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November 26, 2018

Edward Gresser
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20006

RE: Docket No. USTR 2018-0034

Dear Mr. Gresser:

The National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) submit this joint statement in response to the request for public comments on the Administration's intention to enter into negotiations with Japan for a U.S.-Japan Trade Agreement, as requested in the October 26, 2018 edition of the ***Federal Register***.

These comments seek to inform the U.S. Trade Representative's Office about U.S. interests and priorities for the grain; feed; grain, oilseed processing and milling; and export sectors.

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 nationwide, and handle more than 70 percent of the U.S. grain and oilseed crop. 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, processing, milling and export industry. NGFA also consists of 34 affiliated State and Regional Grain and Feed Associations.

The North American Export Grain Association (NAEGA) is a not-for-profit trade association established in 1912 that consists of private and publicly owned companies and farmer-owned cooperatives invested and operating in agricultural product markets. NAEGA member-companies participate in and support competitive, sustainable and fungible global supply chains. 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 serves its members' interests by focusing on what is best for all value chain stakeholders.

The U.S. food and agricultural sector is the world's largest and most efficient, and has benefited greatly from free-enterprise and market-based policies; entrepreneurial, competitive and market-responsive producers and agribusinesses; and secure and reliable access to foreign markets – including Japan. Its safe, reliable, affordable and abundant supply of food and agro-industrial products provides unparalleled food security and is produced from renewable, sustainable and efficient supply chains that start with farms and ranches, encompass the food, beverage and export industry, and extend throughout North America and globally. Today, U.S. agricultural producers and agribusinesses compete successfully in the global market for agricultural products ranging from raw commodities to value-added goods, such as meat, poultry, dairy and biofuels, adding value and creating jobs in communities throughout the nation.

The benefits of U.S. agricultural trade are not limited to farmers, ranchers, grain elevators, feed manufacturers, feed ingredient suppliers, grain and food processors, dairy operators and the many other agricultural businesses whose livelihoods depend extensively on access to foreign markets. Rather, the economic multipliers associated with the U.S. food and agricultural sector accrue to the broader U.S. economy, particularly in terms of job creation and economic growth. According to data from the U.S. Department of Commerce, as well as analysis conducted by the U.S. Department of Agriculture, the food and agricultural sector supports more than 15 million U.S. jobs, creates more than $423 billion in annual U.S. economic activity, and represents the single largest U.S. manufacturing sector – comprising 12 percent of all U.S. manufacturing jobs. Every dollar in U.S. agricultural exports generates an additional $1.27 in U.S. economic activity, contributing positively to the U.S. balance of trade.

Many NGFA- and NAEGA-member companies directly or indirectly ship products to Japan and have benefited from a trading relationship between the two countries that has been grounded on the principles of science, rule of law and mutual respect. While a strong U.S.-Japan trading relationship already exists, recent trade agreements reached between Japan and other countries – particularly the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) – threaten to disadvantage U.S. market access for several major food and raw agricultural products in the future. NGFA and NAEGA appreciate that the Trump administration recognizes this imminent threat to U.S. agriculture and has worked cooperatively to initiate plans to engage in trade negotiations with Japan starting early in 2019.

Recommended U.S. Negotiating Objectives for a U.S.-Japan Agreement

In the joint statement following their summit meeting in New York, N.Y., on September 26, 2018, President Trump and Prime Minister Abe committed to expanding "trade and investment between the United States and Japan in a mutually beneficial manner, including through further concrete steps, as well as to realize free, fair, and open development of the global economy." However, in that same statement, Mr. Abe also promised maximum agriculture, forestry and fisheries outcomes with the United States that only reflect "previous economic partnership agreements." As both countries move forward with negotiations, NAEGA and the NGFA believe that, as a strong and longtime ally, treaty and trade partner, the United States should not accept agriculture, forestry and fisheries outcomes from Japan that are limited in scope. Instead, it should work with our Japanese partners to pursue additional market access and integration that is proportionate to and reflects the close relationship the two countries together have built and enjoyed over the last 70-plus years.

NGFA and NAEGA believe an agreement with Japan should expand all current agricultural market access – to include and exceed all offsetting competitive advantages provided to other countries through the European Union (EU)-Japan Economic Partnership Agreement and the CPTPP – while incorporating modernization provisions adopted in the U.S.-Mexico-Canada Trade Agreement to address the challenges of 21st century global trade.

