3103 10th Street, North, Suite 300
Arlington, Virginia 22201

Comments Regarding the Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021

Investigation No. TPA-105-008

November 6, 2020

The following is a submission for an investigation regarding the Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 as requested by the United States International Trade Commission. These comments are on behalf of U.S. Wheat Associates (USW).

USW is the export market development organization for the U.S. wheat industry. USW promotes the reliability, quality and value of all six U.S. wheat classes to wheat buyers, millers, bakers, food processors and government officials in more than 100 countries around the world.

Its mission is to "Develop, maintain, and expand international markets to enhance wheat's profitability for U.S. wheat producers and its value for their customers." Funding is made possible through checkoff dollars, goods and services from 17 state wheat commissions and cost-share grants from the USDA's Foreign Agricultural Service.

Trade Promotion Authority

Because of the structure of U.S. constitutional authority and law related to trade policy, Trade Promotion Authority (TPA) is critical to the success of negotiations and eventual, timely congressional approval of trade agreements. These agreements in turn have been vital for the growth of U.S. agriculture and future agreements will be needed to ensure the competitiveness of U.S. agriculture in various markets around the world.

Particularly important for the wheat industry was the North American Free Trade Agreement (NAFTA), which helped create the Mexican market for U.S. wheat. USW supported the U.S.-Mexico-Canada

Agreement (USMCA), which incorporates the benefits of NAFTA and adds some additional tools to address potential trade problems.

The Marrakesh Agreement creating the World Trade Organization (WTO) – especially its agreements related to food and agriculture – provides the legal foundation encouraging predictability and openness for global wheat trade.

Other agreements that have been beneficial for U.S. wheat include CAFTA-DR (2006) and bilateral free trade agreements with Chile (2004), Morocco (2006), Peru (2009), Colombia (2012), Panama (2012), and Korea (2012). Except Morocco, each of these countries granted unlimited duty-free access for U.S. wheat – persistent problems with Morocco's TRQ implementation demonstrate why unlimited duty-free access is so important in ensuring that U.S. farmers gain from these agreements.

In some cases, the new duty-free access provided U.S. wheat exports with a built-in advantage over its major competitors, but with the proliferation of bilateral trade agreements new duty-free access often only eliminates a preferential disadvantage. Major wheat exporters like Australia, Canada, and the European Union have been especially active in their bilateral negotiations. Even Russia managed to negotiate an agreement granting duty-free access to Vietnam after the United States had already negotiated such access under the Trans-Pacific Partnership (TPP), putting the United States at a disadvantage in that fast-growing market to every significant global competitor.

Grain trade is a high volume, low-margin business. Even relatively small tariff differences can have a detrimental impact. Wheat trade can be highly affected by quality, and U.S. wheat tends to be among the highest quality globally. However, quality is not free, and an importer may decide that the value advantage of U.S. wheat is not worth the additional cost of the duty if an alternative origin receives improved market access. Predictable market access and a level playing field are therefore top priorities for USW. While trade agreements negotiated under TPA do not guarantee success in a market, they have a strong track record of improving the competitive position of U.S. wheat exports.

WTO/Marrakesh Agreement

The Uruguay Round and Marrakesh Agreement establishing the WTO formed the legal basis for the trade policy commitments covering most U.S. wheat trade. The United States does not have preferential access in major markets like the Philippines, Japan (until 2019), Nigeria, Taiwan, China, the European Union, and Brazil. The only trade rules applying in these markets were negotiated during the GATT negotiating rounds, the Uruguay Round, or subsequent WTO decisions.

On market access, WTO commitments required Japan, Brazil, China, and the European Union to create wheat TRQs. There have been challenges with each of these, but when they've worked U.S. wheat farmers have benefited. Without the WTO commitments, the U.S. would not have had standing to push for the recent implementation of the wheat TRQ in Brazil or have won a dispute settlement case alleging that China had failed to fill its wheat TRQ.

The WTO Agreement on Agriculture also disciplines trade-distorting domestic support policies that can disadvantage U.S. farmers. Generally, countries comply with these commitments, but when they don't dispute settlement provides an opportunity to compel compliance, which was also recently demonstrated in a case against China.

Another critical agreement for U.S. wheat farmers is the Agreement on Sanitary and Phytosanitary (SPS) Measures. This agreement establishes rules to prevent countries from using pseudo-scientific justifications for protectionist policies. Most U.S. FTAs do not have SPS provisions, except to reaffirm the WTO SPS Agreement. Even the USMCA, which includes a high-standard SPS chapter, requires the parties to take into account relevant guidance of the WTO SPS Committee.

