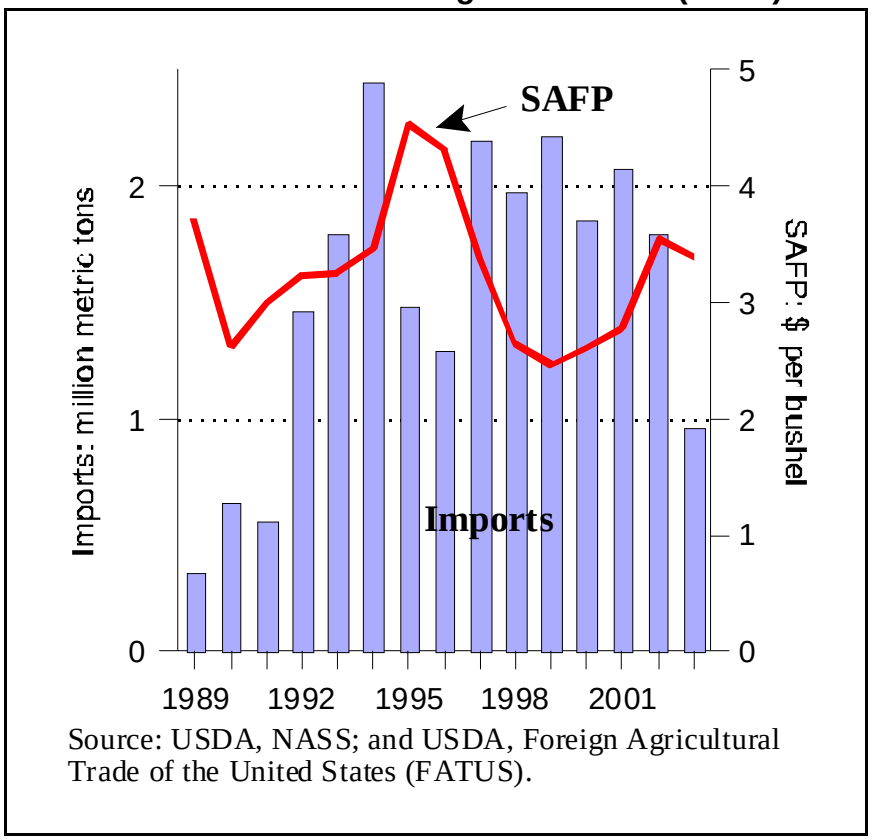



Source: U.S. Dept of Agriculture, National Agricultural Statistics Service (NASS).

[2] USDA, Economic Research Service, *Wheat Situation and Outlook Yearbook*, WHS-2003, March 2003.

Despite their small volume relative to total supply, unexpected growth in U.S. imports of spring and durum wheat from Canada in the early 1990s — with import growth from about 330,000 metric tons in 1989 to over 2.4 million metric tons (mmt) in 1994/95, and an average of over 1.8 mmt since — has been viewed as especially problematic by producers in U.S. border states, especially when U.S. prices are low as during the 1998-2001 period (see **Figure 6**). Trade liberalization following the 1989 Free Trade Agreement between the United States and Canada (subsequently incorporated into NAFTA) contributed to the expanded agricultural trade. However, not all of the change in U.S.-Canadian agricultural trade can be attributed to the FTA or to any other single factor. Weather, policy changes, and world supply and demand conditions are some of the influential factors. Exchange rates are also important. Prevailing exchange rates between the Canadian and U.S. dollars for most of the past decade have made Canadian imports cheaper for U.S. buyers and U.S. farm products more expensive for Canadian buyers.

**Figure 6. U.S. Wheat Imports Compared with the All-Wheat Season Average Farm Price (SAFP)**




Source: USDA, NASS; and USDA, Foreign Agricultural Trade of the United States (FATUS).

