



“Working Together to Make Trade Work”

OUTREACH September 29, 2014

Thank you for your membership in and work with NAEGA

NAEGA Welcomes Its Newest Member: Agniel Commodities, LLC

Agniel Commodities, LLC is a full service international brokerage providing sourcing and sales expertise in grains, oilseeds, cereal feed ingredients and marine proteins/oils worldwide.

Action Reports:

- NAEGA Board of Directors Meeting
- NAEGA Contracts Committee Call
- NAEGA and USBCA Address EU Biotech Authorization

Member Opportunities

- Washington, DC – Regulatory Cooperation Council Stakeholder Event – October 8, 2014
- Honolulu, Hawaii – U.S.W.A. North Asia Marketing Conference – October 14-17, 2014
- St. Louis, MO – Wheat Innovation Alliance Wheat Forum – November 7-8, 2014

Information for your consideration

- U.S. Court of Appeals Contract Arbitration Clause Decision
- USDA APHIS Announces Results of Biotech Wheat Investigation

NAEGA Calendar and Member Notices

- Upcoming Events and Notices for Members

Reports on NAEGA Actions

NAEGA Board of Directors Meeting

The NAEGA Board of Directors met on Friday, September 26th at CoBank’s office in Denver, Colorado. The Board reviewed several topics including upcoming NAEGA By-laws and budget revisions. The Board also joined a USDA Animal and Plant Health Inspection Service (APHIS) stakeholder call held prior to the public announcement of the Results of Biotech Wheat Investigation (see Information for Your Consideration below). Committee reports were accepted and included recent actions:

1. The Grades and Inspections Committee plans to address USDA Federal Grain Inspection Service (FGIS) and U.S. Grain Standards Act reauthorization, and support for 2 new vessels to be examined under that Chinese Soybean Vessel Comparison Study.

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2. The Biotech Committee’s focus is on plans for the U.S. Biotech Crops Alliance (USBCA), the upcoming Meeting of the Parties to Biosafety Protocol in Korea, and developments in efforts to utilize biotechnology in wheat.
3. The Contract Committees work is to:
 - a. Examine improvements in contract guidance focus on managing risks related to official actions at discharge and managing copyrights,
 - b. Expand and enhance NAEGA training,
 - c. Review and provide guidance regarding Clause 20 of the NAEGA 2 model contract.
 - d. Communicate and improve arbitration as provided for by the NAEGA 2.
 - e. Recent changes to GAFTA terms
 - f. Add Paul Sylvester of McDonald Pelz to the committee.

NAEGA staff explained the next steps for the International Grain Trade Coalition (IGTC), including incorporation and contracting to provide for a Secretariat.

Draft minutes from the meeting will soon be available on the NAEGA members’ only website. The next Board Meeting, as well as the Annual Members Meeting, will take place in San Antonio, Texas March 15-17, 2015 in conjunction with the National Grain and Feed Association convention.

NAEGA Contracts Committee Call

The NAEGA Contracts Committee met for the second time in two weeks. The most recent call was a follow-up to decide how the committee would proceed to review and recommend enhancements to NAEGA and provide guidance and industry service related to commercial contracts. An ad hoc subcommittee is now looking into several aspects of commercial risk management, including revisions to the NAEGA 2 model contract and possible solutions to dealing with several risks and current practice. The work will include consideration of CIF and/or C and F contracts for bulk shipments, as well as an examination of options for container trade.

NAEGA and USBCA Address EU Biotech Authorization

The U.S. Biotech Crops Alliance (USBCA) International Working Group (IWG) sent letters to President Barroso and all of the Commissioners of the European Union (EU) urging completion of authorization for eight new biotechnology products for import, food and feed processing in the EU. The letters can be found on the [Biotechnology Page of the Members Only site](#).

NAEGA Actions on Current Issues are tracked on both the Member’s Only Section under their relevant committee pages and the on the Personal Page’s site. Updates to tracked issues are posted in this section.

NAEGA is considering making comments on the following items. Please contact us with your advice or suggestions:

2014

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Oct. 6 – Comments to the Bureau of Industry and Security on the effectiveness of licensing procedures for exports of agricultural commodities to Cuba. A copy of the Federal Register notice can be found [here](#).

Oct. 10 – Comments to USDA-Agricultural Marketing Service on proposed unified process to consolidate all Agency fee setting activities and rates into a single, annual rulemaking. A copy of the federal register notice can be found [here](#).

