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December 10, 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 2018-0035

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, as published in the November 15, 2018 edition of the ***Federal Register,*** on the Trump administration's intention to enter into negotiations with the European Union (EU) on a U.S.-EU Trade Agreement.

These comments seek to inform the U.S. Trade Representative's Office about U.S. interests and priorities for the grain; feed; grain and 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 the EU. 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. These products add value and create 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 extend 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.

NAEGA and NGFA look forward to a successful negotiation with the EU that encompasses policies and measures that further increase U.S. agriculture's contributions to the U.S. economy. In our view, a successful negotiation with the EU will be one that includes ambitious and comprehensive access for U.S. agricultural products and is followed with proper implementation and enforcement. We understand that historically, the EU often has chosen to exclude substantive discussion on agricultural market access. In addition to the obvious merits of including negotiations on agriculture, we believe that the only way for this agreement to achieve the Trump administration's goals of economic growth and job creation is for the United States to demand the reduction of the substantial tariff and non-tariff barriers U.S. exporters currently face in the European market.

In particular, NAEGA and NGFA see this upcoming negotiation as a critical battleground for addressing agricultural non-tariff market access issues. Traditionally, the EU has pursued regulatory measures that conflict with both U.S. interests and World Trade Organization (WTO) rules. The EU's inappropriate use of the "precautionary principle" when addressing regulatory measures is a challenge to both internationally agreed upon commitments to science-based regulation and international rules and norms. And, increasingly, the EU has been encouraging other countries to adopt its regulatory practices and misuse of precaution through its network of 35 trade agreements. NAEGA and NGFA believe that for significant market access gains to be made in this agreement, U.S. negotiators must demand the resolution of several non-tariff trade barriers that result from the EU's protectionist use of precaution and plague current U.S.-EU bilateral trade, as well as global progress in meeting food and nutrition needs.

Aside from the United States, the EU is the world's largest import market for goods. Currently, U.S. agricultural, food and bio-energy exporters are constrained from accessing this market because of tariff and non-tariff trade barriers. These constraints to U.S. exports persist despite steadily increasing U.S. imports of EU products that have led to the largest U.S. agricultural trade deficit with any trading partner. This trade dynamic with the EU contrasts sharply with the experiences of other major U.S. trading partners that are more balanced and provide for fair competition, as in the case of Canada, or those that have shifted to a U.S. food and agriculture trade surplus, such as has occurred with China, Japan and Mexico. Resolving these trade barriers would create the potential for many NGFA- and NAEGA-member companies to ship significantly larger quantities of agricultural products to the EU, increase U.S. employment and help reduce the current negative trade balance.

In this vein, NGFA and NAEGA appreciate the Trump administration's public statements insisting that U.S. food and agriculture must be included in any negotiation with the EU on a new trade agreement. We also appreciate the administration's intent to engage in trade negotiations with the EU starting early in 2019.

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

On July 25, 2018, President Trump announced that he and European Commission President Jean-Claude Juncker had agreed to work together to achieve zero tariffs, zero non-tariff barriers and zero subsidies on non-auto industrial goods. Mr. Juncker said it was his intention to make a deal that would work toward achieving zero tariffs on industrial goods. U.S. Trade Representative Robert Lighthizer told lawmakers during a subsequent Senate hearing on July 26 "our view is we are negotiating about agriculture" and "that's part of the project." Meanwhile his counterpart, EU Trade Commissioner, Cecilia Malmstrom, said a U.S.-EU Agreement "would be limited, and let me state and be very clear, it will not include agriculture."

In constructing a framework for negotiations, NAEGA and the NGFA believe that, as a strong and longtime trade partner and North Atlantic Treaty Organization (NATO) ally with many EU countries, the United States should not accept agriculture, forestry and fisheries outcomes from the EU that maintain an unbalanced and unfair playing field. Instead, it should work with our EU partners to pursue additional market access and integration for agricultural and other products that builds upon the longstanding global leadership of the EU and United States.