**Marketing Methods Differ.** The main difference between the HRS and durum industries in the United States and Canada is the manner in which grain is marketed. In the United States, grain is marketed through a vast network of producer cooperatives and small and large trading companies. In contrast, the role of grain marketing in Canada is assumed entirely by the Canadian Wheat Board (CWB). In accordance with Canadian law, the CWB has the exclusive right to purchase and sell western Canadian wheat (durum and nondurum) and barley for domestic human consumption and for export. While Canadian farmers are free to choose the crops

that they grow each year, all Canadian producer sales of wheat and barley for food use or export must be to the CWB. However, the use or sale of wheat or barley as livestock feed is permitted without restriction in Canadian markets.

## U.S. Allegations and Canadian Counter-Arguments

Despite the general success of the U.S.-Canada agricultural trading relationship, several points of friction exist. U.S. trade officials and wheat producer groups have raised three general charges against the CWB and Canadian wheat trading practices.

**First: CWB Trading Practices.** They contend that Canadian wheat trading practices, particularly the export practices of the CWB, are inconsistent with Canada's WTO obligations and disadvantage U.S. wheat exporters in Canadian and international markets. Canadian officials claim that the CWB operates as a valid state trading enterprise (STE) under WTO rules. Article XVII of the *General Agreement on Tariffs and Trade* (GATT) 1994 is the principal article dealing with STEs and their operations.[3] It sets out that such enterprises — in their purchase or sales involving either imports or exports — are to act in accordance with the general principles of nondiscrimination, and that commercial considerations only are to guide their decisions on imports and exports.

The CWB claims that it is a marketing organization, not a government agency. Under a 1998 amendment to the Canadian Wheat Board Act, the CWB ceased to be a crown corporation and farmers became responsible for the election of members of the board of directors with members from both government and the private sector.[4]

However, in 2001 an ITC investigation found that the CWB operates in all significant respects as an arm of the Canadian government.[5] The CWB retains its monopsony (single buyer) and monopoly (single seller) power in the marketing of western Canadian grains for food use or export. The CWB receives government approval and backing of its borrowing and other financing, which reduces its costs and insulates it from the commercial risks faced by U.S. grain traders. Further, the CWB's producer pool system (by which Canadian producers are remunerated) gives the CWB special marketing flexibility. 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. Subsequent payments are payable only to the extent that the CWB makes money on its sales. If final market returns fail to cover the cost of the initial payments, any losses are covered by the government, not the CWB. This occurred in the 2002/03 pool, when losses of $65.8 million were covered by the Canadian government. U.S. producer groups claim that this equals a direct export subsidy of 20.4 cents per bushel on the

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[3] WTO, "The Regulation of State Trading Under the WTO System," visited Jan. 6, 2004, at [http://www.wto.org/english/tratop_e/statra_e/statrad.htm].

[4] Canadian Wheat Board, "CWB History," visited Dec. 29, 2003, at [http://www.cwb.ca/en/about/vision_mission/history.jsp].

[5] ITC, *Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat*, Publication 3465, Dec. 2001, p. xv.

320 million bushels of Canadian HRS export sales.[6] The CWB dismissed this criticism, saying that this was the first deficit since the 1990/91 crop year and falls far short of the average $740 million in annual subsidies provided to U.S. wheat producers.[7]

Critics of the CWB also argue that its monopsony power in Canada gives the CWB extraordinary market power, particularly in the North American markets for durum and hard spring wheat. Representatives of the U.S. wheat industry, as well as U.S. agriculture and trade officials, also complain that the CWB's "monopoly" control over Canada's wheat trade permits it to practice discriminatory pricing in international markets and thereby gain unfair competitive advantage over other wheat exporters. Because the CWB does not publicly report the terms and conditions of individual sales, these charges have been difficult to prove. The CWB responds to this alleged lack of transparency by saying that U.S.-based private companies such as Cargill or Archer Daniels Midland also do not report the contractual details of their commercial transactions.[8]

The Canadian government has shown no interest in negotiating a mutually acceptable resolution to the dispute. However, within Canada an important producer group, the Western Canadian Wheat Growers Association (WCWGA), has argued for ending the CWB's special monopoly powers and other special privileges.[9] The WCWGA states that, "as long as the CWB continues to operate as a legislated monopoly, with government supports for its borrowings and bad debts, it will continue to be a subject of trade disputes."

