

November 22, 2006

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Executive Director, Plant Health Programs  
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Animal and Plant Health Inspection Service  
C/O Regulatory Analysis and Development  
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***Re: Docket No. APHIS-2006-0096 – Agricultural Inspection and AQI User Fees Along U.S.-Canada Border***

Dear Mr. Green:

The National Grain and Feed Association (NGFA), North American Export Grain Association (NAEGA), National Oilseed Processors Association (NOPA) and Pet Food Institute (PFI) are pleased to submit this joint statement in response to the interim final rule published by the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) in the August 25, 2006 ***Federal Register*** that would subject to agricultural quarantine inspection (AQI) all commercial conveyances entering the United States from Canada, as well as remove the exemption from user fees previously granted to such conveyances.

The NGFA, established in 1896, is the U.S.-based nonprofit trade association that consists of approximately 900 grain, feed, processing and grain-related firms comprising more than 6,000 facilities that handle more than 70 percent of U.S. grains and oilseeds. The NGFA's membership encompasses all sectors of the industry, including country, terminal and export elevators; commercial feed manufacturers; cash grain and feed merchants; end users of grain and grain products, including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries, such as railroads, barge lines, banks, grain exchanges, insurance companies, computer software firms, and engineering/design/construction companies. The NGFA also consists of 35 affiliated state and regional grain and feed associations. In addition, the NGFA is co-located and has a joint operating agreement with NAEGA, and has strategic alliances with the Grain Elevator and Processing Society and PFI.

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, oilseeds and their primary derivative products exported each year from the United States. Its 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.

NOPA is a non-profit, national trade association comprised of 13 regular and 12 associate member companies with plants that produce vegetable meals and oils from oilseeds. NOPA's 13 regular member firms process more than 1.6 billion bushels of oilseeds annually at 66 plants located throughout the United States, and employ more than 4,500 workers.

PFI represents the companies that manufacture more than 98 percent of the dog and cat food sold in the United States, as well as affiliated ingredient, packaging and other companies that serve the pet food industry.

At the outset, our organizations strongly support efforts undertaken by APHIS and the U.S. Department of Homeland Security's Customs and Border Protection (DHS/CBP) to protect the United States from the introduction of high-risk plant pests and animal diseases. These proactive, risk-based efforts by the U.S. government are essential to preserving U.S. crop, livestock and poultry production, as well as the competitiveness of U.S. agriculture in serving domestic and international markets.

That said, the U.S. grain, feed, oilseed and pet food industries and the consumers they serve are highly dependent upon efficient and competitive two-way trade with Canada. Canada represents a significant market for U.S. agriculture, as well as a significant source of certain grains, oilseed meals and other agricultural products vital to the efficient performance of the U.S. milling, feed and livestock and poultry industries. As indicated in the tables accompanying this statement, the United States imported agricultural commodities and products valued at nearly \$29 billion from Canada in 2005, including significant quantities of feed ingredients (such as canola meal and other oilseed meals for use in dairy and poultry rations), wheat and coarse grains. Indeed, the United States is highly dependent upon Canada for imports of feed ingredients, milling-quality wheat and breeding livestock needed to sustain U.S. grain processing and livestock operations. Canada also is a significant export market for U.S. agricultural exports, with more than 2.1 million metric tons of coarse grains, 1.2 million metric tons of soybean meal and other grain byproducts exported in 2005. Total U.S. agricultural exports to Canada were valued at more than \$13.3 billion in 2005.

Our organizations have reviewed the interim final rule carefully, and have concluded that APHIS has not provided ample justification for proceeding on an "emergency" basis to revoke the current exemption from inspection granted to Canadian imports or to impose AQI user fees on all commercial conveyances entering the United States from Canada.

Further, our review has identified the following major concerns. We respectfully urge APHIS either to withdraw the rule or, failing that, further delay its implementation beyond the extended dates announced in the November 22, 2006 *Federal Register* until such time as these concerns are resolved:

- **APHIS Has Not Provided Ample Justification to Implement the Rule on an Emergency Basis.** Rather than following the normal rulemaking process – in which a proposed rule is published and comments taken into consideration before a final rule is issued – APHIS has chosen to utilize an interim final rule that would implement significant and far-reaching changes on an emergency basis. Yet the agency’s interim final rule does not identify an immediate risk or emergency situation involving high-consequence plant pests, animal diseases or bioterrorism threats that would justify such an action. In fact, we find extremely troubling the revelation from APHIS officials that the agency has been discussing removal of the current exemption from inspection granted to Canadian-produced fruits and vegetables – as well as the exemption from AQI inspections and user fees – for at least five years!