NGFA and NAEGA believe an agreement with the EU should expand all current agricultural market access and ensure standards and rules are based on sound science, prudent risk-assessment and risk-management policies, and are enforceable.

Tariff, quota and administrative barriers

On June 20, 2018, the EU began applying retaliatory tariffs on many U.S. agricultural goods. The EU alleged the U.S. section 232 tariffs applied on EU steel and aluminum were safeguard measures, not security measures. U.S. corn, rice and certain types of dry beans were included in the retaliation and now face a 25 percent tariff. NGFA and NAEGA urge the U.S. Trade Representative to address and remove the retaliatory tariffs as soon as possible.

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.-EU 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 involved in 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 encourage the inclusion of the following applicable USCMA provisions in a trade agreement with the EU:

1. ***Inclusion of steps to reduce the likelihood of trade disruptions involving products of agricultural biotechnology and other seed-breeding innovations:*** Especially relevant and essential to any successful U.S.-EU trade agreement is the need to address long-festering EU non-science-based policies that have restricted or prevented import of safe agricultural products derived from modern biotechnology. 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 facilitate trade in agricultural products, and should be a linchpin in any negotiations on a trade agreement with the EU.

2. ***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.

3. ***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.

4. ***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). Within North America, Chapter 28 deepens already robust and functioning cooperative arrangements between 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.

5. ***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, which also should be replicated in a U.S-EU trade accord.

Biotechnology and New Plant Breeding Innovations

As noted previously, NAEGA and NGFA urge the Trump administration to address the reduction and elimination of non-tariff barriers related to crop biotechnology that currently restrict or prevent trade in grains, oilseeds and their derived food and feed products with the EU. Doing so would be mutually beneficial to consumers, farmers and the economies of the United States and the EU.

Reducing the time lag between the authorization as safe of new biotechnology-enhanced events in the United States and their authorization for import and use in food, feed or for further processing (FFP) in Europe should be among the highest priorities for these negotiations. The current "asynchronous approval" situation is caused by many factors, including EU risk assessment guidelines that are not science-based nor aligned, and the increasingly politically-motivated delays in product approvals in Europe.

Changing the EU's approach to regulating stacked crop biotechnology events also should be addressed within the context of the biotech discussions. The EU, in addition to a separate risk assessment for each individual component of a stacked biotech-enhanced event, currently requires a scientifically unjustified risk assessment and authorization for each stack. Moreover, since the review of the stacks cannot begin until after the risk assessment on the single component is completed, this current requirement unnecessarily delays the process and further widens the time gap between U.S. deregulation and EU authorization for import FFP use. In the future, maintaining the requirement for separate authorization of event stacks will become increasing burdensome and will increase delays substantially as stacked products become more prevalent in the marketplace.

Provisions also should allow FFP imports that may contain a LLP of crop biotechnology events that have received a positive safety assessment from the European Food Safety Agency (EFSA) and have completed a full approval process in the United States, consistent with international standards.

Implementing limited, harmonized and practical sampling and identification of crop biotechnology events in FFP commodity shipments also should be part of the agreement. For example, when biotech content must be identified, grains drawn from existing processes that sample for quality and safety should be used and final identification should occur in the country of origin prior to shipment.

Finally, the Trump administration should work together with EU authorities to address diverging regulation of new plant breeding innovations. New technologies for plant breeding, including genome editing, are exciting, innovative and cost-effective opportunities for meeting the world's food security needs in a safe and environmentally sustainable manner. However, diverging regulatory standards and approval processes between the EU and the United States on genome editing would result in disruptions to global grain flows once these products are commercialized. The prospect for such an unfortunate outcome was made even more likely given the July 25, 2018 European Court of Justice (ECJ) ruling that organisms obtained by mutagenesis, which is defined as a set of techniques which make it possible to alter the genome of a living species without the insertion of "foreign" DNA, should be subject to the obligations laid down by EU GMO regulations. This is in sharp contrast to the U.S. Department of Agriculture's announcement on March 28, 2018 that "USDA does not regulate or have any plans to regulate plants that could otherwise have been developed through traditional breeding techniques as long as they are not plant pests or developed using plant pests," as well as updated guidance likely to be developed by the U.S. Food and Drug Administration in 2019, that apply to plants developed with new genome-editing techniques.