**Second: Treatment of Imported Grain.** According to U.S. trade officials, the Canadian government has certain rules and regulations in place that discriminate against imported grains at grain elevators and within Canada's rail transportation system.[10] Under the Canadian Grains Act and other Canadian regulations, imported wheat cannot be mixed with Canadian domestic grain being received into or discharged out of grain elevators. Also, Canadian law caps the maximum revenues that railroads may receive on the shipment of domestic grain but not revenue received on the shipment of imported grains. As a result, imported grain can be charged potentially higher shipping costs than domestic grain. Finally, Canada provides a preference for domestic grain over imported grain when allocating government-owned railcars.

**Third: Subsidies Aid Canadian Wheat Exports to the United States.** In addition to charges against the CWB, U.S. northern-tier wheat producers have long

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[6] North Dakota Wheat Commission, News Release, "NDWC Denounces Canadian Wheat Board's Latest Export Subsidy," Dec. 18, 2003, at [http://www.ndwheat.com/].

[7] CWB, News Release, "NDWC charges completely hypocritical," Dec. 19, 2003, at [http://www.cwb.ca/en/news/releases/2003/121903.jsp].

[8] Personal discussions with CWB personnel, Winnipeg, Canada, August 18, 2003.

[9] *Sparks Policy Reports*, "Canadian Farmers Call for Changes in CWB Operations," March 26, 2003, p. 2.

[10] The CWB does not engage in wheat imports.

argued that Canadian wheat entering the U.S. market is being supported by various subsidies and that these wheat imports have had a large negative impact on local grain prices (see **Figure 6**). As a result of these trade violations, U.S. industry groups have argued that some form of trade restriction such as a tariff-rate quota should be placed on Canadian wheat entering the United States and that the CWB should lose its monopsony and monopoly privileges over western Canadian grain.[11]

Canada maintains that Canadian import practices and the CWB wheat export practices comply fully with international trade rules and its WTO obligations. In addition, the North American Millers' Association (NAMA)[12] has argued strongly against the imposition of any form of trade restraint on Canadian grain exports to the United States.[13] They argue that continued open access to Canadian high-protein wheat and durum is important to maintain adequate milling supplies, particularly given the downward trend in U.S. wheat and durum acreage that has occurred since the passage of the 1996 U.S. Farm Act (P.L. 107-77).

**Legal Actions.** These allegations against Canadian wheat trading practices have led to a series of investigations by U.S. agriculture and trade authorities at various levels. First, the charge that Canadian wheat exports to the U.S. are aided by subsidies that disadvantage U.S. wheat producers has been investigated under countervailing duty and anti-dumping investigations by the U.S. International Trade Commission. Second, charges concerning the trading practices of the CWB and the treatment of wheat imports by Canada are being pursued under a WTO Dispute Settlement Case. The timeline of key activities under each of these two legal actions are detailed below.

## U.S. International Trade Commission (ITC) Case

***September 2000.*** The North Dakota Wheat Commission (NDWC) filed a petition with the U.S. Trade Representative (USTR) alleging that certain wheat trading practices of the government of Canada and the CWB are unreasonable, and that such practices burden or restrict U.S. commerce.

***October 2000.*** In response to the NDWC petition, USTR initiated an investigation under Section 301 of the Trade Act of 1974 concerning the acts,

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[11] North Dakota Wheat Commission,"N.D. Wheat Commission Proposes Remedies to U.S.-Canada Wheat Dispute," news release, Dec. 22, 2000, at [http://www.ndwheat.com/].

[12] NAMA is the trade association representing most of the wheat, corn, oat, and rye milling industry in North America. NAMA has 46 milling member companies that operate 169 mills in 38 U.S. states and Canada. Their aggregate production of more than 160 million pounds per day is approximately 90% of the total industry capacity. For more information, see NAMA's website at [http://www.namamillers.org/].

[13] NAMA testimony given at ITC hearings pursuant to the investigations on imports of HRS and durum from Canada (Washington, D.C., Sept. 4, 2003).

policies, and practices of the CWB.[14] Subsequently, USTR requested that ITC institute an investigation into Canadian wheat trading practices.

