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Douglas M. Bell,
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative

RE: Request for Public Comments to Compile the Report on Technical Barriers to Trade

The North American Export Grain Association (NAEGA) appreciates this opportunity to provide input to the Office of the U.S. Trade Representative (USTR) to assist it in identifying significant sanitary and phytosanitary and standards-related barriers to U.S. exports of goods for inclusion in USTR's annual Report on Technical Barriers to Trade.

A not for profit trade association, NAEGA was established in 1912 and includes membership from private and publicly owned companies and farmer-owned cooperatives that are involved in and provide services to the bulk grain and oilseed exporting industry. NAEGA member's exports from the U.S. total approximately $70 billion, well over 60% of total U.S. agricultural exports. NAEGA's mission is to promote and sustain the development of commercial export of grain and oilseed and their primary products. Through a reliance on member action and support, NAEGA acts to accomplish this mission from its office in Washington D.C., and in markets throughout the world.

There are a number of significant technical and standards-related barriers to trade that impact U.S. exports of bulk grains and oilseeds. Argentina's trade policies, the EU Renewable Energy Directive and technical regulations from the International Maritime Organization have the potential to negatively impact the sales of U.S. bulk grains & oilseeds.

- **Argentina** – USTR is already well aware of the technical barriers to trade that Argentina has implemented that negatively impact the trade of U.S. bulk grains and oilseeds. The U.S. Government is requesting consultations with the Government of Argentina under the dispute settlement provisions of the WTO concerning trade restrictive measures applied to all goods, include the broad use of non-transparent import licensing requirements that have the effect of unfairly restricting U.S. exports. In addition, Argentina further disadvantages U.S. exports by requiring importers to agree to export as much as they import or undertake other burdensome commitments in exchange for authorization to import goods. Some of those restrictive commitments include:

1. Argentina subjects the importation of all goods to approval of a non-automatic import license through the Declaración Jurada Anticipada de Importación (DJAI) system.
2. Argentina subjects the importation of certain goods to other product-specific non-automatic import licenses, or Licencias No Automáticas de Importación, in the form of Certificados de Importación (CIs).
3. The issuance of CIs and approval of DJAIs are systematically delayed or denied by Argentine authorities on non-transparent grounds.
4. Argentina often requires importers to undertake commitments to limit imports, to balance imports with exports, to make or increase investments in production facilities in Argentina, to increase the local content of products manufactured in Argentina (and thereby discriminate against imported products), to refrain from transferring revenue or other funds abroad and/or to control the price of imported goods.
5. Argentine authorities often make the issuance of CIs and the approval of DJAIs conditional upon importers undertaking to comply with the above trade-restrictive commitments.

NAEGA has also addressed problems with Argentina's Differential Export Taxes (DETs) and their negative impact on U.S. exports of soy products. Along with the American Soybean Association and the National Oilseed Processors Association, NAEGA submitted comments to USTR comments to assist with the development of the National Trade in October 2012. The comments note that Argentina's DET's on soybeans and soybean products should be eliminated, as they are inconsistent with Argentina's obligations to the World Trade Organization and that left unchecked, DET's could be used by other countries on other agricultural products. The comments included a report which pointed out that the elimination of the DETs the potential would increase U.S. soy product by $US400 million.

- **EU Renewable Energy Directive –** The implementation of the EU's Renewable Energy Directive (RED) remains a major standards-related barrier to the U.S. soybean trade with that region. Trade reports indicate that since the RED was implemented by Germany on January 1, 2011, U.S. soybean exports to that country have declined significantly and soybean oil processed in the EU from U.S. soybeans is being re-exported from the EU. Further we believe Germany's implementation presages considerable inconsistency between EU Member State implementation of and compliance with the intent of the RED. As other Member States transpose the RED into national law we anticipate the economic viability of exporting U.S. soybeans to the EU will be further eroded, and that a $1 billion market could be lost. We are also concerned by the possibility that unless a workable approach to the RED is found, it will establish a precedent for other countries imposing environmental and sustainability requirements on U.S. agriculture.