Oct. 29 – Comments to USTR on TBT & SPS trade barriers for Annual National Trade Estimate Report

The Office of the U.S. Trade Representative (USTR) is seeking input for its annual national trade estimate (NTE) report on foreign trade barriers. Comments are due by October 29 and are encouraged to be made on any of the following topics:

- import policies (e.g., tariffs, quotas, import licensing and customs barriers)
- government procurement restrictions (e.g., “buy national” policies and closed bidding)
- export subsidies
- lack of intellectual property rights protection
- anticompetitive conduct of state-owned or private firms tolerated by foreign governments that restricts the sale or purchase of U.S. goods or services in the foreign country’s markets
- other barriers, including barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector

The USTR is particularly interested in trade practices that may violate U.S. trade agreements and information on new barriers. The USTR also welcomes comments on trade restrictions through unwarranted sanitary and phytosanitary measures and standards (SPS), and conformity assessment procedures or technical regulations that can be implemented in less trade restrictive ways (TBT).

A copy of the federal register notice can be found [here](#).

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Member Opportunities

Washington, DC – Regulatory Cooperation Council Stakeholder Event – October 8, 2014

The U.S. and Canadian governments released the Regulatory Cooperation Council (RCC) Joint Forward Plan (Forward Plan). The Forward Plan outlines departmental commitments to cooperate in 24 areas of regulatory business and new department-level partnerships to institutionalize the way U.S. and Canadian regulators work together to develop smarter and more effective regulatory approaches that avoid creating unnecessary requirements and costs.

As part of the effort to rollout the Forward Plan, stakeholders are invited to participate in a bi-national RCC Stakeholder Event in Washington, D.C. on October 8, 2014. The meeting will

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provide interested stakeholders the opportunity to learn more about the Forward Plan, and provide input to regulators from both countries on its implementation.

For more information on the Forward Plan, stakeholder event, or to add names to the RCC email distribution lists Canadian stakeholders can go to: www.actionplan.gc.ca/rcc, and U.S. stakeholders can go to: www.trade.gov/rcc.

Honolulu, Hawaii – U.S.W.A. North Asia Marketing Conference – October 14-17, 2014

The U.S. Wheat Associates will host the North Asia Marketing Conference (NAMC) on October 14-17, 2014 in Honolulu, Hawaii. This regional buyer’s conference is for both private and public organizations that procure wheat from the international market. The agenda will address the most pressing issues for the Korea, Taiwan, and Japan markets, including advanced application and end-use trends in U.S. wheat classes; world trade agreements – TPP impact and opportunities – and others that can influence agricultural trade; current factors and mega-trends in the world grain market may affect global wheat prices; and the connection between corn and wheat.

A copy of the most recent agenda can be found [here](#). The conference will be held at the Modern Honolulu hotel on Waikiki: <http://www.themodernhonolulu.com>. USW has arranged a special group rate of \$189 + 13.962% tax per night; this room rate is based on single or double occupancy with a maximum room occupancy of four people per room. This rate expires in early September.

The online registration can be done [here](#).

St. Louis, MO – Wheat Innovation Alliance Wheat Forum – November 7-8, 2014

The Wheat Innovation Alliance executive committee is hosting a “Wheat Forum” to introduce objectives of identifying and overcoming obstacles to innovation in wheat in order to improve wheat profitability. The National Association of Wheat Growers encourages all current and potential industry partners to participate in this important discussion surrounding current and future innovation in wheat.

A description of the Wheat Forum can be found [here](#) and a “Save the Date” can be found [here](#). Please direct any questions regarding this Wheat Forum to Burleson Smith at technology@wheatworld.org or 202-547-7800.

Full Details on Upcoming Events can be found in the Meetings & Events Section of the [NAEGA Member’s Only Page](#).

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Information for your Consideration

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U.S. Court of Appeals Arbitration Clause Decision

The Ninth Circuit of the U.S. Court of Appeals affirmed the denial of a motion to compel arbitration. Elite Logistics Corporation brought suit against Hanjin Shipping Company in the Central District of California. The contract between the two parties contained an arbitration clause, which the defendant sought to enforce. The District Court denied the motion to compel arbitration and the majority of the Ninth Circuit panel affirmed that decision.