Finally, the Agreement on Technical Barriers to Trade (TBT) addresses technical barriers that are not related to health, safety, or the environment but can still disrupt U.S. wheat exports. This includes, for example, discriminatory labelling and grading standards, which have sometimes impaired wheat trade.

While these agreements – like FTAs – do not prevent all trade problems or outright violations, they have a normative effect, and where the norms aren't enough the fear of litigation and retaliation often prevent adverse actions. Where even this fear is not enough, the United States and other WTO members have recourse to WTO dispute settlement.

Free Trade Agreements

Negotiating new FTAs has long been a policy priority for the U.S. wheat sector, especially after it became clear that the WTO Doha Round negotiations were likely to result in minimal market access gains and now when there is virtually no prospect of a successful reduction in multilateral tariff bindings in the foreseeable future. FTAs provide an opportunity to reduce barriers in key markets among a group of willing countries. These agreements have been effective tools in reducing barriers to U.S. wheat exports and in some cases have laid the groundwork for extraordinary market growth.

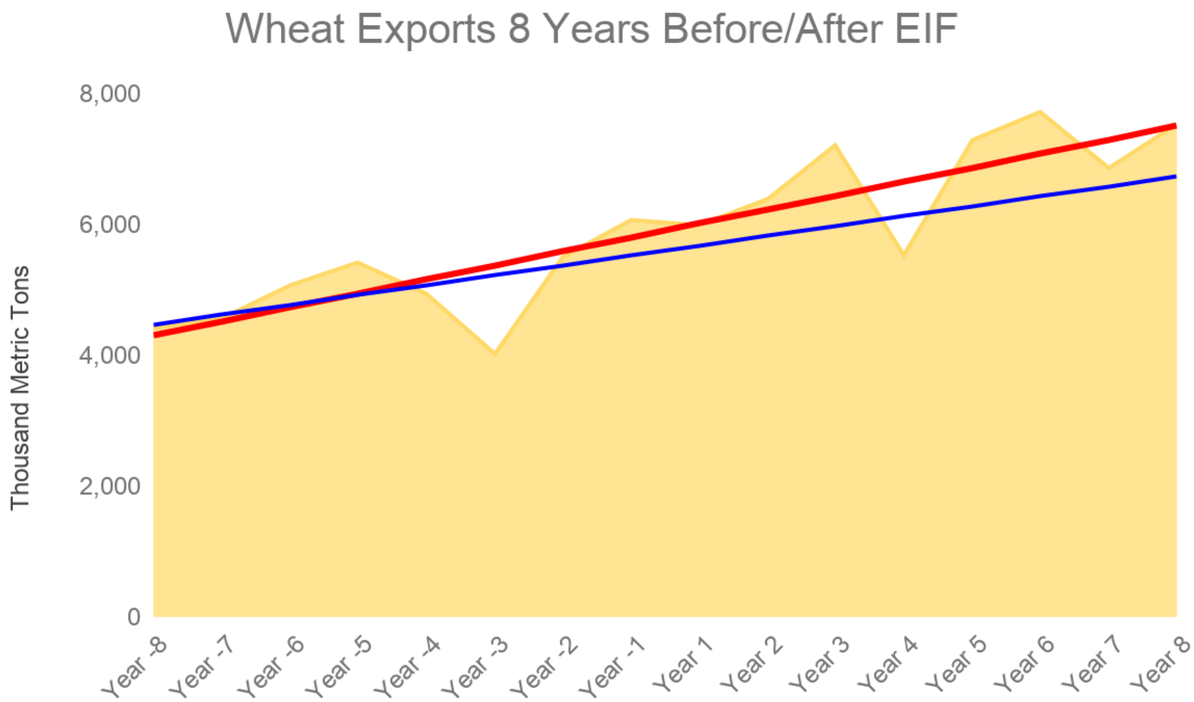
Unfortunately, the pace of securing new FTA's has slowed in the last decade and a half. Since 2007, the only market access gains negotiated through FTA's for wheat producers were the reductions in effective tariffs agreed to by Japan in 'phase one' of the U.S.-Japan Trade Agreement (USJTA).