  NAEGA has joined with a coalition other agricultural trade associations in review the EU's Renewable Energy Directive (RED) sustainability requirements as they impact the trade of U.S. soybeans and soybean oil. The U.S. value chain representation has serious concerns about the impending implementation of the requirements of the European Union (EU). Three main concerns with RED:

1. The uncertainties surrounding implementation of the RED requirements by EU member states, and how the lack of synchronization of RED implementation will hurt U.S. producer's ability to access EU markets;
2. The RED's sustainable use land requirements, which the group believes are not reflective of the best data available;
3. The RED's greenhouse gas (GHG) emissions savings default value of 31 percent for soy-based biodiesel, which the group points out significantly underestimates the emissions savings of U.S. soy biodiesel relative to petroleum diesel.

- **EU Biotech –** Inconsistencies between the U.S. and EU regulation of crop biotechnology either restrict or prevent trade in grains, oilseeds and their food and feed products. For example the current EU "technical solution" with respect to the low level presence of yet to be approved for use as food or feed in the EU crop biotechnology places an impractical restriction on imports to the EU of U.S. grains, oilseeds and products thereof. NAEGA supports the work of the U.S.-EU High-Level Working Group on Jobs and Growth and we support the goal of reducing and eliminating these inconsistencies.

- **International Maritime Standards–** In meetings this Fall, the International Organization (IMO) Maritime Environmental Protection Committee (MEPC) failed to extend the compliance date of January 1, 2013 for the creation of adequate reception facilities for environmentally harmful cargo residues. Amendments that were to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships earlier this year created a new definition for cargo residues and included provisions regulating the discharge of cargo residues into the sea, including the prohibition of any discharge of cargo residues classified as "harmful to the marine environment" (HME).

  During the MEPC meeting, several countries submitted papers requesting an extension of the deadline, including the U.S. but due to disagreements regarding a readiness levels report from the International Council on Mining and Metals and a lack of leadership on the issue, no extension was issued and many U.S. ports and ports throughout the world now face the possibility of being classified as not able to receive shipments containing HME residues. Many U.S. ports do not have reception facilities for bulk cargo residues, especially those residues contained in several hundred tons of wash water. It is not known what the U.S. Coast Guard will do if a vessel complains that a U.S. terminal or port cannot receive cargo residues. This is a potential technical barrier that can impact trade worldwide, slowing down maritime trade at every level.

- **Rapid Response Mechanism** – To promote improved food and agriculture trade and decrease the chance of future impediments to trade, NAEGA, along with our partners in the industry, is working to promote the inclusion of a Rapid Response Mechanism (RRM) in future trade agreements. RRM is a timely, transparent and commercially-meaningful method to help governments implement the least trade distortive measures and resolve trade interruptions related to sanitary and phyto-sanitary (SPS) measures and technical barriers to trade (TBT).

An RRM that improves controls related to SPS and TBT so that official actions work for consumers, farmers, ranchers and global commerce fits into the concept of "WTO-plus" obligations that go beyond the WTO SPS Agreement on issues like risk assessment, risk management, transparency, border checks/laboratory testing and facilitating trade through regulatory coherence measures. A RRM would take the dispute from a bilateral one to extend to broader oversight as well as effective engagement of commercial parties.

A RRM provides for a specific, practical and reasonable component of what is emphasized and articulated by many agricultural trade stakeholders as a critical need: "Full enforceability includes a commitment to timely and transparent action to address actions that delay shipments of perishable and needed agricultural products". Further, RRM inclusion in trade agreements forwards the objective: "To that end, it is imperative that all elements of the agreement's SPS provisions, including the WTO-plus components, be fully enforceable."

Part of NAEGA's mission is to work to eliminate technical barriers to trade such as those outlined above. We thank you for considering our views and we would be pleased to respond to any questions the agency may have.

Sincerely,

Gary C. Martin
President and Chief Executive Officer
North American Export Grain Association