Nor does the interim final rule contain any information as to whether the agency has conducted a formal risk assessment that would justify either the actions contemplated under the rule or its implementation on an “emergency” basis. Instead, APHIS has chosen to present random incident information, much of it anecdotal in nature. Perhaps that is because, as documented in a recent Government Accountability Office report<sup>1</sup>, DHS/CBP has not used data generated through APHIS’ Work Accomplishment Data System to evaluate the effectiveness of the AQI program. Science-based risk assessment is a fundamental tenet of sound governmental risk-management policies to protect against plant and animal disease threats, and is part of the United States’ obligations for managing sanitary and phytosanitary risks under its World Trade Organization commitments to international trading partners.

**Importantly in this regard, the NGFA, NAEGA, NOPA and PFI are not aware of any sanitary or phytosanitary risks associated with Canadian-grown grains, oilseeds or processed grain or oilseed products imported into the United States that would justify the increased inspections called for by APHIS in the interim final rule. If APHIS, through a valid scientific risk assessment, subsequently determines that fruits and vegetables or other products from third countries transshipped through Canada represent a specific risk of introducing high-consequence plant pests into the United States, then perhaps those products should be subjected to increased inspections – provided such action is justified by sound scientific risk management.**

In the absence of information from APHIS as to whether a formal scientific risk assessment has been conducted, we are concerned that what appears to be the random, non-risk-based nature of the inspection protocol cursorily outlined in the interim final rule may be inconsistent with – or contrary to –

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<sup>1</sup> “Homeland Security: Management and Coordination Problems Increase the Vulnerability of U.S. Agriculture to Foreign Pests and Disease” (GAO-06-644). Government Accountability Office. May 2006. Page 22.

the risk-based approach that DHS/CBP and APHIS have been striving to achieve through ongoing refinements to DHS/CBP's Automated Targeting System. Under the Automated Targeting System, CBP agriculture inspection specialists have access to a computer system that, among other things, is intended to: 1) identify high-risk inbound and outbound passengers and cargo for terrorist links; 2) focus limited inspection resources on higher-risk passengers and cargo; and 3) facilitate expedited clearance or entry for low-risk passengers and cargo. It is our understanding that further refinements to this system are planned this year to make it more effective in detecting non-agroterrorism events, such as detecting smuggling and shipments not compliant with U.S. quarantine regulations.

Moreover, if APHIS proceeds to implement policies in the absence of a scientific risk assessment and without applying science-based risk management, it risks harming U.S. efforts to improve access to international markets for U.S. agricultural products. Such action would undermine the ability of the United States to enforce the obligations of foreign governments to utilize sound science when establishing regulatory controls to protect against legitimate plant or animal disease risks. In this regard, we note that both the International Plant Protection Convention (IPPC) and the North American Plant Protection Organization (NAPPO) harmonization plans call upon countries to take risk-based approaches when targeting inspection resources.

We believe it is incumbent upon APHIS to conduct a formal risk assessment – if it has not done so already – and provide non-classified summary information from that assessment to justify the scope of actions contemplated under the interim final rule.

APHIS also does not provide specific financial data in its interim final rule to document its statement that the AQI reserve fund has been “depleted in part because we have not been recovering the costs of even the limited inspection activities we have been conducting at the U.S-Canada border.” APHIS, in the interim final rule, also states that AQI user fees are used “only for expenses associated with providing AQI services” for the passengers or mode of transportation being inspected (i.e., fees assessed for trucks fully fund truck inspections, etc.).

But APHIS' contention is contradicted by the GAO report<sup>2</sup> referenced previously, which stated that DHS/CBP's new financial management system implemented in 2005 was unable in fiscal year 2005 to provide APHIS with information on the actual costs of the AQI program by user-fee type (e.g., international airline passengers, vessels, trucks or rail). “As a result, APHIS was not able to evaluate the extent to which individual user fees cover program costs,” the GAO found. The GAO report went on to add that,

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<sup>2</sup> IBID. Pages 5-6 and 32-33.

“[u]ntil CBP’s financial system can provide actual costs by activity and AQI user-fee type, APHIS will not be able to accurately determine the extent to which user fees need to be revised. In addition, without such information, APHIS does not know whether inspections of international airline passengers and commercial aircraft, vessels, trucks and railroad cars are being funded by revenue from the appropriate fee.”

The GAO report also revealed that in October 2004, APHIS’ associate deputy administrator of plant protection and quarantine notified DHS/CBP’s Office of Budget that: “We are in dire need of generating increased revenue for the AQI program; without an increase, the AQI account could run out of money on or about July 19, 2005.” That 2004 APHIS letter also discussed a three-phase approach for funding the AQI program, one of which envisioned removing the exemption from paying AQI user fees granted to passengers, cargo and commercial vehicles at ports of entry along the U.S.-Canada border. This APHIS letter apparently **did not cite a need to hire additional inspectors** to protect against potential threats involving the introduction of high-consequence plant pests, animal diseases or agroterrorism threats into the United States. Rather, this action – which now is being issued by APHIS on an emergency basis through this interim final rule – was envisioned as a way to buttress funding for the AQI program.