U.S.-Japan Trade Agreement

Preferential access for competitors was nearly a devastating reality for U.S. wheat exports to Japan after Japan implemented the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) at the end of 2018. Fortunately, U.S. negotiators were able to finalize the USJTA in 2019, averting what could have soon resulted in the collapse of what had been one of the largest markets for U.S. wheat. This agreement merely ensures that U.S. wheat exporters are on a level playing field with Japan's other major wheat suppliers, Canada and Australia. While the USJTA has not been considered by Congress under TPA procedures, a subsequent "Phase Two" of the USJTA must be negotiated eventually, otherwise the current agreement will violate WTO rules requiring regional trade agreements to cover substantially all trade.

Economic Effects of FTAs

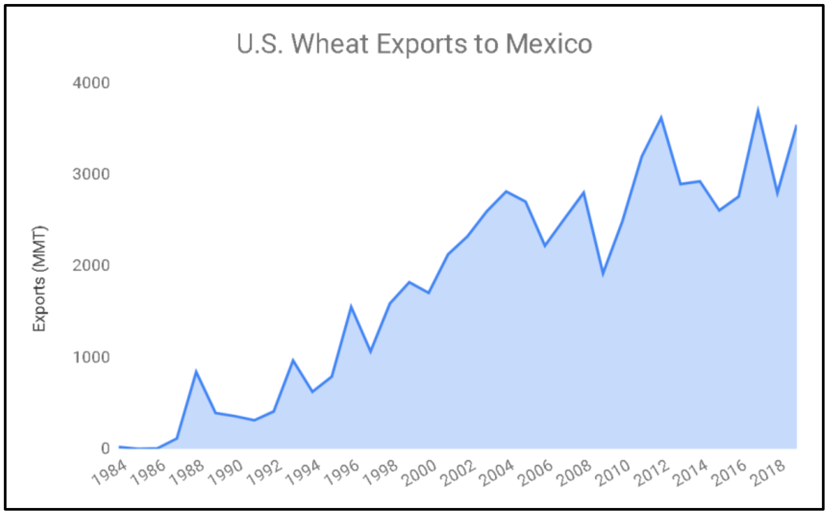
The following chart shows wheat exports to U.S. FTA partners eight years before and after entry into force (EIF). The yellow area shows actual exports to FTA partners. The red line shows the trendline for the full sixteen years. The blue trendline is derived from the data for only eight years prior to EIF. The difference in year 8 of the FTA is an additional 773,000 MT of wheat exports to these FTA partners.



While this trend shows export growth, there are many factors at work in each of these agreements and trade relationships. In some cases, the FTA only helped mitigate losses due to FTAs signed by the importing country and a competing exporting country (e.g. the U.S.-Colombia FTA granted duty-free access to U.S. wheat but only after Colombia granted duty-free access to Canada the previous year) while in others the FTA did not provide duty-free access (e.g. the U.S.-Morocco FTA).

NAFTA/USMCA

The United States and Canada folded their bilateral FTA into NAFTA in 1994 after concluding negotiations with Mexico. Gaining permanent, duty-free market access to Mexico under NAFTA has unquestionably been the greatest benefit of any FTA to U.S. wheat farmers. The chart below shows the ten years prior to NAFTA, when exports ranged from nearly zero to less than a million tons. Within two years, exports increased to over 1.5 million metric tons (MMT). In year 8, exports exceeded 2 MMT and over the past decade exports have routinely exceeded 3 MMT (source: USDA GATS).



Mexico had a variable WTO bound tariff rate, with a minimum of 67 percent. A state-run grain monopoly was responsible for all wheat purchases. Upon implementation, the board lost its monopoly, the tariffs were phased out over the next several years, and wheat exports skyrocketed.

USMCA

The United States-Mexico-Canada Agreement (USMCA) ensured that Mexico would continue to apply duty-free treatment to U.S. wheat. It also addressed a longstanding border issue with Canada, allowing U.S. wheat grown near the Canadian border to receive a Canadian grade if it meets the grade standards. Prior to this, U.S.-grown wheat would have to receive the lowest grade (i.e. feed wheat) based on its origin alone. This will lead to new marketing opportunities for U.S. producers near the Canadian border.

