

**National Grain and Feed Association  
North American Export Grain Association**

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*Submitted Electronically*

July 18, 2017

To: Global Affairs Canada  
Trade Negotiations — North America (TNP)  
Lester B. Pearson Building  
125 Sussex Drive  
Ottawa, Ontario K1A 0G2

Dear Reviewing Officials:

The North American Export Grain Association (NAEGA) and the National Grain and Feed Association (NGFA) submit this statement in response to the request for consultations on the renegotiation and modernization of the North American Free Trade Agreement (NAFTA) as requested in the June 3, 2017 issue of the *Canada Gazette*. These comments seek to inform Global Affairs Canada on the North American and Canadian grain and oilseed export sector's views on new areas that should form part of a modernized NAFTA agreement.

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-member companies ship and support the vast majority of the highly competitive, sustainable and fungible North American grain and oilseed export supply. NAEGA works collaboratively around the world to improve and maintain the trade of grains, oilseeds and other agri-bulks by informing industry and addressing both commercial and official practices. NAEGA was founded over one hundred years ago by members of the grain trade in the United States and Canada interested in creating an American-Canadian export grain association. NAEGA's membership then, and now, consists of U.S. and Canadian companies with an interest in promoting and sustaining the development of commercial exports of grains, oilseeds and their primary products from North America. Today, NAEGA has over forty members and associate members throughout the United States and Canada.

NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, milling, exporting and other grain-related companies that operate more than 7,000 facilities. Its membership includes grain elevators, feed and feed ingredient manufacturers, biofuels companies, grain and oilseed processors and millers, exporters, livestock and poultry integrators,

and associated firms that provide goods and services to the nation's grain, feed and processing industry. NGFA also consists of 34 affiliated State and Regional Grain and Feed Associations.

NGFA's multi-faceted membership includes U.S. and Canadian companies and serves as a testament of the integrated North American grain and feed supply chains. NGFA's members trade many types of commodities and a core tenant of NGFA's mission is to promote free enterprise policies, such as trade. In addition, NGFA provides commercial services for its members, such as NGFA trade rules and arbitration. NGFA trade rules were formally established in 1902 and are commonly referenced in grain and feed contracts to help facilitate trade. NGFA arbitration services began in 1901 and have been helping grain and feed companies on both sides of the border settle disputes and avoid costly litigation.

What has brought NAEGA and NGFA's Canadian and U.S. members together over their history has been an enduring commitment to promoting trade within and from the North American continent. Today, North America is one of the most competitive export markets for grains and oilseeds in the world, reaching customers on six continents. Building on this strength and cooperation has been the development of the thriving trade partnership laid out first in the Canada-U.S. Free Trade Agreement and solidified in the North American Free Trade Agreement. This partnership has been clear success story for the North American grain and oilseed export industry. NAFTA has reduced the tariff barriers that restricted cross border trade and, in efforts over the last two decades, has encouraged regulatory cooperation and trade facilitative measure that have helped to address non-tariff barriers.

The resulting environment has created an integrated marketplace for agriculture products that promotes consumer choice and encourages regional specialization that leads to efficiencies and enhanced productivity. Canada and the United States are successful competitors in the global market because of comparative advantages that exist given North America's agricultural bounty, superior logistics and market-based economies. These advantages have enabled specialization and opened opportunities that expand the economic pie and create room for the development of new specialty markets.

For example, the United States is well positioned to produce and supply corn, soybeans and rice. Canada, in turn, is often the supplier of choice for crops such as oats, canola and certain classes of wheat. This specialization has freed up U.S. acreage for other crops for which the United States has a strong comparative advantage, such as corn and soybeans. Moreover, Canada's high per-capita income has created opportunities for U.S. exports of value-added agricultural products, such as meat, dairy and biofuels, that are produced in part by using U.S. grain and feed products. Consequently, Canada indirectly imports a large quantity of U.S. grains, oilseeds and feed by way of value-added agricultural products, contributing to U.S. manufacturing jobs in the food and agricultural sector.

As the Government of Canada begins work with its partners in the United States and Mexico to modernize the NAFTA agreement, we ask that negotiators first recognize these enduring successes and endeavor to "do no harm" during negotiations by preserving all current market access gains for U.S. and Canadian companies and consumers.

