National Grain and Feed Association

North American Export Grain Association

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Technical Trade Policy Division
Agriculture & Agri-Food Canada (AAFC)
Environment Canada
1341 Baseline Road
Tower 5, Floor 3, Room 145
Ottawa, Ontario K1A 0C5

RE: Consultation on the Proposed Domestic Policy on the Management of Low-Level Presence of Genetically Modified Crops in Imports and its Associated Implementation Framework, September 2012

To Whom It May Concern:

The North American Export Grain Association (NAEGA) and National Grain and Feed Association (NGFA) appreciate this opportunity to provide input on Canada's proposed domestic policy and implementation framework to manage the low-level presence (LLP) of genetically modified crops in imports (hereafter referenced as the "Policy and Framework") through World Trade Organization Notification G/SPS/N/CAN/640.

NAEGA, a not-for-profit trade association established in 1912, consists of 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's membership largely is domiciled in both the U.S and Canada. NAEGA's mission is to promote and sustain the development of commercial export of grain and oilseeds and their primary products. Through a reliance on member action and support, NAEGA acts to accomplish its mission from its office in Washington D.C., and in markets throughout the world.

The NGFA is comprised of 1,050 member companies that operate more than 7,000 facilities and handle more than 70 percent of the U.S. grain and oilseed crop. NGFA's membership, domiciled in Canada, Mexico and the United States, encompasses all sectors of the industry, including country, terminal and export grain elevators; commercial feed and feed ingredient operations; biofuel producers; cash grain and feed merchants; end-users of grain and grain products,

including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries that provide goods and services to the grain, feed, processing and export sectors.

The member companies of the NGFA and NAEGA represent a majority of firms and facilities involved in the U.S. and Canadian grain and oilseed handling and marketing system. Our associations and member companies have deep experience, capacity and interest in the production of safe and healthful agricultural commodities. As such, our organizations strongly support agricultural biotechnology and other scientific and technological innovations that contribute to agricultural production efficiencies. These advances are crucial to enabling the agri-food industry to meet the demand for a safe, abundant, affordable and high-quality food, feed and fiber supply for North American and world consumers. We also support science- and risk-based governmental regulatory systems that contribute to protecting the safety of the food and feed supply.

At the outset, NAEGA and NGFA commend the Government of Canada for its leadership in bringing the development of a domestic low-level presence (LLP) policy to the forefront. We also wish to recognize and express our appreciation for the important roles played by the Canadian and U.S. governments in facilitating the science-based innovation of crop biotechnology and the robust bilateral trading relationship that exists between our two countries, particularly the largely seamless and cost-effective cross-border movement of agricultural commodities and products that benefit consumers in both the United States and Canada.

Concerning the matter subject to this WTO notification, we agree with the International Statement on Low Level Presence that resulted from the Vancouver, Canada, March 22, 2012 meeting that defines "*LLP in food as low levels of recombinant DNA plant materials that have passed a food safety assessment according to the Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003) in one or more countries, but may on occasion be present in food in importing countries in which the food safety of the relevant recombinant-DNA plants has not been determined*." Further, we agree with the Statement's intent, background and purpose, and emphasize the importance of the following paragraph: *"3. Today, the number and complexity of genetically engineered crops being developed and cultivated worldwide is increasing annually. This situation threatens to increase the number of asynchronous and asymmetric approvals worldwide and, consequently, increase the risk of trade disruptions resulting from the LLP of unapproved events in commercial channels. Reducing asynchronous approvals is the most effective way of reducing trade disruptions due to LLP. However, there is an immediate need to address the risk to trade arising from LLP occurrences, a risk that impacts importing and exporting countries alike, and global food security in general."*

In this regard, we encourage Canada to fully consider the definition and direction provided by the International Statement on Low Level Presence as it devises its LLP Policy and Framework. While we fully agree with the statement contained in 1.1 of the Policy and Framework, NAEGA and NGFA are concerned with the approach taken in the balance of the document that defines LLP differently than the International Statement on Low Level Presence, and establishes regulations and processes that treat LLP as unapproved and violative if detected in imported

shipments. Further, the Policy and Framework mistakenly, in our view, places responsibility for an enforced testing regime and commodity-based default and threshold values (called "a stepwise risk management approach") on participants in the commodity and food supply chain that have limited ability to efficiently or cost-effectively exert such management control.

We suggest the AAFC and others consider modifying the Policy and Framework approach to provide for a **process-based authorization for LLP** of certain GM novel traits in designated imported agricultural products intended for use in food, feed and further processing. We recommend AAFC pursue this course of action with the following objectives in mind:

1. Any LLP policy must provide for consumer confidence and foster acceptance of modern biotechnology, as well as be practical and facilitate trade.