Tariff, quota and administrative barriers

Tariff barriers are an increasing concern for U.S. grain and oilseed exporters, particularly as Japanese trade agreements consummated with U.S. competitors come into effect. In coming years, U.S. competitors in the EU, Australia and Canada will gain preferential market access to the Japanese market that exceeds what is currently allowed for the United States under World Trade Organization rules. For example, CPTPP countries will gain a number of key concessions, including a 45 percent reduction in Japan's Ministry of Agriculture, Forestry and Fisheries (MAFF) tariff markups by year nine of the agreement's implementation. This would have the following impacts on U.S. grain products:

- ***Wheat:*** the CPTPP agreement gives Canada a 40,000 metric ton (MT) country-specific quota (CSQ) and Australia a 38,000 MT CSQ for wheat. Imports within these quotas are duty free. In addition, MAFF markups for wheat imports under these CSQs also will decline by a further 50 percent by year nine of implementation, except for Western White, Dark Northern Spring, Hard Red Winter Wheat, Canadian Western Red and Australian Standard White wheat. In fact, according to the U.S. Department of Agriculture, Japanese flour millers estimate after CPTPP is implemented, they will pay an $85/MT effective import tariff for Australian and Canadian wheat. Meanwhile, the effective import tariff for U.S. wheat would remain at $150/MT. Because of this price differential, it is anticipated that the Japanese milling industry will cut average annual total imports of U.S. western white, dark northern spring and hard red winter wheat by more than half — from about 3.1 million MT to 1.35 million MT or less.

- ***Barley:*** CPTPP countries have access to an additional quota for food barley that will grow to 65,000 MT per year by year nine of implementation. In addition, in-quota MAFF markups will decline by 45 percent.

Further, under the EU-Japan Economic Partnership Agreement, the United States is set to lose additional market share relative to EU competitors in wheat, barley, and oilseeds and derived products.

Given these evolving realities that U.S. agricultural exporters will confront when trying to access Japanese markets in the near future, NAEGA and NGFA urge the U.S. Trade Representative to address the following market-access issues relative to Japanese market tariffs and quotas:

- Improve market access for all grains and oilseeds. In particular, this should include expanded duty-free access for U.S. wheat that will level the playing field for U.S. imports and reduce import duties on U.S. corn and sorghum.

- Reduce the MAFF markup for all imported U.S. grains and oilseeds to equal or exceed all competitive advantages provided to other countries through the EU-Japan Economic Partnership Agreement and the CPTPP.

Importantly, as these important negotiations get underway, we urge USTR to secure agreement from Japan at the earliest stage possible – and before negotiations conclude – to provide market access and tariff treatment for U.S. agricultural products that are comparable to what Japan is providing to our foreign competitors under the CPTPP and the EU-Japan Economic Partnership Agreement to avert an imminent loss of U.S. market share. Once eroded or lost – even temporarily – history repeatedly has shown that U.S. market share is never completely recovered.

Non-tariff Barriers (NTBs)

Paramount among the current global challenges to trade is the growing number of non-tariff barriers that distort and slow trade flows. We believe the U.S.-Mexico-Canada Agreement (USMCA) contains useful provisions to address non-tariff barriers and should serve as a model for incorporation into a U.S.-Japan Agreement.

NGFA and NAEGA have been working constructively with the Trump administration since its inception to promote best official practices, including standards that increase transparency, promote reliability and reduce the risks of international trade. The global international trading environment changes rapidly and often unpredictably, and global supply chains are increasingly complex and subject to overlapping jurisdiction and rules. Because of these challenges, NGFA and NAEGA advocate and promote rules and standards that will reduce risk and increase the predictability and certainty of efficiently trading with our partners, which ultimately benefits consumers and food security.

We believe USMCA takes significant steps to address these issues by promoting a more transparent and reliable trading environment, and we encourage the inclusion of applicable USCMA provisions in a trade agreement with Japan. Significant improvements in USMCA that similarly would facilitate the terms of U.S.-Japan trade going forward include the following:

1. ***Establishment of a rapid response mechanism (RRM) to facilitate trade during adverse import checks:*** The establishment of an RRM significantly improves the reliability of the trading environment in the event goods are detained at customs for SPS reasons. A RRM increases certainty by requiring an importing party that prohibits or restricts the importation of a good based on an adverse result of an import check to provide notification ***within five calendar days*** – rather than the seven days provided under the Trans-Pacific Partnership trade agreement from which the United States withdrew – after the date of the decision to prohibit or restrict, to at least one of the following: the importer or its agent; the exporter; or the manufacturer. In the notification, the importing party under USMCA is required to provide the reason for the prohibition or restriction; the legal basis or authorization for the action; and information on the status of the affected goods, including, where applicable; relevant laboratory results and laboratory methodologies; identification of the pests at the species level; and information on the disposition of goods. This has the potential to reduce trade disruptions and inefficiencies, as well as cross-border transportation backlogs and excessive demurrage costs.