In addition, we ask that the negotiating partners consider sensible and trade promoting efforts to modernize the NAFTA agreement and promote the continued success of the North American grain and oilseed industry. Over the last 23 years since NAFTA took effect, economies, markets, technologies and supply chains have evolved immensely. This evolution has created a new set of 21<sup>st</sup> century challenges to facilitating trade within the North American marketplace. Chief among these challenges is the growing number of non-tariff barriers that distort and slow cross-border trade flows. Given the opportunity to modernize NAFTA, we urge the Canadian Government to make the accord more effective in preventing technical, sanitary and phytosanitary (SPS) barriers to trade, encouraging higher levels of regulatory cooperation, transparency and professionalism, and promoting the convergence of standards and rules to level the playing field and ensure against unjustified, unscientific and discriminatory regulatory initiatives.

In particular, we believe NAFTA partners, and the Canadian Government, should work together to address the following impediments to facilitate trade in North America:

- 1. *Actions at Import:*** Import checks on cross-border shipments of individual containers or consignments may present a major barrier to trade in agricultural commodities. When they occur, checks can result in expensive delays. Goods may be subjected to inspection, or may even be rejected, without apparent scientific justification.
- 2. *Science and Risk Analysis:*** Many SPS-based import bans and restrictions do not conform to the applicable regional and international standards and the promulgating authority often fails to provide a science-based risk assessment as required under the World Trade Organization's SPS Agreement. U.S. negotiators should negotiate to include provisions that effectively force the timely completion of sound risk assessments, with adequate opportunities for comment by the public.
- 3. *Transparency Provisions:*** Agricultural traders often are kept in the dark about the basis for measures that restrict movement of agricultural products based on alleged SPS and technical barriers to trade (TBT) grounds. All requirements – including those cited previously – should explicitly require disclosure and should be made available to governments, as well as commercial parties, prior to implementation. U.S. negotiators should pursue clear and transparent timelines for disclosure and resolution of adverse import checks that prevent or delay import shipments. Further, regulatory authorities should be encouraged to follow transparent and predictable regulatory timelines with adequate opportunity for comment and critique of new regulatory measures.

In addition, we believe a modernized NAFTA provides the opportunity to include language to increase transparency and cooperation on activities related to modern agricultural production technologies, including seed-breeding innovations, improving upon provisions agreed to in the Trans-Pacific Partnership negotiations.

To address the aforementioned concerns and issues, we believe negotiators should pursue 21<sup>st</sup> century, WTO-plus negotiating objectives in a renegotiated NAFTA that include the following:

- Maintaining and expanding all market access, tariff concessions and other provisions that have enabled economic integration in the North American marketplace and supply chain over the last 23 years.
- Creating a rapid response mechanism (RRM) that enables the timely and transparent resolution of adverse import checks by importing country customs and plant protection authorities. An RRM should include immediate and detailed notification of the importer or exporter of record within *three days* of any risk- detection, assessment and management measures. Further, an RRM should mandate expedited review processes, at the request of the importer or exporter of record, that are completed within 15 days. A properly functioning RRM will increase reliability, reduce risk premiums sometimes associated with agricultural trade, and avert costly demurrage and trade inefficiencies that result when U.S. agricultural exports are detained at customs and border crossings in importing countries.
- Enhancing science-based SPS rules that: promote the adoption of testing procedures based upon international laboratory standards; require export and import checks be carried out “without undue delay”; require documentation of the frequency of import checks and demonstration of the risk factors that justify the import check; and provide for mechanisms to resolve adverse import checks.
- Adopting risk-management and risk-assessment procedures that prevent the use of non-tariff barriers that lack scientific merit. Risk-assessment and risk-management procedures should take into consideration reasonably available and relevant scientific data, and should not be more trade restrictive than required to achieve SPS objectives.
- Promoting regulatory consistency and cooperation provisions. Such provisions should encourage the adoption of widely-accepted good regulatory practices and core principles such as transparency, impartiality and due process, as well as coordination across governments to ensure coherent regulatory approaches. The stated objectives should be to provide globally effective measures that eliminate trade-distortive policies and reduce bureaucratic impediments to trade, and that foster trade-facilitative official practices and regulations for which NAFTA-member countries are held accountable. One mechanism for achieving this may be to formally include within NAFTA references to bilateral and trilateral regulatory cooperation bodies including, but not limited to, the regulatory cooperation councils, high-level regulatory cooperation councils, technical committees and cooperative technical consultative bodies that currently exist on an *ad hoc* basis. If doing so, however, NAEGA and NGFA recommend that the updated objectives cited above concerning enhancement of trade-facilitative measures and removal of bureaucratic-related impediments to trade should be included as a specific charge for such bodies within the NAFTA text.
- Strengthening efforts to address TBT matters, including through the promotion of transparency and good regulatory practice, convergence or mutual recognition of regulatory standards, and the adoption of no less favorable treatment to national conformity assessment bodies.