The majority at Appellate Court ruled the arbitration clause was unconscionable under California state law. In California, an arbitration clause is unconscionable if the terms are unfairly one-sided (substantially unconscionable) and if the party that drafted the contract has superior bargaining strength to impose the terms on the other party without opportunity to negotiate (procedurally unconscionable). Further, the Court of Appeals found that although the Federal Arbitration Act (FAA) preempts contrary state law, California’s procedural unconscionability doctrine was not contrary to the FAA.

The dissent in the case argued the FAA preempts state law unconscionability doctrines that have a disproportionate effect on arbitration clauses, and because the District Court did not allow parties to conduct factual discovery before voiding the arbitration clause, there were not sufficient facts to determine if the arbitration clause unreasonably favored one party (substantially unconscionable) or if it was a result of unequal bargaining power (procedurally unconscionable).

USDA APHIS Announces Results of Biotech Wheat Investigation

The USDA Animal and Plant Health Inspection Service (APHIS) announced the results of its investigation into the field escape of biotechnology wheat in Oregon. APHIS has concluded, after exhausting all leads, the presence of the genetically engineered (GE) wheat appears to be an isolated incident. The agency also found no evidence of GE wheat in commerce. However, APHIS was unable to determine exactly how the GE wheat came to grow in the farmer’s field. APHIS has released its [findings and full report of investigation and evidence file](#).

Additionally, APHIS has opened a new investigation into a regulatory compliance issue involving GE wheat found growing at the Montana State University’s Southern Agricultural Research Center (SARC) in Huntley, Montana. The research facility was the previous site of authorized field trials in Montana. GE wheat was field-tested under APHIS’ regulatory approval, between 2000 and 2003.

APHIS has not deregulated any GE wheat varieties to date, and thus, there are no GE wheat varieties for sale or in commercial production in the United States. Additionally, the genetic trait detected in the wheat in these two instances does not present a food safety issue because FDA completed a food safety consultation for this GE wheat in 2004 and expressed no food safety concerns.

APHIS will inspect field trials planted in 2014, and follow-up with post-harvest inspections to ensure those conducting the field trials adhere to APHIS’ requirements to monitor for, and remove,

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volunteer plants (plants that grow in a field following a previous harvest). A copy of the USDA APHIS press release on the investigations can be found on the [APHIS website](#).

If you would like more information or wish to provide comments on any of these news topics monitored by NAEGA, please contact us.

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NAEGA Calendar & Member Notices

2014

September 29-October 3 – Pyeongchang, Korea – 7th Meeting of the Parties/Conference of the Parties for the Cartagena Biosafety Protocol under the Convention on Biodiversity, which governs trans-boundary movements of Living Modified Organisms for feed, food and processing. Kirk Miller and Paul Green will be attending on behalf of NAEGA. More information can be found at: <http://bch.cbd.int/protocol/>

October

1-3 – Panama – Dry Bulk Terminal Group (DBTG) Annual Meeting, Jerry Cotter and Gary Martin planning to present and attend.

8 – Washington, D.C. – Forward Plan Rollout/RCC Stakeholder Bi-national Event

13 – Geneva, Switzerland – WTO Sanitary and Phytosanitary Measures (SPS) Committee Meeting

20-24 – Huatulco, Oaxaca, Mexico – The North American Plant Protection Organization (NAPPO) and the National Plant Protection Organization of Mexico. <http://www.nappo.org/>

30 – Washington, D.C. – US Coast Guard Alternative Security Program (ASP) Workshop. NGFA/NAEGA hosting. Jerry Cotter attending.

31-November 2 – Seoul, South Korea – Korea Food Security Research Foundation (KFSRF) seminar on economic impacts of asynchronous approvals/LLP in the context of food security. Gary Martin attending and presenting.

November

7-8 – St. Louis, MO – Wheat Innovation Alliance Executive Committee Wheat Forum

10-11 – Beijing, China – APEC Economic Leaders’ Meeting (TBD)

17-20 – Baltimore, MD – USAEDC Annual Workshop

December

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8-10 – Brussels, Belgium – International Grain Trade Coalition (IGTC) Meeting

10-12 – Geneva, Switzerland – UN Globally Harmonized System (GHS) Subcommittee meeting.
Jerry Cotter attending.

14 – Washington, D.C. – U.S. China Joint Commission on Commerce and Trade (JCCT)

15 – Washington, D.C. – U.S. Biotech Crops Alliance Plenary Session

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