***December 2000.*** The NDWC claims that CWB wheat exports to the United States are undercutting U.S. wheat prices by approximately 8% due to the Canadian practice of over-delivering protein content as well as rail transportation benefits. Higher protein content wheat generally sells at a premium to lower protein wheat. As a result, when the CWB delivers wheat with a higher protein content than specified in a sales contract while still accepting the original contract price, it is equivalent to accepting a below-market price or price undercutting.

***April 2, 2001.*** USTR formally requests that ITC conduct an investigation into Canadian wheat pricing practices.

***April 12, 2001.*** ITC instituted investigation No. 332-429, *Wheat Trading Practices: Competitive Conditions between U.S. and Canadian Wheat*, conducted under section 332(g) of the Tariff Act of 1930, in response to the USTR request.

***December 18, 2001.*** ITC released its report *Wheat Trading Practices: Competitive Conditions between U.S. and Canadian Wheat*, Publication 3465. The report identified several features of the CWB that, as a state monopoly, afford it "unfair" market advantages over U.S. wheat exporters.[15]

***January 11, 2002.*** Several Members of Congress followed up on the ITC report with a letter to USTR highlighting the key findings of the ITC report and recommending that the CWB be held accountable for its alleged unfair trade practices.[16]

***September 13, 2002.*** The ITC initiated a countervailing duty and anti-dumping investigation on durum and HRS wheat imports from Canada. The ITC investigations Nos. 701-TA-430A and 430B, and 731-TA-1019A and 1019B, *Durum and Hard Red Spring Wheat from Canada*, were conducted under section 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b)), in response to petitions filed by the NDWC, the Durum Growers Trade Action Committee, and the U.S. Durum Growers Association. (However, U.S. millers and pasta makers dispute the allegations of price discounts on Canadian wheat and have expressed concern over potential trade restrictions that might limit their access to high quality grain supplies.)

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[14] For information on Section 301 and other U.S. trade remedies, see *CRS Trade Briefing Book*, Trade Remedies section, page on "Section 301of the Trade Act of 1974," available at [http://www.congress.gov/brbk/html/ebtra86.html].

[15] ITC report on investigation no. 332-429 (under Section 332(g) of the Tariff Act of 1930 as amended), *Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat*, Publication 3465, Dec. 2001, p. xiv. The report is available at ftp://ftp.ITC.gov/pub/reports/studies/pub3465.pdf.

[16] Letter from the offices of Representatives Bob Schaffer, Scott McInnis, and Mark Udall, Jan. 11, 2002.

***November 19, 2002.*** The ITC made an affirmative preliminary injury determination on wheat imports from Canada. An affirmative preliminary determination means that, in the view of the ITC, there are some indications that imports of Canadian wheat are causing or threatening to cause material injury to U.S. domestic wheat producers. In other words, the case has merit and should be pursued.

***March 4, 2003.*** The U.S. Department of Commerce (DOC) issued a preliminary finding that two Canadian programs represented countervailable subsidies: the provision of government railcars to Canadian producers and the guarantee of CWB borrowing. A provisional punitive duty of 3.94% was imposed on both Canadian durum and HRS wheat imports.

***May 2, 2003.*** The DOC issued a preliminary ruling against Canada in the antidumping investigation that durum and HRS wheat from Canada were being sold in the United States at prices lower than those prevailing in Canada or below full cost. The DOC assigned provisional dumping margins of 6.12% on HRS and 8.15% on durum wheat from Canada. These duties are in addition to the 3.94% preliminary countervailing duty.

***May 23, 2003.*** ITC published notice of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith in the Federal Register (68 FR 28253).

***August 29, 2003.*** The DOC announced affirmative final determinations in its countervail and anti-dumping investigations. The final outcome was as follows: countervail rate of 5.29% for both durum and HRS; and final anti-dumping rates of 8.26% for durum and 8.87% for HRS. Together, these result in total punitive duties of 13.55% for durum and 14.16% for HRS.