- Increasing transparency and cooperation on activities related to modern agricultural production technologies, including seed-breeding innovations. In this regard, NGFA and NAEGA fully support the separate statement being submitted by the U.S. Biotech Crops Alliance, which calls on U.S. negotiators to include in NAFTA: 1) a mutual recognition agreement concerning the safety determination of crops intended for use as food, feed and/or for further processing; and 2) development of a consistent approach for managing low-level presence (LLP) of products that have undergone a safety assessment and are approved for use in a third country, but not yet approved for import by a NAFTA-member country.
- Enabling innovation of information technologies to improve logistics and regulatory implementation and to facilitate trade. NAFTA members should be encouraged to recognize electronic signatures and certifications wherever possible and support the electronic exchange of official trade documents including, but not limited to, bills of lading, origin certifications, quality certificates and SPS certificates.
- Ensuring safe, orderly and secure passage for rail and truck freight transportation within NAFTA-member countries.

In addition, the NAFTA agreement should support and encourage industry based efforts to facilitate trade and promote regulatory cooperation and compliance. For example, NAEGA, NGFA and the Canadian grain and seed trade industry have been working together since 2012 as part of the Canada-U.S. Grain and Seed Trade Task Group to help both Canadian and U.S. wheat, barley and durum producers with marketing that may include cross-border transactions. These efforts have been successful at maintaining trade relations and easing regulatory uncertainty following the passage of the Marketing Freedom for Grain Farmers Act by the Canadian Parliament and the elimination of the Canada Wheat Board.

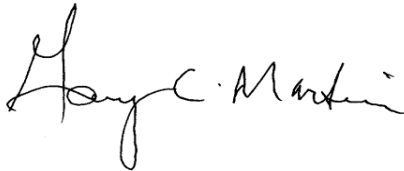
As the parties move forward with negotiations, we encourage the Government of Canada and Global Affairs Canada to work together with their U.S. and Mexican counterparts to identify areas of mutual interest and understanding. Considering the constrained political calendar, NAFTA partners should move quickly to address non-controversial issues in a quick and expeditious negotiating period. Doing so will help lock in some of the gains already achieved in negotiations of the Trans-Pacific Partnership agreement and increase certainty for exporters, who often contract with buyers months or years in advance.

In addition to seeking the common ground for the completion of a timely agreement, we encourage the Government of Canada to consider eliminating market access barriers that continue to limit the free flow of agricultural products between the U.S., Canada and Mexico. In the spirit of promoting free trade, we encourage the Canadian Government to heed the words of Prime Minister Justin Trudeau by refusing “politically tempting shortcuts” that restrict trade and hurt workers and consumers. In particular, ongoing supply management policies in the dairy industry distort bilateral dairy markets and limit further integration of agriculture markets. Worse still, refusing to address these ongoing restrictions limit the aspirations of a future agreement. Furthermore, they are inconsistent with the parties’ expressed hopes to “modernize” NAFTA.

As negotiations move forward, NAEGA and NGFA are pleased to assist in identifying opportunities to update and modernize NAFTA as well as improve regulatory communication and cooperation. In particular, we are keen to support efforts to facilitate trade; expand market access and tariff concessions; improve regulatory consistency and cooperation; remove non-tariff barriers that lack scientific merit; enable the innovation of information technologies; recognize comparable regulatory systems for assessing the safety of plant breeding technologies; adopt a North American approach to LLP policy; and ensure safe and orderly passage for rail and truck freight transportation throughout North America. NAEGA and NGFA are also eager to work actively, constructively and expeditiously with the Government of Canada to more closely examine these key areas and to develop specific strategies to preserve, improve and build upon existing and new trade relationships between the U.S. and Canada.

Thank you for your consideration. We would be pleased to respond to any questions you may have.

Sincerely,



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



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