In light of these facts, we believe it is incumbent upon DHS/CBP and APHIS to provide a full accounting of its collection of AQI inspection fees and the status of the AQI reserve fund, neither of which the agency has done in the interim final rule. Further, we call on DHS/CBP and APHIS to develop and make available for public review a “business plan” that clearly identifies fixed and operating costs and structure of its AQI program. The plan should include the necessary risk assessment and consideration of all risk-management options. Further, we believe that established per-unit import inspection fees should reflect only the operational cost of inspections, and not fixed investment in new or shared resources. Those parties that will be subject to the inspection fees – as well as the buyer of products that ultimately will foot the bill – deserve nothing less.

For each of the aforementioned reasons, our organizations respectfully submit that APHIS has failed to justify issuance of the interim final rule as an emergency measure.

- **APHIS Has Not Provided Information on How It Intends to Implement the Interim Final Rule to Avoid Disruptions in Cross-Border Trade Flows.** APHIS provides no specific information in the interim final rule on the scope, number or frequency of random inspections that the agency states it intends to implement on “all” conveyances entering the United States from Canada. Nor does APHIS discuss the inspection mechanisms and processes it intends to utilize. Further, the agency rule does not explain adequately how

and where user fees will be collected. Instead, APHIS states only that DHS/CBP intends to “transfer inspectors to the U.S.-Canada Border, establish new inspection protocols...and implement collection procedures (for) those who must collect user fees.” Further, other than stating that it would be necessary to station 136 full-time employees along the U.S.-Canada land border crossing points to inspect ground conveyances, APHIS provides no information on the timetable for hiring, training and deploying such inspectors to prevent significant disruptions in cross-border traffic.

Given the limited number of available traffic lanes available for trucks to enter the United States from various Canadian border checkpoints, we strongly urge APHIS and DHS/CBP – in consultation with the Canadian government and U.S. importers and Canadian exporters – to develop plans and protocols that are adequate to avert what could become massive disruptions in traffic flows across the U.S-Canadian border before contemplating the actions envisioned in the interim final rule.

- **APHIS Has Not Provided Information that It Has Exhausted Other Alternatives to Achieve the Objectives of the Interim Final Rule.** APHIS also is silent in the interim final rule as to whether the agency has explored alternative methods or options with the government of Canada to address the alleged risks cited by APHIS. It is our understanding, in fact, that pre-consultations with the Canadian government did not occur prior to publication of the interim final rule. If true, this would appear to be inconsistent with the objectives of ongoing U.S.-Canada cooperative efforts and political commitments to improve the efficiency of cross-border trade. Those efforts have included the Security and Prosperity Partnership Initiative, endorsed by the Heads of State of all three countries that are signatories to the North American Free Trade Agreement (NAFTA), to develop a common security strategy and to promote economic growth and competitiveness. Likewise, the actions anticipated in the APHIS interim final rule appear to run counter to the recommendations of the North American Competitiveness Council to enhance border trade efficiency, including: 1) placing greater reliance upon pre-clearance procedures and exploring ways to relocate border processing farther away from the border to decrease congestion; and 2) improving trilateral cooperation on border processing to better facilitate low-risk trade and travelers. The Customs Trade Partnership Against Terrorism (CT-PAT) developed by DHS/CBP, as well as ongoing discussions with the U.S. Food and Drug Administration (FDA) on developing a “low-risk” importer status program, are other initiatives that appear to be at odds with what appears to be a random, non-risk-based approach to inspections outlined in the APHIS interim final rule.

We respectfully suggest that APHIS, in consultation with the Canadian Food Inspection Agency, consider the following potential alternatives to the interim final rule:

- Notify the Canadian government when Canadian agricultural shipments are not accompanied by official phytosanitary documentation.
- Use of information on potentially high-risk shipments already available to DHS/CBP through FDA's prior-notification requirements that apply to all imports under the Bioterrorism Act of 2002. If necessary, the Canadian government could consider additional mechanisms to voluntarily identify Canadian-origin products to allow the United States to target higher-risk shipments.
- The potential use of any recommendations forthcoming from discussions already underway between the U.S. and Canadian governments within the Security and Prosperity Partnership Initiative to develop pre-clearance procedures for plant products to mitigate the risk at origin in third countries, or at the port-of-first-arrival in North America.
- The potential use of Certificates of Origin established under NAFTA as a mechanism for certifying that fruits and vegetables shipped to the United States from Canada are of Canadian origin. These Certificates of Origin already are required to determine if certain shipments to the United States are eligible for reduced- or duty-free import.