***September 4, 2003.*** ITC held a hearing pursuant to the durum and HRS investigation.

***October 3, 2003.*** ITC released its final ruling, full report, and materials in support of its final ruling on the investigation: *Durum and Hard Red Spring Wheat From Canada*, Publication 3639. ITC found that only the HRS wheat and not durum imports were being subsidized by the government of Canada and sold in the United States at less than fair value thereby injuring the U.S. wheat sector.[17] As a result, the punitive duties of 14.16% on Canadian HRS were left in place while the punitive duties on Canadian durum were removed.

***October 3, 2003.*** The government of Canada (jointly with the provincial governments of Alberta and Saskatchewan) filed a formal request for a NAFTA panel review of the DOC final determinations in the countervail case against Canadian HRS wheat exports. Chapter 19 of NAFTA provides for a binding, bi-national panel review of final determinations in trade remedy cases. Panels consisting of five

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[17] ITC report on investigations nos. 701-TA-430A and 430B, and 731-TA-1019A and 1019B, *Durum and Hard Red Spring Wheat From Canada*, Publication 3639, Oct. 2003, p.1.

persons are established to review the determinations. These panels are required to ascertain whether or not the determinations are consistent with the trade laws of the country conducting the investigation (Canada in this case).

***November 19, 2003.*** The NDWC filed notice of intent to challenge the ITC's negative injury determination with respect to Canadian durum before the U.S. Court of International Trade under NAFTA provisions.

***November 24, 2003.*** The CWB filed a formal appeal under NAFTA of the U.S. ITC's October 3, 2003 injury ruling against Canadian HRS wheat exports, thereby joining the appeal filed earlier by the Canadian national and provincial governments.

***December 2003.*** The CWB announced that it was considering the merits of a joint WTO appeal (with the Canadian government) of the ITC injury ruling as well as the DOC antidumping and countervail rulings.

***June 2004.*** Canada announced that it will request the establishment of a WTO dispute settlement panel to adjudicate over the ITC final injury determination related to imports of HRS from Canada. The request will be made at the next Dispute Settlement Body meeting, set for June 22.

**Summary.** Presently, imports into the United States of Canadian HRS are subject to punitive duties of 14.16%, while imports of Canadian durum are not subject to punitive duties. The ITC's positive ruling on Canadian HRS is being appealed under NAFTA provisions by the CWB and Canadian national and provincial governments. In addition, the Canadian government has announced its intention to call for the formation of a WTO dispute settlement panel to review the ITC injury ruling. The NDWC has announced its intent to appeal the ITC's negative ruling on Canadian durum.

## WTO Dispute Settlement Case (DS276)[18]

***December 17, 2002.*** U.S. trade officials submitted a request for consultations with Canada via the Dispute Settlement Body of the WTO as regards matters concerning the export of wheat by the CWB and the treatment accorded by Canada to U.S. grain imported into Canada.

U.S. trade officials argue that the CWB's export practices are inconsistent with WTO trade provisions governing the trade behavior of STEs which require them to undertake trade in a manner consistent with the general principles of nondiscriminatory treatment as prescribed in the GATT 1994 (Article XVII).

Concerning the treatment of imported grains, U.S. trade officials argue that Canadian import practices are inconsistent with Canada's obligations under Article

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[18] For more information on the WTO Dispute Settlement Case (DS276), "Canada-Measures Relating to Exports of Wheat and Treatment of Imported Grain," see [http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm].

III of GATT 1994 and violate the WTO's national treatment requirements (Article 2 of the *Agreement on Trade-Related Investment Measures*). More specifically, U.S. trade officials contested four distinct measures of Canadian import practices:

- first, the conditions surrounding the receipt of foreign grain into Canadian grain elevators under Section 57(c) of the *Canada Grain Act*;
- second, rules governing the mixing of certain grain in Canadian transfer elevators (rules which were used to exclude certain classes and grades of U.S. wheat from importation) under Section 56(1) of *Canada Grain Regulations*;
- third, the imposition of a revenue cap on certain railways for the transportation of Western Canadian grain but not for foreign imported grains under Sections 150(1) and 150(2) of the *Canada Transportation Act*; and
- fourth, Section 87 of the *Canada Grain Act* which, the United States charges, allows for domestic producers of grain to apply for a railway car to receive and carry the grain to a grain elevator for a consignee while precluding the same degree of access to producers of foreign grain.

