



Tuesday, December 21, 2004

TO: NTE Comments
U.S. Department of Commerce
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RE: Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers.

Please accept the following comments in response to the Trade Policy Staff Committee (TPSC), acting pursuant to section 303 of the Trade and Tariff Act of 1984, request for interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the National Trade Estimates report. These comments reflect our perspective on impediments that materially affect the actual and potential financial performance of US agriculture.

The North American Export Grain Association (NAEGA) appreciates the opportunity to comment with respect to U.S. exports of grain and oilseeds to China. More specifically, we comment herein on recently issued and implemented regulations (Decree 73) that apply to imports of soybeans and other agricultural products subject to the quarantine process in China. In its application by Chinese authorities, Decree 73 serves as a non-tariff barrier to U.S. agricultural exports – including grains and oilseeds. Our primary concern is the use of Decree 73 to implement arbitrary and non-transparent regulations that indicate lack of commitment to WTO obligations and in turn may sanction defaults or unwarranted rejections of U.S. shipments of grains and oilseeds. Recent defaults on soybean contacts by Chinese importers demonstrate the potential for such abuse of the regulatory process as outlined by Decree 73.

NAEGA, established in 1912, is comprised of private and publicly owned companies and farmer-owned cooperatives involved in and providing services to the bulk grain and oilseed exporting industry. NAEGA member companies ship practically all of the bulk grains and oilseeds exported each year from the United States. NAEGA members are committed to integrity in a commercial environment supported by free trade and competition in commerce involving grain and other agricultural products and to promote certainty in the customs and usages of trade and commerce. The Association's mission is to promote and sustain the development of commercial export of grain and oilseed trade from the United States. NAEGA acts to accomplish this mission from its office in Washington D.C., and in markets throughout the world.

DECREE 73: A NON-TARIFF BARRIER TO U.S. EXPORTS OF GRAINS AND OILSEEDS

On June 16, 2004, China's quarantine and inspection agency, the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), issued revised regulations for importation of soybeans and other products subject to the quarantine process, which became effective on July 1, 2004. The new regulations, known as Decree 73 (*Items on Handling the Review and Approval for Animal and Plant Entry Quarantine*), were not properly notified to the World Trade Organization (WTO). To date, China has yet to properly identify, as well as support scientifically, the phytosanitary risks that require implementation of such regulations. In our estimation, Decree 73 places exporters in an unfavorable commercial position relative to domestic producers in China.

While Decree 73 extended the validity of quarantine import permits (QIP) from 3 months to six months in accordance with an agreement reached during the April 2004 meetings of the U.S.-China Joint Commission on Commerce and Trade (JCCT), Decree 73 included additional burdensome requirements that constrain U.S. exporters' ability to export grain and oilseeds to China, and that create uncertainty for U.S. producers.

Following are NAEGA's major concerns with Decree 73:

- Requires exporters to assume the risk of non-compliance with Chinese laws. Decree 73 requires all contracts for importation of soybeans and other products to include Chinese inspection and quarantine requirements as a contract term. Further, the contract must stipulate that entry of goods is dependent on whether the goods comply with relevant Chinese laws and food safety regulations. Such requirements are inconsistent with standard international trading practices in that exporters of agricultural products are forced to assume the risk of non-compliance with foreign standards. Even Chinese exporters do not face those requirements in export markets. Under an international commercial sale, the quality, condition, and specification of the goods are determined when the goods are shipped, and therefore, the risk is transferred from the exporter to the importer *upon shipment* of the product, *not upon discharge* in the foreign port. Under these requirements, the importer can reject shipments if the Chinese authorities determine the product does not comply with Chinese laws, creating a great deal of uncertainty for U.S. suppliers.
- Creates zero tolerance level for GMO presence. Decree 73 requires that a safety certificate issued by the Ministry of Agriculture in China accompany all products of Genetically Modified Organisms. The Ministry only makes certificates available for GMO products that are approved by the Chinese government. The requirement in essence creates a zero-tolerance requirement for any shipments that contain trace elements of non-approved GMO products. Zero-Tolerance standards that apply to many commercially produced agricultural commodities are impossible to meet. The failure to provide for the adventitious presence of GMO

events in any shipment results in the strong possibility that trade will be prohibited.

- QIP applications require identification of supplier. It is not practical to require the importer to list the supplier at the time of application because often the supplier is often changed after the QIP is issued. The exporter is the contracting party with the Chinese importer, not the supplier.
- Allows for arbitrary revocation of QIPs. Chinese authorities can, at any time, invalidate an import permit in the event of any announcement by the government that forbids entry of the product. Basically, this regulation provides Chinese authorities the license to issue scientifically unfounded bans on U.S. exports of agricultural products, which runs counter to China's obligations under the WTO *SPS Agreement* and the GATT 1994.

In the November 23, 2004 Federal Register Notice, a request was made for estimates of the potential increase in exports that would result from the removal of the trade barrier. In this particular case, it is difficult to estimate the exact amount of additional grain and oilseeds or other agricultural products would flow to China with the removal of the barrier. US agricultural exports to China continue and have increased significantly as China's economy grows and barriers to trade and investment decrease as a result of China's WTO commitments. However, the trade is occurring under more uncertain conditions, with higher risk premiums built into the existing contracts. A more accurate measure of the effect of the trade barrier is the potential harm that could occur to U.S. exporters of grain and oilseeds as a result of arbitrary rejections of vessels under the auspices of Decree 73. The potential holdup costs from such circumstances would be astronomical. Depending on the size of cargo and port of import, demurrage charges from re-directing a vessel to an alternative destination, quality deterioration and other costs could add up to millions of dollars per held-up vessel.

It is also important to recognize, and we certainly appreciate, the assurances that Chinese officials have provided to our senior U.S. trade officials that Decree 73 will not disrupt U.S. soybean exports to China. However, assurances do not remove the risk created by the existence of the regulation as it stands. The recent problems with shipments of soybeans from South America have had secondary effects on our markets. Rejection of products from Brazil or Argentina send the U.S. market into a tailspin in terms of price declines created by an unsuspected glut of additional product in the world market. Our consistent experience is that, contrary to such assurances, the short term disruption of trade that results from the combination of an interest in managing trade and the authority described in Decree 73 is not only expensive but can result in discrimination against US exports. Such discrimination is very damaging to the US export of commodities like soybeans that trade in intensely competitive international markets.

While our perspective is that of US grain and oilseed exporters, we caution the U.S. government and other U.S. producers that export to China that this particular regulation, Decree 73, encompasses applications that extend beyond exports of grains and oilseeds.

The regulation creates uncertainty for all current and potential exporters of agricultural products to China that are subject to the quarantine process in China.

Please contact me with any questions you might have. We look forward to continuing our work with USTR and USDA in providing for global food security through efficient international commerce.

Sincerely,

A handwritten signature in black ink that reads "Gary C. Martin". The signature is written in a cursive style with a large, looped initial "G".

Gary C. Martin
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