

Via Facsimile to 202 395 6143

North American
Export Grain
Association, Inc.

September 15, 2004



Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative

1250 I Street, N.W., Suite 1003
Washington, D.C. 20005

Tel. 202.682.4030
Fax 202.682.4033
E-mail: info@naega.org

Dear Ms. Blue,

Please accept the following comments of the North American Export Grain Association in response to the USTR "Request for Comments and Hearing Concerning China's compliance with WTO Commitments" in the July 29, 2004 Federal Register.

NAEGA, established in 1912, is a not-for-profit trade association 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. 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 offices in Washington D.C., and in markets throughout the world.

China is now more than half-way through its commitment phase-in period. At this time China should have graduated from the early period of its implementation efforts. China has made progress in important areas, particularly in tariff reduction; revising existing laws and drafting and passing new ones to comply with its WTO requirements; and educating its officials and companies about its WTO obligations. China should be recognized for its efforts that have resulted in tangible improvements in market access. Given the sweeping nature of China's December 2001 market access commitments, this progress was to be expected.

The elevated meetings of the US and Chinese officials have made significant progress in several lagging areas of implementation. However, US agricultural interests have expressed and should continue to express growing concern regarding the direction of China's WTO implementation efforts.

China's WTO commitments to reduce both tariff and non-tariff barriers in the agricultural sector have met with mixed results. There has been welcome progress in some key areas such as tariff reductions. Unfortunately, however, many non-tariff barriers continue to limit the progress anticipated from China's WTO membership.

China has made some progress in addressing a range of problems with the

implementation of China's promised TRQ system, including a lack of transparency, delay in the announcement of quotas, granting of insignificant and uneconomic quotas, imposition of restrictions that are not required of domestic producers or merchants, and other unnecessary restrictions.

China has also removed, to a degree, uncertainty regarding biotech regulations and the issuance of permanent safety certificates for biotech products. The progress on certification of US genetically modified agricultural exports included a political commitment by the Chinese to not disrupt US soybean exports.

But while China has eliminated or reduced some tariff barriers, the benefits from these actions can be quickly offset by continued non-tariff barriers that restrict trade into China, create significant marketplace uncertainty, and discourage further foreign investment. We should also be concerned with the failure of China to reduce significant export subsidies for agricultural products, particularly corn.

Among many agricultural trade restrictions that China imposes are additional standards and actions on imports of agricultural products that:

1. Are applied without prior notice and geographic consistency;
2. Fail to provide for comment period and time provisions for trading partners to institute practices to readily comply;
3. Encourage and support Chinese firms to avoid contractual commitments;
4. Inappropriately discriminate against specific private entities through the broad-based imposition of company-specific trading bans (blacklisting); and
5. Result in unjustified management and delay of the issuance of Permits for Quarantine Inspections to control imports for political or economic reasons.

Soybean, cotton, and meat traders have reported significant restrictions on exports of products to China stemming from the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic (AQSIQ) issuance of Import of Animal and Plant Quarantine permits and its inspection procedures. Chinese quarantine regulations require importers to obtain import permits before entering into purchase contracts and effecting shipments. With import permits valid for a short period of time, buyers are locked into a very narrow period to purchase, transport, and discharge their cargoes before expiration of the permits.

While the technical requirement imposed on importers is to obtain an import permit in advance of contracting for commodity shipments, the current AQSIQ requirement is often unworkable as importers buy products when prices are low—sometimes months ahead of actual shipment. Contracting parties cannot wait to obtain an import permit first before making a contract for shipment of commodities.

Although China removed soybean import quota control in 1999, the Chinese government continues to control import volume through WTO-inconsistent methods such as the use of the AQSIQ import permits. Many of the administrative requirements of the import permit system—such as factory inspections, the requirement that buyers not import more

than they did in previous years, rules that restrict buyers from using premium/basis or other forward delivery contracts, and rules that restrict the issuance of permits only to processing plants and not to traders supplying multiple plants—have no relevance to the enforcement of animal and plant health regulations. The requirement for a surface inspection of imported grain and feed ingredients prior to discharge has no scientific validity.

AQSIQ issuance of permits is inconsistent, which has resulted in significant commercial uncertainty and, in some cases, has placed U.S. foreign investment in the Chinese agricultural sector at risk. Because of the commercial necessity to contract for commodity shipments when prices are low, combined with inherent delays in having import permits issued, many cargoes of soybeans end up arriving in Chinese ports without import permits. This has created delays in vessel discharge and resulted in demurrage bills for Chinese buyers.

Please note in particular a recent notice from AQSIQ that articulates and codifies inappropriate regulatory authority.

AQSIQ Decree 73, we fear, unilaterally imposes new and additional standards to imports of all plant and animal agricultural products and expressly rejects the sanctity of international sampling and testing procedures that have been developed and respected over time. China's issuance of the new measure, "*Items on Handling the Review and Approval for Entry Animal and Plant Quarantine*" on June 16, 2004, was not notified to the WTO and maintains the requirement that Quarantine Import Permits (QIP's) be approved prior to signing contracts. This is of significant concern to all U.S. agricultural exporters. The measure provides AQSIQ with blanket authority to annul or void import permits in the case of a government issued warning or ban and also requires quarantine requirements specified in QIP's be written into contracts. China should promptly reduce the level of ongoing administrative interference with import trade by China's quarantine authorities in the Ministry of Commerce, including requirements that importers get import permits before signing purchase contracts and making shipments.

In addition to the concerns with Decree 73, US interests are harmed by the failure of China to utilize the International Plant Protection Convention, China's use of "zero tolerance" pathogen standards that are neither science based nor practical, and undue quantitative restrictions on meat and poultry imports.

Fundamentally, China needs to adhere to the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures. These various non-WTO complaint measures are causing serious interruptions in cargo contracting for the next shipping year and are limiting sales of various agricultural products. The near and long term costs of such actions directly impact US farm income.

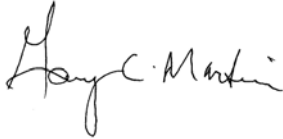
As a remedy for these AQSIQ related problems, China should provide for:

- Changes in activities that restrict actions to import quarantine procedures that are science based and compliant with WTO and international conventions and should

- not impose delays, uncertainties, or commercially discriminatory or commercially unrealistic requirements that inhibit free trade.
- The approvals of import permit requests in a timely and commercially realistic manner.
 - Process and communication that ensures that all formalities are transparent, with clear timelines openly promulgated.

The North American Export Grain Association urges the governments of China and the United States to work collaboratively to reduce these unjustified barriers to agricultural imports and the modernization of Chinese food production. Further, we wish to emphasize the importance of working with other nations who serve the Chinese market. A multinational strategy needs to be a priority of US government in order to ensure sufficient progress in China, as well as the maintenance of a level playing field for U.S. agricultural products.

Thank you.

A handwritten signature in black ink, appearing to read "Gary C. Martin". The signature is written in a cursive style with a large initial "G" and "M".

Gary C. Martin
President and CEO