To reiterate, our organizations believe that each of the aforementioned problems, issues, concerns and potential alternatives needs to be addressed by APHIS in an acceptable manner before it determines whether and how to proceed with its interim final rule.

Finally, we also are concerned that the course of action being pursued by APHIS in the interim final rule may prompt the Canadian government to impose a non-risk-based approach to agricultural imports from the United States. Canada currently imposes no comparable user fee on U.S. non-agricultural shipments or on airline passengers, contrary to what would occur for all shipments and airline passengers originating in Canada bound for the United States under the APHIS interim final rule. Indeed, it is our understanding that fees currently imposed by Canada apply only to conveyances actually inspected, and that those inspections typically occur at the end-destination in Canada, not at border-crossing points.

## **Conclusion**

For the reasons cited in this statement, the NGFA, NAEGA, NOPA and PFI respectfully urge APHIS either to withdraw or, failing that, further delay – beyond the extended dates announced in the November 22, 2006 *Federal Register* – the effective date of the interim final rule until such time as the agency has:

1. Fully evaluated and responded to comments submitted by our organizations and other parties in response to the interim final rule.
2. Made information available concerning whether it has conducted a comprehensive risk assessment to quantify the plant pest, animal disease and bioterrorism risk that may be posed by shipments from Canada and how its interim final rule would substantially reduce such risks. In addition, we believe APHIS should make available at least summary information about the risk-assessment's results.
3. Fully explored alternative means that may be effective in achieving the interim final rule's objectives through bilateral discussions with the Canadian government.
4. Ensured that the interim final rule conforms to U.S. obligations under NAPPO and the IPPC.
5. Met with affected industry groups to resolve concerns over cross-border traffic disruptions that could result from implementation of the rule.
6. Developed and made available for public review and comment the inspection protocols and fee-collection mechanisms CBP intends to implement under the interim final rule.
7. Developed and vetted a "business plan" that clearly identifies fixed and operating costs and structure. The plan should include the necessary risk assessment and consideration of all risk-management options.
8. Established per-unit import inspection fees that reflect only the operational cost of inspections, and not fixed investment in new or shared resources.

We appreciate this opportunity to provide our thoughts on this important rulemaking. Please contact NGFA Vice President for Communications and Government Relations Randy Gordon at 202-289-0873 or NOPA Director Regulatory Affairs David Ailor at 202-842-0463 Ext. 5 if you need further information.

Sincerely,



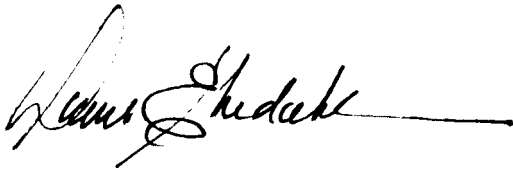
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## U.S. - Canada Agricultural Trade

### *Top 10 (by Quantity) of U.S. Agricultural Imports from Canada (2005)*

<b>Product</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Value</b>
Soft/treated Lumber	Cubic Meters	50, 428, 284	\$6,610,424,000
Live Animals	Number	24,173,940	1,191,448,000
Panel / Plywood Products	Cubic Meters	12,202,999	4,096,919,000
Logs and Chips	Cubic Meters	2,908,227	270,331,000
Other Intermediate	MT	2,315,158	608,777,000
Coarse Grains	MT	1,722,346	213,346,000
Wheat	MT	1,282,810	169,928,000
Hides and Skins	Number	1,153,807	96,480,000
Hardwood Lumber	Cubic Meters	1,116,345	318,123,000
Processed Fruits and Vegetables	MT	1,060,326	880,883,000
Total Ag Imports			\$28,729,537,000
Total Imports			\$287,870,000,000

### *U.S. Exports (by Quantity) of Select Products to Canada (2005)*

<b>Product</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Value</b>
Coarse Grains	MT	2,196,033	\$201,988,000
Soybean Meal	MT	1,166,415	245,695,000
Feeds and Fodder	MT	661,884	162,274,000
Snack Foods	MT	396,994	906,032,000
Soybeans	MT	382,910	88,205,000
Pet Foods	MT	287,712	338,395,000
Veg Oils	MT	240,197	225,342,000
Breakfast Cereal	MT	224,263	417,659,000
Soybean Oil	MT	70,061	46,516,000
Wheat Flour	MT	48,191	15,456,000
Total Ag Exports			\$13,363,519,000
Total Exports			\$211,420,000,000