***January 31, 2003.*** Consultations on DS276 were held between the United States and Canada. During the consultations, Canada expressed no willingness to make any modifications to its wheat trading practices, arguing that they were already in full compliance.

***March 6, 2003.*** USTR requested the establishment of a WTO dispute settlement panel to hear DS276.

***July 21, 2003.*** The WTO dispute settlement panel issued its preliminary ruling in DS276 case, released privately to contestants.

***April 4, 2004.*** The dispute settlement panel issued its final ruling publicly.[19] The verdict was mixed. The panel concluded that, although the CWB acted as a "noncommercial" arbiter in setting sales of Western Canadian grain in the global market, this practice is not inconsistent with WTO provisions. In other words, the panel found that the CWB's trading practices do not violate WTO rules for state trading enterprises (STEs).

The panel agreed with the first three U.S. allegations concerning the treatment of imported U.S. grains by Canada, while the panel found that the United States failed to establish the charges made under the fourth import treatment measure concerning access to railway cars.

Both parties have claimed a ruling in their favor. A Canadian government spokesman claims that the ruling upholds the Canadian position that the CWB

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[19] WTO, *Canada — Measures Relating to Exports of Wheat and Treatment of Imported Grain*, "Reports of the Panel," WT/DS276/R, 6 April 2004.

operates as a valid STE under WTO rules. A U.S. trade official disagreed, saying that, although the panel did not find that the CWB is "in and of itself" illegal, it did rule that certain CWB practices are not consistent with international trade rules.[20] Further, the U.S. official says the panel found that the CWB should pay fair market value for transporting Canadian wheat and that Canada must stop discrimination against U.S. wheat.

***June 1, 2004.*** USTR notified its decision to appeal to the WTO's Appellate Body (pursuant to Article 11 of the Dispute Settlement Understanding) the panel's DS276 final ruling. In particular, USTR is seeking review of the panel's ruling that the CWB export regime is consistent with Canada's obligations under Article XVII of GATT 1994.

**Summary.** The WTO ruling with respect to the treatment of imported grains, calls for removal of regulatory hurdles that have been imposed on imports of U.S. wheat. The result could be increased marketing opportunities for U.S. wheat into niche markets in Canada. The administrator of the NDWC also says that the ruling will be helpful to American farmers and elevators that may at times want to ship wheat west on the Canadian rail system since now Canadian railways will have to haul U.S. wheat for the same price as Canadian wheat.[21] However, because the panel recognized Canada's right to maintain its grain quality assurance system, some market analysts suggest that subsequent revisions to Canada's grain marketing system may ultimately have little significant impact on the volume of Canada's imported grain.[22]

U.S. wheat producer groups and the USTR remain very disappointed in the WTO panel's ruling with respect to the CWB and are likely to aggressively pursue the U.S. appeal to DS276 at the WTO, as well as the elaboration of greater disciplines on state trading enterprises like the CWB in ongoing and future WTO trade negotiations.

## Role of Congress

Given the importance of wheat in the U.S. agricultural economy, Congress may be closely monitoring developments in both the WTO U.S.-Canada wheat dispute settlement case and the legal followup to the ITC rulings on durum and HRS wheat imports from Canada. Successful appeal and resolution of the WTO dispute in favor of the United States could result in greater competitiveness for U.S. wheat vis-a-vis Canadian wheat in international markets. It could also establish precedent under WTO dispute settlement procedures for regulating the activities of state trading enterprises.

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[20] *International Trade Reporter*, "Canada Hints Interim WTO Ruling Upholds Wheat Board's Validity; U.S. Also Sees Win," ISSN 1523-2816, Vol. 21, No. 1, January 1, 2004. Note, these comments were made after the interim ruling which was upheld in the final ruling.

[21] NDWC news release, April 7, 2004.

[22] World Perspectives, Inc., "WTO Canada Grain Decision Dissected," April 7, 2004.