2. As such, any LLP policy should:

    a. Be linked to, and contingent upon, a commitment by the biotechnology provider or legally obligated assignee to seek full approval/authorization of the novel biotechnology-enhanced trait with the competent government authority in the importing country.

    b. Represent an integral, but interim period, intended to bridge the time gap that ends with the ultimate approval/authorization or disapproval/de-authorization of the novel trait by the national competent governmental authority responsible for the risk-management function.

    c. Provide for an internationally consistent, as well as commercially practical and achievable, LLP level to be established for the novel trait covered by the policy. In this regard, NAEGA and NGFA urge technology providers to implement – and regulatory authorities like AAFC to accept – the recommendation of the International Grain Trade Coalition (www.igtcglobal.com) that no less than a 5 percent threshold be established as the authorized LLP level;

    d. Require the entity submitting application for approval/authorization of the novel biotechnology-enhanced trait (e.g., the biotechnology provider or legally obligated assignee) to manage compliance with the LLP policy.

    e. Require the entity making application for approval/authorization (the biotech provider or legally obligated assignee) to implement the necessary risk assessment, risk management and risk responsibility (discussed in more detail later) to meet the LLP threshold level appropriate for the given novel trait.

    f. Not shift the obligation to determine or maintain the amount of the novel biotech product from the technology provider to downstream importer, processor, food manufacturer, and ultimately the end user of the agricultural product that may contain the novel trait subject to an authorization.

g. Accommodate, to the greatest extent possible, the least trade-distortive approach to risk management, including: 1) providing for compliance via processes that provide for adequate controls to achieve established outcomes; and 2) preventing unique sampling and minimizing additional mandatory sampling and testing of commercial grains and oilseeds for genetic content, which unnecessarily increases costs, decreases competitiveness and restricts liquidity in global commodity markets.

NAEGA and NGFA believe the current approach contained in the proposed Policy and Framework under which agricultural commodities compliant with an LLP policy would be deemed violative – combined with enforcement via a testing regime for commodity-based default and threshold values that places further responsibility on the commodity and food supply chain – does **not** provide an efficient framework for trade; places inequitable and unjustifiable responsibility on downstream exporters, importers, processors, food manufacturers and end users; and fails to enhance consumer confidence.

The NGFA and NAEGA respectfully request that AAFC consider the following factors in support of our suggestion that the Policy and Framework be modified to provide for a **process-based authorization** for the presence at low levels of certain GM novel traits in designated imported agricultural products for use in food, feed and processing:

1. Canada has a product-based regulatory system for plants with novel traits, as well as novel foods. Health Canada and the Canadian Food Inspection Agency (CFIA) require product developers to follow regulatory directives and guidelines to obtain approval for the commercialization of novel foods, novel feeds and environmental release. Among other things, technology provides are required to supply Canadian government evaluators with thorough and detailed information about their novel food products before they can receive approval to sell or advertise them in Canada. We believe that any LLP policy must be incorporated into the importing country's respective regulatory system. Hence Canada's LLP policy also should be product-based and be tied to the approval/authorization or de-authorization/disapproval for the novel trait.

2. All issues concerning how crop biotechnology is managed need to be addressed from a global perspective to provide for marketability of crops, and avoid the costly and far-reaching disruption of the integrity of domestic and export supply chains. When novel traits are commingled with their traditional plant or plant-product counterparts, global marketability and integrity are compromised in instances in which such biotech events have not been approved or authorized in export markets. Thus, it is exceedingly important that Canada's approach to LLP – the first time such a policy has been officially undertaken by a competent government authority – be devised in a way that maximizes the chances of it being consistent with (and setting an example for how) LLP policy ideally will be implemented by other importing countries.

3. Biotechnology providers, not downstream value chain participants, have the exclusive decision-making authority over whether to voluntarily restrict commercialization (marketing of seeds) under corporate stewardship plans until such time as the technology provider has obtained sufficient authorizations from governments of importing countries.

Such import authorizations, or an appropriate LLP policy that is in place until such authorizations are granted, are essential to facilitate competitive, reliable and efficient international market access. The reality is that the first and over-riding point of control resides exclusively with the technology provider. No step other than the interdiction for planting can prevent bulk grain and oilseed shipments from containing a biotech-enhanced event that has been made available to producers for planting. Any biotechnology trait present in such shipments that lacks approval in full, or is not covered by a commercially practicable and achievable LLP process by the country of import, will confront trade-distortive, costly and/or an impossible-to-achieve zero tolerance in that country. The consequences of such outcomes are dire, including impeding the ability of importing countries to provide food security, imperiling present and future market opportunities for U.S. and Canadian farmers, and imposing unrecoverable and extensive product and shipment-rejection costs on the Canadian and U.S. production and marketing systems.