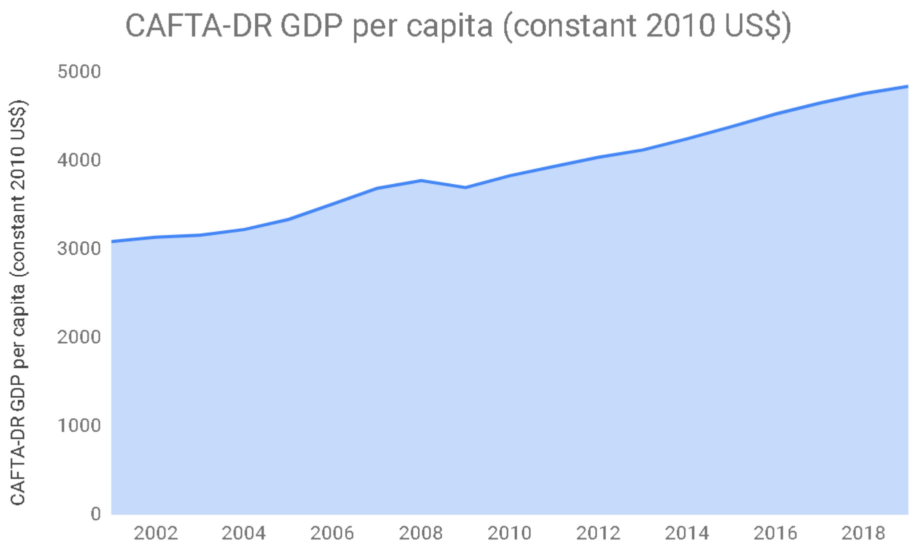
USMCA also added an improved SPS chapter, a first-of-its-kind provision for regulating trade in goods developed using agricultural biotechnology, and updated methods for resolving technical disputes. These provisions should help avoid future challenges that have the potential to disrupt U.S. wheat exports.

CAFTA-DR and Panama

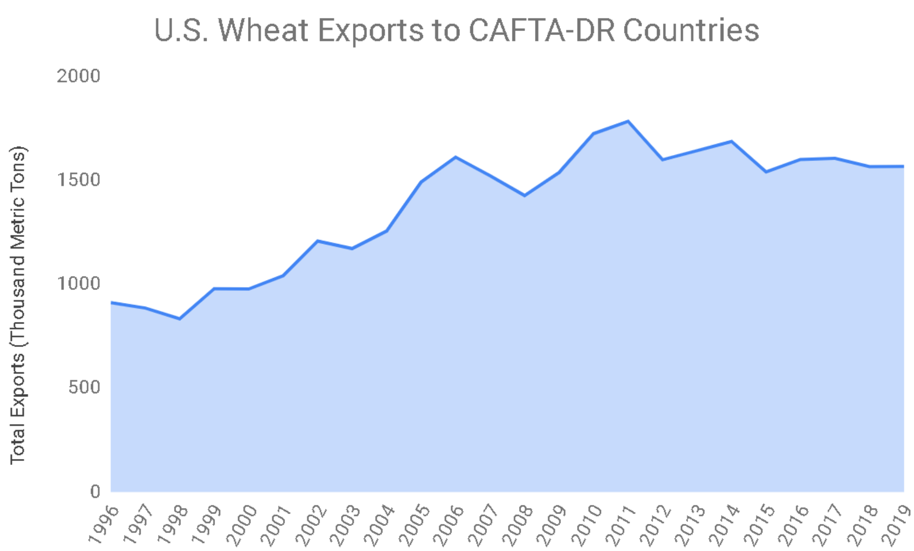
The U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) was also a success for U.S. wheat. Collectively, these FTA partners represented the fifth largest export market for U.S. wheat in 2019.

CAFTA-DR locked in duty-free market access for each country. Wheat had duty-free access in almost all countries, but bound rates were typically very high. Costa Rica's common wheat tariff was bound at 1 percent, but the rest were bound between 5 and 106 percent. Durum was bound between 10 and 112 percent.

The terms of the FTA for wheat were not likely to have a direct effect on wheat exports because tariffs were already applied at zero in most cases. However, the FTA clearly strengthened trade relations with these countries, which saw accelerated GDP per capita growth and increased purchasing power after the FTA. See the chart below, which shows average GDP per capita across the CAFTA-DR countries in constant 2010 U.S. dollars (source: World Bank).



This growth in income coincided with a continuation of growth in U.S. wheat exports. CAFTA-DR countries collectively imported less than a million tons in 2000 but have leveled out around 1.5 MMT since 2010. While these numbers are not as dramatic as for other FTA partners, like Mexico, CAFTA-DR has locked in access to these markets, which has led to a consistent customer base that continues to add value to U.S. wheat farmers every year (source: USDA GATS).