NAEGA and NGFA urge U.S. negotiators to work with their European counterparts to address these diverging biotech-related regulations in a way that will maximize bilateral trade flows of products derived from deployment of safe crop-production technologies and minimize regulatory risk for U.S. exporters.

Sustainability Standards

NAEGA and NGFA also believe that this agreement should provide for fair treatment of U.S. farm products in compliance with EU mandatory sustainability requirements. For example, a bilateral agreement, as provided for in EU Renewable Energy Directive (RED), should expressly recognize that RED sustainability requirements are achieved via production and marketing practices conducted in compliance with the long-standing framework of U.S. conservation programs. The agreement ultimately should determine that U.S. soybeans and other commodities that are imported to the EU for biofuels and biofuel feedstock do not require additional certification.

U.S. Agricultural Exports

To illustrate the importance of U.S food and agricultural trade with the EU – as well as the potential for future growth in trade volumes if the EU's current impediments are resolved successfully through negotiation – the NGFA and NAEGA provide the following data:

In 2017, the United States exported $14.7 billion in agricultural and related products to the EU, making the EU the fourth largest overall export market for U.S. agricultural products following Canada, China and Mexico. The United States imported $18.2 billion in agricultural products from the EU. For the 16th year in a row, the United States has run a trade deficit in agriculture with the EU, underscoring the need to remove non-tariff barriers that prevent more U.S. food and agricultural products from entering the EU.

As demonstrated by the high rankings in some of the tables below, the EU is an important export customer for a few U.S. grain and feed products. However, the EU's absence in many of the tables illustrates the trade barriers that severely restrict the import of many U.S. agricultural goods.

Agricultural & Related Products (In Million $)

Rank	Partner	Value
1	Canada	$24,722
2	China	$24,019
3	Mexico	$19,472
4	European Union	$14,718
4	Japan	$13,562

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	South Korea	$161
4	European Union	$150
5	Thailand	$126

Ethanol (In Million $)

Rank	Partner	Value
1	Brazil	$741
2	Canada	$621
3	India	$280
4	European Union	$111
5	Philippines	$101

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	European Union	$1,637
3	Mexico	$1,568
4	Japan	$974
5	Indonesia	$921

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.-EU trade agreement and strongly urge the administration to promptly initiate these trade discussions to preserve and build upon the core benefits that have helped the U.S. food and agricultural sector grow U.S. exports, support U.S. economic growth and job creation, and contribute positively to the U.S. balance of trade.

Currently, U.S. agricultural, food, and bio-energy exporters are constrained from accessing the EU market because of tariff and non-tariff trade barriers. These constraints to U.S. exports and steadily increasing EU imports have led to the largest U.S. agricultural trade deficit with any trading partner. This trade dynamic with the EU contrasts sharply with the experiences of other major U.S. agricultural trading partners that remain balanced, as in the case of Canada, or shifted to surplus, as has occurred with China, Japan and Mexico. NGFA and NAEGA appreciate that the Trump administration recognizes the inappropriate EU barriers for U.S. food and agriculture and has initiated plans to engage in trade negotiations with the EU starting early in 2019. With the resolution of these trade barriers, many NGFA- and NAEGA-member companies would be positioned to ship larger quantities of agricultural products to the EU and help reduce our negative trade balance.

Further and as quickly as possible, NGFA and NAEGA urge the U.S. Trade Representative to address the EU’s retaliatory tariffs on U.S. corn, rice and certain types of dry beans.

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.-EU Trade Agreement that will remove impediments to U.S. food and agricultural exports. We would be pleased to respond to any questions you may have.

Sincerely,

Randall C Gordon

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