**National Grain and Feed Association**
**North American Export Grain Association**
1400 Crystal Drive, Suite 260, Arlington, VA, 22202
Phone: 202-289-0873 (NGFA); 202-682-4030 (NAEGA)

***Submitted Electronically***

November 12, 2018

Office of the Secretary
U.S. International Trade Commission
500 E St., S.W.
Washington, DC 20436

***RE: Investigation No. TPA-105-003***

Dear Secretary:

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 matters relevant to the United States-Mexico-Canada Agreement (USMCA), as requested in the October 16, 2018 issue of the ***Federal Register***. These comments seek to inform the U.S. International Trade Commission on the likely impact of USMCA on the U.S. grain, feed, grain and oilseed processing, 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 and processing 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 member's 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 Canada and Mexico. Its safe, reliable, economical and abundant supply of food and agro-industrial products provide 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.

Much of U.S. agriculture and the grain, feed, processing and export industry's value to the U.S. economy and job expansion is generated through North American trade and demonstrated by consistent generation of U.S. trade surpluses. While most agricultural products handled by NGFA- and NAEGA-member companies produce significant trade surpluses for the United States, NGFA and NAEGA fully recognize and affirm the benefits of two-way trade. Two-way trade enables U.S. agricultural producers and agribusinesses to source farm inputs, such as potash fertilizer and crude oil (that will be refined into fuel) from Canada, Mexico and other nations. Sourcing from the most economical origin lowers U.S. production costs and contributes to the global competitiveness of U.S. food and agricultural exports.

For NGFA and NAEGA, a major accomplishment of USMCA is that it will preserve vibrant trade with the United States' North American partners – thereby fulfilling U.S. food and agriculture's admonition that it "Do No Harm." In Mexico, the ratification of the North American Free Trade Agreement (NAFTA) in 1993 led to the elimination of nearly all tariff barriers that previously restricted U.S. access to the Mexican market. Subsequent efforts to encourage regulatory cooperation and facilitate cross-border trade have helped to address non-tariff barriers. As a result, Mexico is the first or second largest export market for NGFA- and NAEGA-member firms and is one of U.S. food and agriculture's most consistent buyers throughout the year. Following the removal of market access trade barriers, members of NGFA and NAEGA invested in strategically located physical plants and logistics to facilitate the efficient sale of agricultural products to Mexico. Mexican end users also invested in facilities to cost-effectively receive U.S. agricultural products. These strategically planned business investments that reduced transportation costs and integrated supply chains were made possible by the removal of market-access barriers, enabling U.S. agriculture to reliably and competitively serve the growing Mexican market.

Meanwhile, with Canada, NAFTA helped reduce barriers for grain, feed and processed agricultural products to facilitate cross-border trade. Because both the United States and Canada are net grain exporters, cross-border trade opportunities for NGFA- and NAEGA-member companies contribute to both countries' position in an expanding global market. Both Canada and the United States are successful competitors in the global market because of comparative advantages that exist given North America's geographical characteristics, agricultural bounty, superior logistics and market-based economies. Both countries serve global food security needs with grains, oilseeds and processed products for which NAFTA enabled specialization and opened opportunities for niche markets. For example, the United States is well-positioned to produce and supply corn and soybeans. Canada, in turn, often is 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, poultry, dairy and biofuels, that are produced in large part through consumption and utilization of U.S.-produced grain and feed products. Consequently, Canada "indirectly" imports a large quantity of U.S. grains, oilseeds and feed through its import of U.S. value-added agricultural products, thereby contributing to U.S. manufacturing jobs in the food and agricultural sector.

## Market Access

The U.S. food and agricultural sector has benefited immensely from the market-access gains achieved under NAFTA. However, in the nearly quarter-century since NAFTA took effect, economies, markets, technologies and supply chains have evolved. NGFA and NAEGA recognize this evolution and are pleased the USMCA maintains and expands all current agricultural market access and preserves the dispute-settlement process for antidumping and countervailing duty cases, while modernizing the accord to address the challenges of 21st century global trade.

## Non-tariff Barriers

Paramount among the current global challenges to trade is the growing number of non-tariff barriers that distort and slow cross-border trade flows. In our review, we believe USMCA will help address these non-tariff barriers. More specifically, we believe USMCA will be: 1) more effective in preventing technical, sanitary and phytosanitary (SPS) barriers to trade; 2) encourage higher levels of regulatory cooperation, transparency and professionalism; and 3) promote the convergence of standards and rules to level the playing field and safeguard against unjustified, unscientific and discriminatory regulatory initiatives.

Over the past year, NGFA and NAEGA have been working constructively with the Trump Administration to promote best official practices, including standards that increase transparency, promote reliability and reduce the risks of international trade. Since NAFTA was ratified in 1993, the global international trading environment has changed immensely. Global supply chains are increasingly complex and subject to overlapping jurisdiction and rules. Trade with Canada and Mexico is no different. Because of these challenges, NGFA and NAEGA have worked to promote rules and standards that will reduce risk and increase the predictability and certainty of efficiently trading across borders. For example, prior to the USMCA negotiations, NGFA and NAEGA encouraged the Trump Administration to pursue a modern, high-standard trade agreement that would address the following current barriers that encumber trade between Canada, Mexico and the United States:

1. ***Actions at Import*****:** Import checks on individual containers or consignments can present a major barrier to trade in agricultural commodities. 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 consider provisions that effectively force the timely completion of risk assessments with adequate opportunities for comment by importing parties.

3. ***Audit Provisions:*** Often, importing country SPS authorities frustrate trade through the implementation of unjustified and unscientific import bans and restrictions. Audits of importing country SPS authorities provide an objective basis to determine whether control procedures at export are equivalent to or reasonably meet those at import.