Panama had similarly low tariff barriers to U.S. wheat imports, though its bound tariff was unusually low at 3 percent. Wheat imports faced zero duties prior to the agreement. Panama's U.S. wheat imports have remained consistent since implementation of the agreement, averaging 131 TMT in the eight years since compared to 113 TMT in the eight years prior.

<u>South American FTAs</u>

The United States has three FTAs with South American trading partners: Colombia, Peru, and Chile. Colombia produces almost no wheat, while Peru averages around 200,000 MT and Chile about 1.4 MMT. Ironically, Colombia had the highest bound rate in its WTO Schedule of Concessions at 124 percent. Peru's bound rate was 68 percent and Chile's was 31.5 percent for common wheat and 25 percent for durum.

Colombia and Peru both provided duty-free access upon entry into force, down from base rates of 13 percent and 17 percent respectively. Chile phased out its 31.5 percent tariff over 12 years, with U.S. wheat entering the market duty-free since January 1, 2015.

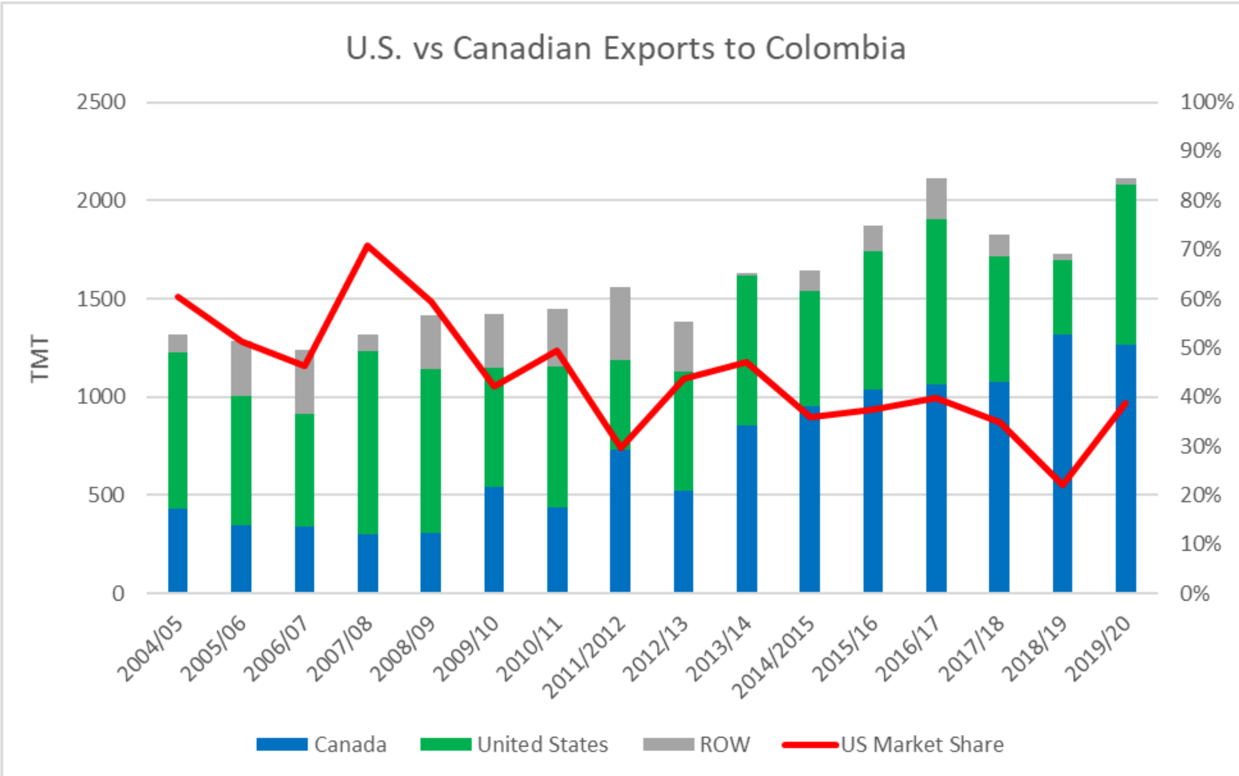
Colombia

If NAFTA best illustrated the benefits of opening a market through an FTA, Colombia best illustrates the danger of falling behind in competitive trade liberalization. This has been an increasing challenge for U.S. agriculture as competitors continue to negotiate new market access while the United States has failed to gain new market access since 2007 (except the unusual case of Japan, which was not subject to congressional approval).