2. ***Enhanced technical consultations for SPS disputes:*** Misapplied or non-science based SPS measures are a growing barrier to international trade, and SPS disputes between countries often are costly and time consuming. The USMCA makes significant progress toward mitigating these barriers by establishing technical consultations that will resolve SPS disputes in as little as 180 days. In the event technical consultations are unable to resolve the SPS dispute, the parties have the option to use the dispute-settlement process under Chapter 31 of USMCA.

3. ***Regulatory coherence:*** Significant and positive steps to enhance regulatory cooperation are made through the establishment of a USMCA chapter on Good Regulatory Practices (Chapter 28). Chapter 28 deepens already robust and functioning cooperative arrangements between North American regulatory authorities by institutionalizing standards, practices and forums for engaging on regulatory issues. Most notably, Chapter 28 sets high standards for information-sharing and public engagement during rulemaking, encourages the use and disclosure of science-based measures, encourages the use of expert advisory groups and sets out areas of engagement between regulatory authorities. USMCA also provides a forum for the parties to consult at least annually through the establishment of Committees on Agricultural Trade, Sanitary and Phytosanitary Measures, Technical Barriers to Trade and Agricultural Biotechnology.

4. ***Promoting science-based standards, risk management and risk assessments:*** Establishing rules and regulations that appropriately manage risk and are backed by science are vital to facilitating trade. USMCA requires its parties to adhere to regulatory and SPS practices that are rooted in science, based on proper risk assessments and implemented using accepted risk-management practices.

5. ***Inclusion of steps to reduce the likelihood of trade disruptions in products of agricultural biotechnology and other seed-breeding innovations:*** USMCA contains

major and highly significant provisions designed to improve rules regarding the approval of agricultural biotechnology traits, including new plant breeding innovation techniques (e.g., gene-editing) in an effort to reduce trade disruptions, align and better synchronize regulatory approvals and facilitate trade, while encouraging continued innovation in safe and sustainable crop production technologies. In particular, USMCA requires parties to encourage applicants to “submit timely and concurrent applications” for authorization of biotech products; requires parties to maintain rules that provide for the initiation of authorization processes, even if the product is not authorized yet in another country; improves the timeliness of the review of expiring authorizations; improves communication between parties on new and existing authorizations of products; and requires parties to adopt or maintain policies to facilitate the management of low-level-presence (LLP) occurrences, thereby significantly reducing potential trade disruptions. These standards, if implemented, would take significant steps to reduce the risk of asynchronous regulation of agricultural biotechnologies.

6. ***Inclusion of an Investor-State Dispute Settlement System that includes Agriculture:*** The USMCA does take a notable step backward from the original North American Free Trade Agreement (NAFTA) by removing investor-state dispute settlement (ISDS) procedures for agriculture, and we strongly urge the inclusion of ISDS procedures for food and agriculture in a U.S.-Japan Trade Agreement. For food and agricultural companies that have committed billions of dollars in investments to facilitate trade of U.S. goods in foreign countries, inclusion of dispute-settlement procedure that protects companies against prejudicial treatment by foreign governmental or legal authorities is essential.

   Dispute-settlement provisions, like those established under NAFTA Chapter 11, have helped open foreign markets for U.S. investment, reduce risk, protect private and intellectual property rights and provide a “fail-safe” enforcement mechanism for companies that have been mistreated to seek remedies before a neutral arbitration panel – a process that has been transparent and under which the U.S. food and agriculture sector has been treated fairly. For example, Mexico levied a 20 percent tax on beverages not sweetened with cane sugar in 2002, thus targeting U.S. exports of high fructose corn syrup. Discriminating against a NAFTA partner’s industry to favor a domestic one is prohibited under NAFTA’s ISDS procedures. U.S. corn refiners challenged Mexico’s action under NAFTA’s ISDS statute and won all cases, recovering $160 million in restitution. We believe a similar safeguard in a U.S.-Japan Trade Agreement would provide important protections to U.S exporters and investors.

<u>U.S. Agricultural Exports</u>

To illustrate the importance of U.S food and agricultural trade with Japan, NGFA and NAEGA provide the following data:

In 2017, the United States exported nearly $13.6 billion in agricultural and related products to Japan, with grain and feed products constituting a large share of this market. As demonstrated by the high rankings in many of the tables below, Japan is an important export customer for many U.S. grain and feed products, as well as value-added meat and dairy products derived from grain- and oilseed-consuming animal units. Similarly, Japan's absence in some of the tables below illustrates there is room for growth for U.S. grain and feed product exports to this important U.S. export market.