4. ***Transparency Provisions*****:** Agricultural traders are often kept in the dark about the basis for measures that restrict movement of goods based on alleged SPS and technical barrier to trade grounds. All requirements – including those identified above – should explicitly require disclosure and should be 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. Further, regulatory authorities should be encouraged to follow transparent and predictable regulatory timelines with adequate room for comment and critique of new regulatory measures.

We believe USMCA takes significant steps to address these issues by promoting a more transparent and reliable trading environment with Canada and Mexico. Significant improvements in USMCA to the terms of U.S.-Canada-Mexico trade include:

1. ***Establishment of a rapid response mechanism (RRM) to facilitate trade during adverse import checks:*** Through the establishment of an RRM, USMCA significantly improves

the reliability of the trading environment in the event goods are held at the border for SPS reasons. USMCA 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*** 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 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 demurrage costs. Further, it improves upon what was achieved under the Trans-Pacific Partnership trade accord from which the United States withdrew.

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 are often costly and time consuming. The USMCA agreement makes significant progress toward mitigating these barriers by establishing technical consultations that will help the U.S., Mexico and Canada 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.

3. ***Regulatory coherence:*** USMCA makes significant and positive steps to enhancing regulatory cooperation in North America through the establishment of a 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 U.S., Mexican and Canadian 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 improves upon NAFTA by requiring the United States, Mexico and Canada 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 steps to improving 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 regulatory approvals and facilitate trade, while encouraging continued innovation in crop production technologies. In particular, the agreement 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 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 take significant steps to reduce the risk of asynchronous regulation of agricultural biotechnologies in the North American market and serve as a model for future trade agreements.

Importantly, we believe each of these improvements to address non-tariff trade barriers will benefit not only the future competitiveness and growth of the U.S. food and agricultural sector, but also enhance the efficiency of all three U.S. transportation modes – truck, rail and vessel – that are integral to transporting these products to meet the needs of North American consumers and enhance the hemisphere's food security.

## New Investor-State Dispute Settlement Procedures Harm Agriculture

Despite these significant improvements, the USMCA does take a notable step backward from the original NAFTA agreement. For food and agricultural companies that have committed billions of dollars in investments in Canada, Mexico and the United States, a major concern is the elimination of current NAFTA Chapter 11 dispute-settlement protections against prejudicial treatment by foreign governmental or legal authorities. NAFTA currently provides companies access to dispute-settlement procedures under Chapter 11 in the event a party provides less favorable treatment for foreign investors than domestic investors. Under these terms, NAFTA was successful in protecting U.S. food and agricultural companies with investments in Canada and Mexico from discrimination, expropriation and localization requirements. Dispute-settlement provisions, like those established under NAFTA Chapter 11 helped to 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.

While USMCA preserves these protections for some industries, including oil and gas, power generation, telecom, transportation and infrastructure, it eliminates protections for U.S. food and agriculture companies beginning three years after the termination of NAFTA. Unfortunately, these terms are a significant regression from the protections provided by the NAFTA agreement, and are the result of USMCA negotiators picking winners and loser by deciding which sectors can access the investor dispute-settlement process and which can't. U.S. food and agriculture companies have successfully used investor-state dispute settlement protections to defend export opportunities in Mexico. If this tool is lost, U.S. companies will face a potential greater risk if they find it necessary to defend investments in Canada and Mexico that enhance North American supply chains and benefit consumers.

## U.S. Agricultural Exports

To illustrate the importance of U.S food and agricultural trade with Mexico and Canada, NGFA and NAEGA wish to provide the following data.

In 2017, the United States exported $24.7 billion in agricultural and related products to Canada and $19.5 billion to Mexico. Most of Canada's agricultural and related product imports from the United States were consumer-oriented food products, whereas most of Mexico's imports were bulk agricultural commodities. As demonstrated by the high rankings in the tables below, Canada and Mexico are important export customers for many U.S. grain, feed and value-added products.

**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 |

**Biodiesel (In Million $)**

| Rank | Partner | Value |
|---|---|---|
| 1 | Canada | $366 |
| 2 | Peru | $13 |
| 3 | Mexico | $12 |
| 4 | Switzerland | $2 |
| 5 | Netherlands | $1 |

**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 |

**Eggs & Products (In Million $)**

| Rank | Partner | Value |
|---|---|---|
| 1 | Mexico | $169 |
| 2 | Canada | $102 |
| 3 | Japan | $56 |
| 4 | Hong Kong | $38 |
| 5 | Jamaica | $23 |

**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 the USMCA maintains and expands all current agricultural market access and preserves the dispute-settlement process for antidumping and countervailing duty cases, while modernizing the agreement to address the challenges of 21$^{st}$ century global trade.

In addition, the NGFA and NAEGA believe USMCA will help facilitate cross-border trade flows through higher levels of regulatory coherence and cooperation, the implementation of timelines and notifications for adverse import checks, the inclusion of steps to reduce the likelihood of trade disruptions in products of agricultural biotechnology, the use of technical consultations for SPS disputes, and by requiring that SPS standards be grounded in science and based on proper risk assessments and implemented using accepted risk management techniques.

While it is disappointing the agreement eliminates the investor-state dispute-settlement procedures, which has been important for U.S. food and agriculture, the agreement, taken together, makes significant progress – particularly in addressing non-tariff trade barriers – in facilitating the trade of grains, oilseeds and their derived products within the North American marketplace.

The NGFA and NAEGA thank you for the opportunity to express these views and greatly appreciate the Administration's efforts on USMCA to preserve and build upon the core benefits of North American trade that have helped the U.S. food and agricultural sector flourish and support U.S. economic growth and job creation.

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

Sincerely,

Randall C. Gordon

**Randall C. Gordon**
President and Chief Executive Officer
National Grain and Feed Association

Gary C. Martin

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