When the U.S.-Colombia Trade Promotion Agreement was signed in 2006, U.S. wheat exporters were looking at preferential duty-free market access that was not available to any competitors in this growing market. Canada – understandably concerned about its own export interests – initiated its own negotiations with Colombia in 2007 and signed an agreement in 2008. U.S. wheat exporters should have had the first-mover advantage, but due to political delays Canada instead received duty-free treatment beginning in August 2011, while the United States still faced a 10 percent duty until May 2012.

During that year, U.S. market share collapsed to 30 percent. In the six years prior to the agreement market share had averaged 53 percent. Exports have grown since implementation of the FTAs, but U.S. market share remains lower around 40 percent. This failure to regain lost market share is in part due to differences in milling requirements for wheat from different regions. Due to price advantages, including the elimination of the tariff, more Colombian millers were willing to incur the cost of switching to Canadian wheat in 2011/12. Even though U.S. wheat became duty-free the next year, those switching costs had already been incurred. Some could go back to the U.S. – and did – but in many cases the damage was done.

The chart below shows U.S. wheat market share before and after FTA implementation, along with U.S. market share. Again, Colombia's wheat imports have grown in the period since the FTAs were implemented. U.S. wheat would have lost more market share without the FTA, possibly continuing the steep drop as in 2011/12 (source: TDM).



Peru
The U.S.-Peru Trade Promotion Agreement entered into force in 2009, the same year as the Peru-Canada agreement. Both allowed immediate duty-free access to the wheat market. Peru's overall wheat imports have grown from 1.4 MMT before the agreement to 2.2 MMT in 2019/20. The U.S. market share is around 20 percent. Argentina and Russia also compete in Peru, which now applies zero duties for all wheat imports. However, the FTA is a virtual guarantee that tariffs will remain at zero for U.S. wheat.

Chile
The U.S.-Chile Free Trade Agreement is the only Latin American FTA outside of NAFTA that included a phase-out for its tariff rather than granting duty-free access upon entry-into-force (2004). Wheat imports were duty-free beginning January 2015. It is a significant wheat producer, with 1.3 MMT projected in 2020/21, although this covers less than half its consumption. Chile splits its imports primarily between the United States, Canada, and Argentina. There is now a 6 percent MFN duty on wheat imports, so the FTA helps ensure a level playing field among the major competitors in the market.

<u>KORUS</u>
The United States-Korea Free Trade Agreement (KORUS) provided immediate duty-free access for U.S. wheat when it was implemented in 2012, down from a bound rate of 3.2 percent and an applied rate of 1.8 percent. Korea is a major market for U.S. wheat, with over 1 MMT imported each year. Canada and Australia – the other major wheat suppliers in the Pacific region – signed agreements putting their wheat on a level playing field in Korea in 2015.

Morocco

The U.S.-Morocco FTA did not eliminate tariffs for wheat but instead granted duty-free TRQs in perpetuity. In most years the MFN tariff rates are prohibitive. TRQ administration has been a significant challenge, though the terms of the FTA provide opportunities that might not exist without it.

Morocco's base tariff rates for wheat range from 75-135 percent. The durum TRQ reached 340,000 MT in 2015, after which it began increasing by 10,000 MT annually. The common wheat TRQ is a minimum of 400,000 MT but can grow to 1.06 MMT if Moroccan production totals less than 2.1 MMT. However, this year production has been so poor in Morocco that the tariff on common wheat has been eliminated entirely.

Due to a high degree of competition in the region, with the proximity of European and Black Sea wheat producers, the United States would rarely supply the Moroccan market in large quantities. Filling the TRQ has normally been a challenge due to both competition and policy reasons. While U.S. wheat has more opportunities in Morocco because of the FTA, the challenges underscore the importance of prioritizing tariff and quota elimination in future FTAs.

As mentioned throughout this submission FTAs have played a critical role in expanding and maintaining market share for U.S. wheat producers. It is important to secure agreements in ongoing negotiations with Kenya and the United Kingdom before TPA expires to protect U.S. market share in these two countries. It is also important that TPA is in place for future trade negotiations since TPA enhances the credibility of U.S. negotiators in reaching new FTAs, which will be critical for expansion of market access for U.S. wheat producers.

Submission filed by Shelbi Knisley, Director of Trade Policy, U.S. Wheat Associates, on behalf of U.S. Wheat Associates on November 6, 2020.