



“Working Together to Make Trade Work”

**NAEGA MAP Trip Report – Contracts and Best Practices Seminar – Tokyo, Japan –
November 2018**

Name of Travelers:

Gary C. Martin, President & CEO, NAEGA
Ryan Olson, Director of Operations, NAEGA
Sam Bonilla, Senior Advisor, NAEGA
Andrew Marting, Senior Advisor, NAEGA

Dates of Travel:

November 27 – December 1, 2018

Purpose of Travel:

Consistent with advancing NAEGA UES objectives, NAEGA President and CEO, Gary C. Martin, NAEGA Director of Operations, Ryan Olson and Senior Advisors Sam Bonilla and Andrew Marting traveled to Tokyo, Japan from November 27 – December 1, 2018 to provide for market and trade education and gather information related to GRNOS trade. The primary mission of this team was to educate and inform Japanese Industry and Government officials on current contracting practices as they relate to trade risks, with an overview of the current global contracting environment.

Two events on November 30, 2018 were the focus of the mission:

1. A **Contracts and Best Practices for the International Grain and Oilseed Trade Seminar** at the TKP Gardencity Shinagawa Goos. This seminar was an interactive opportunity to review commercial and official practices to improve predictability, reduce risks, resolve trade barriers and facilitate the profitable trade of grains and oil seeds. Topics included a review of the NAEGA II Model Contract, perspectives on the global contracting environment and case studies of commercial topics like arbitration and contract terms. NAEGA also provided an update on changes to the NAEGA II Model Contract
2. A **cocktail reception** following the contracts seminar on November 30. Members of the Japanese grain and oilseed trade, MAFF and Japanese government officials and U.S. Embassy staff are invited to attend. NAEGA was delighted to welcome remarks from the U.S. Embassy, the Ministry of Trade and Industry and the Japan Feed Trade Association (JAFTA).

In addition to these events, NAEGA also conducted a number of fact-finding and education meetings with Tokyo based NAEGA membership and the U.S. Embassy. NAEGA would like to thank USDA FAS for accommodating their scheduling and helping to arrange the seminar and other meetings.

Summary of Accomplishments:

Meetings with USDA FAS



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On November 29, 2018, the NAEGA team visited the U.S. Embassy for a meeting with USDA FAS and industry representatives including the U.S. Grains Council, the U.S. Soybean Export Council and U.S. Wheat Associates. During this meeting, NAEGA and U.S. industry representatives shared their views on the upcoming U.S.-Japan trade agreement (USJTA) negotiations and global trade developments including U.S. trade remedy actions and negotiations with China. NAEGA highlighted its negotiating objectives submitted to the U.S. Trade Representative as part of the public comment period ahead of USJTA negotiations. NAEGA remains committed to promoting bilateral trade and investment between the U.S. and Japan, supported by the close historical trade and investment ties between the two countries. Post welcomed NAEGA’s comments and the North American grain industry’s views that the U.S. and Japan should be seeking a deep and reciprocal trade agreement equal to its long security and diplomatic ties.

Meetings with NAEGA Member Companies and Colleagues

Following NAEGA’s meeting with USDA FAS, NAEGA conducted fact finding meetings with Cargill Japan and with the Japan Oil and Fat Importers and Exporters Association (JOFIEA) at the offices of Mitsui & Co. During these meetings, NAEGA assessed the adoption of the new version of the NAEGA 2 Model Contract, which was launched on March 30, 2018. In addition, NAEGA team members also received input from member companies and Japanese industry on the upcoming USJTA negotiations.

All stakeholders reported strong understanding and adoption of the NAEGA 2 Model Contract. Contract revisions seem to be well reported within companies, and contract terms have been widely adopted. NAEGA indicated to members that it continues to standby to answer any questions, and Senior Advisors are always on call to assist with contract issues.

NAEGA member companies were optimistic about the USJTA negotiations, and emphasized that, to maximize certainty and benefit to industry, that they should be started as soon as possible. Market access issues surrounding the Ministry of Agriculture, Forestry and Fisheries mark-up and quota access ranked as top of member company interests priorities.