4. Biotechnology providers have several corporate responsibilities associated with the commercial introduction of biotechnology-enhanced events that may become present in the general commodity supply. The following three elements of the responsible commercialization of biotech-enhanced events currently are being practiced by most technology providers, and should be required as part of an LLP policy of importing governments:

   - **Risk Assessment:** The biotechnology provider should be required to determine a threshold level, if any, at which it is inappropriate for such traits to be present in the general commodity stream because of potential adverse market access and/or food/feed functionality economic impacts. Such threshold levels and the assessment and factual basis on which they were determined should be part of the public rulemaking record.

   - **Risk Management:** Based upon the results of the risk assessment, the biotechnology provider should be required to develop, implement and enforce binding stewardship programs and supply chain management with which the technology provider is obligated to comply in a manner that is: 1) appropriate for the given biotech-enhanced trait; and 2) sufficient to prevent it from becoming present above established threshold levels in the commodity stream.

   - **Risk Responsibility**: Biotechnology providers should be required to accept liability to compensate parties for economic damage resulting from a failure to adequately implement and enforce binding risk-management (stewardship) and supply chain management plans deemed sufficient and effective in preventing biotech events from becoming present above established threshold levels.

5. Under no circumstances can or should the downstream value chain (e.g., the grain handling, processing, food, feed or export industry sectors) be subjected to bearing the risks of market disruptions over which they have little, if any, ability to control or manage. Rather the technology providers that do have the ability to control such

> exposure must be responsible. Doing otherwise creates market risk, and undermines the ability of agriculture to contribute to global food security, as well as economic growth and job creation.

It is clear that any LLP policy should provide the technology provider with an option to manage its product's exposure in the commercial grain supply until such time as full authorization is granted or a determination of no adverse impacts is made. It is as simple as that. Absent this, full international authorizations need to be in place at the time seed containing the event first is purchased by producers. For example, producers often make their initial seed purchase decisions several months prior to planting and at approximately the same time in the year when international buyers begin substantial contracting for delivery of the next year's harvest. around one year prior to harvest. Given that such contracts are contingent upon receiving authorizations for all biotech-enhanced events that may be present in the commodity shipment, import authorizations or any related LLP provisions need to be in place at least one year prior to harvest-time deliveries from U.S. farms.

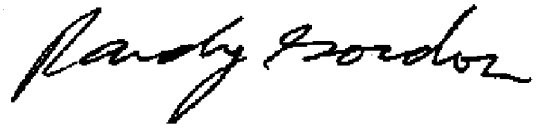
Technology providers may find the economic opportunity attractive enough not to wait to complete necessary international approvals or wait until an appropriate LLP is implemented prior to the product launch. However, NAEGA and NGFA believe appropriate restraints and responsibility for risks imposed on downstream stakeholders when and after a crop biotechnology product is in production must be part of all technology provider product stewardship obligations. Such restraint and risk responsibility are just as important when crop biotechnology is deployed under a regulatory system that provides for LLP as one that does not incorporate the potentially valuable LLP option.

In closing, we commend Canada for its leadership in developing a proposed domestic policy and implementation framework to manage LLP of genetically modified crops in imports. Canada's initiative represents an important step toward much-needed improvement in how this important technology is used, as well as in how marketability issues associated with commodities produced using this technology is managed. Canada's approach to LLP will set an important and valuable international precedent for not only other national LLP regimes, but also for technology providers comprehensively obligated to obtain and maintain authorizations – and develop and implement appropriate stewardship – for the use of their products. Most importantly, the measures incumbent in any LLP policy will have considerable impact on consumer confidence and acceptance of agricultural products utilizing today's modern agricultural systems.

Given the overriding importance and significance of Canada's proposed Policy and Framework to Canada's consumers and agricultural economy, its potential influence on the development of similar policies worldwide and the impact on Canada-U.S. trade, the NGFA and NAEGA respectfully urge AAFC to consider fully the issues and recommendations contained in this statement, as well as alternative approaches and options that warrant careful and comprehensive consideration. We fervently believe the extra time taken to fully deliberate these important matters will help inform the development of a sound and well-reasoned policy.

The NGFA and NAEGA appreciate your consideration of our views and look forward to further consultation on this issue. We would be pleased to respond to any questions the agency may have. Thank you again for the opportunity to comment.

Sincerely,



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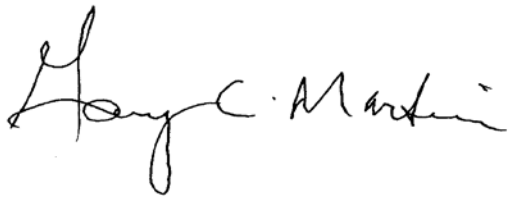

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