Agricultural & Related Products (In Million $)

Rank	Partner	Value
1	Canada	$24,722
2	China	$24,019
3	Mexico	$19,472
4	Japan	$13,562
5	South Korea	$7,534

Beef (In Million $)

Rank	Partner	Value
1	Japan	$1,889
2	South Korea	$1,220
3	Mexico	$979
4	Hong Kong	$884
5	Canada	$791

Corn (In Million $)

Rank	Partner	Value
1	Mexico	$2,652
2	Japan	$2,145
3	Colombia	$781
4	South Korea	$705
5	Peru	$515

Dairy Products (In Million $)

Rank	Partner	Value
1	Mexico	$1,312
2	Canada	$637
3	China	$577
4	Japan	$291
5	South Korea	$280

Distillers Grains (In Million $)

Rank	Partner	Value
1	Mexico	$374
2	Turkey	$229
3	Korea, South	$161
4	Thailand	$126
5	Indonesia	$123

Ethanol (In Million $)

Rank	Partner	Value
1	Brazil	$741
2	Canada	$621
3	India	$280
4	Philippines	$101
5	South Korea	$91

Pork (In Million $)

Rank	Partner	Value
1	Japan	$1,626
2	Mexico	$1,514
3	Canada	$792
4	China	$662
5	South Korea	$475

Poultry (In Million $)

Rank	Partner	Value
1	Mexico	$933
2	Hong Kong	$468
3	Canada	$459
4	Cuba	$165
5	Angola	$156

Soybean Meal (In Million $)

Rank	Partner	Value
1	Philippines	$748
2	Mexico	$579
3	Colombia	$340
4	Canada	$317
5	Dominican Rep.	$174

Soybean Oil (In Million $)

Rank	Partner	Value
1	South Korea	$207
2	Mexico	$202
3	Dominican Rep.	$140
4	Colombia	$73
5	Guatemala	$41

Soybeans (In Million $)

Rank	Partner	Value
1	China	$12,253
2	Mexico	$1,568
3	Japan	$974
4	Indonesia	$921
5	Netherlands	$776

Wheat (In Million $)

Rank	Partner	Value
1	Mexico	$855
2	Japan	$713
3	Philippines	$555
4	Nigeria	$372
5	China	$351

Conclusion

The NGFA and NAEGA are pleased to provide our collective views in identifying negotiating objectives for a U.S.-Japan Agreement and strongly urge the administration also to promptly initiate new trade discussions – particularly with other Asia-Pacific countries – that preserve and build upon the core benefits that have helped the U.S. food and agricultural sector grow U.S. exports, support economic growth and job creation, and contribute positively to the U.S. balance of trade.

Many NGFA- and NAEGA-member companies directly or indirectly ship products to Japan and have benefited from a trading relationship grounded on the principles of science, rule of law and mutual respect. While a strong U.S.-Japan trading relationship already exists, recent trade agreements reached between Japan and other countries threaten to disadvantage U.S. market access for several agricultural products in the very near future. NGFA and NAEGA appreciate that the Trump administration recognizes the imminent threat to U.S. agriculture and has made plans to engage in trade negotiations with Japan.

NGFA and NAEGA believe an agreement with Japan should maintain and expand upon current agricultural market access – to include offsetting competitive advantages provided to other countries through the EU-Japan Economic Partnership Agreement and the CPTPP. Importantly, as these important negotiations get underway, we urge USTR to secure agreement from Japan at the earliest stage possible – and before negotiations conclude – to provide market access and tariff treatment for U.S. agricultural products that are comparable to what Japan is providing to our foreign competitors under the CPTPP and the EU-Japan Economic Partnership Agreement to avert an imminent loss of U.S. market share.

We also urge USTR to take this opportunity to continue its overarching efforts to modernize trade agreements by including within a U.S.-Japan accord provisions of the USMCA that better address the challenges of 21st century global trade.

The NGFA and NAEGA thank USTR for the opportunity to express these views and greatly appreciate the administration's efforts to negotiate a U.S.-Japan Trade Agreement that preserves and builds upon the core benefits of the current trading relationship between the two countries that has helped the U.S. food and agricultural sector flourish and support U.S. economic growth and job creation and contribute positively to the U.S. balance of trade. We would be pleased to respond to any questions you may have.

Sincerely,

Randall C. Gordon
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National Grain and Feed Association

Gary C. Martin
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