Contracts and Best Practices Seminar

On November 30 NAEGA welcomed about 45 attendees from the Japanese grain and oilseed trade industry participate in our seminar. The main goal of this seminar was to provide an interactive, industry-wide opportunity for a meaningful exchange between participants and learn through an intensive overview of commercial and official practices to improve predictability, reduce risk, resolve trade barriers and facilitate successful trade. The team accomplished this through a series of presentations focused on current official and commercial practices, placing an emphasis on the proper use of the NAEGA No 2 model contract and avoiding potential trade disputes in the interpretation of the clauses.

Senior Advisor Andrew Marting presented a timeline of the process used by the NAEGA Contracts Committee in revising the contract, accomplishments during the approximately 2 year review process and an explanation of each of the revisions made to the contract. With these changes now in place, it was important for the participants to understand that while these were the first changes



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to take place since the 2000 edition, many of the changes were necessary to increase the clarity of language and increase the transparency of some of the clauses and sections. However, changes to the arbitration clauses incorporated new arbitration rules adapted to increase efficiency and reduce costs in administering arbitrations, while changes to clause 26 “Limitation of Liability” clause was necessary to provide additional protection to sellers following recent well documented import issues in deliveries to China.

Senior Advisor Sam Bonilla then followed with the proper use of the current edition of the NAEGA 2 model contract, together with best practices in avoiding potential disputes in the more complex clauses of the contract. Of interest to the group was the proper use of the contract when used for other origins not covered by the model contract as written. There was also a lively discussion on the proper use of Clause 8 “Delivery” with respect to the use of “custom of the port and subject to the elevator tariff,” as well as the proper application of the “pre-advice” requirements of the clause. There was an interest from some of the participants in understanding the role despatch at load in expediting the loading of vessels.

Japanese Grain and Oilseed Industry Cocktail Reception

A cocktail reception followed the seminar on November 30, 2018 celebrating the Japanese grain and oilseed industry, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF), Japan Feed Trade Association, U.S. Grains Council, Japanese government officials and U, S, Embassy staff. NAEGA President and CEO, Gary Martin opened the reception with remarks highlighting the value of the long and successful relationship between the U. S. and Japan. He mentioned we are well positioned to continue our successful history to meet the opportunities and challenges in the future. Following Mr. Martin’s remarks, NAEGA was honored to welcome Mr. Christopher Riker, Senior Agricultural Attaché, Embassy of the United States of America. Mr. Riker mentioned how NAEGA works proudly to facilitate grain trades in competitive markets and endeavors to insure the integrity and reliability of grain supplies to Japan. Following Mr. Riker, Mr. Takaya Komine, of Grain Trade and Operation Division of Ministry of Agriculture, Forestry and Fisheries and Mr. Shuji Kobayashi Chairman, Japan Feed Trade Association, both expressed their appreciation of NAEGA’s role in the facilitating trade between the U.S. and Japan. Mr. Kobayashi remarked that in the midst of continued uncertainty in this current environment, NAEGA has a big role to play in insuring the continued supply of grain to Japan and asked for their continued cooperation in this grain trade.

Recommendation:

1. NAEGA should continue to provide outreach and continue to monitor how the Japanese grain trade is adapting the NAEGA No 2 model contract, revised as of March 30, 2018.
2. The Contracts Committee should evaluate any feedback, or trade impact, associated with the use of the revised model contract.
3. NAEGA senior advisors should work to encourage a more interactive session. There were very few questions during the session; however, some participants took advantage of the recess to ask very interesting questions.
4. NAEGA should reformat the Contracts seminar to incorporate a formal question and answer session at fixed points on the schedule.
5. NAEGA should follow up and work closely with USDA FAS during USJTA



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negotiations.

Attachments:

- *Contracts and Best Practices Seminar Presentation*
- *NAEGA No 2 Contract Revised Effective March 30, 2018*