

Food and Agriculture Task Force of the U.S. Business Coalition for the Trans Pacific Partnership

March 8, 2013

President's Export Council
c/o Ms. Tricia Van Orden
Executive Secretary
Room 4043
1401 Constitution Avenue N.W.
Washington, D.C. 20230
Via Email: tricia.vanorden@trade.gov

**RE: Federal Register Notice Document #2013-04381, February 25, 2013.
Request for comments for the President's Export Council March 12, 2013
meeting.**

Dear Council Members and Staff,

Please accept our appreciation for your ongoing and successful service as the principal national advisory committee on international trade. In response to this request for comments, we would like to convey the strong support and interest we find for a "rapid response mechanism" to address sanitary and phytosanitary trade impediments and technical barriers to trade in the "Trans-Pacific Partnership (TPP) Agreement.

As Co-Chairpersons of the Food and Agriculture Task Force of the Business Coalition for the TPP, we are working with an extensive cross section of U.S. stakeholders in agricultural trade. The Task Force works to inform TPP stakeholders in both the United States and internationally as well as assemble and communicate priorities. Ultimately the Task Force works to support the negotiation of a comprehensive, high-standard and commercially meaningful Trans-Pacific Partnership (TPP) agreement that will open markets for U.S. farmers, manufacturers and service providers, as well as increase U.S. exports and support and create American jobs.

We find strong and wide ranging support for the inclusion of "rapid response mechanism" in TPP. The concept is at the forefront of the trade facilitation priorities of U.S. agricultural trade interests who are considering government policies and programs that affect U.S. trade performance; ways to promote export expansion; and who work to provide for the resolution of trade-related problems.

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As we seek to improve and facilitate food and agriculture trade among all of our trading partners, we support the deployment of a timely, transparent and commercially-meaningful method to help governments implement the least trade distortive measures and resolve trade interruptions related to sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT). Putting in place, whenever possible a “rapid response mechanism” (RRM), to improve the application and timely resolution of SPS and TBT measures and concerns will provide for immediate and much needed improvements as well provide for the long term establishment of sound and improved commercial and regulatory practice.

Food and agriculture imports and exports frequently face actions by SPS and TBT administrative entities that unnecessarily delay or prevent shipments of critically important and perishable agricultural products for food, feed and further processing. These actions by governments often lack transparency, predictability and timely mitigation. Unwarranted costs and significant impediments to safe and secure supply chains often result. Short and long term harm to important trade flows that support global food and economic security while benefiting consumers, farmers, ranchers, manufacturers, transporters and labor can be prevented and reduced with improved capacity to manage actions by SPS and TBT administrative entities.

While industry can petition its own government to utilize the WTO dispute settlement process when one of these actions occurs, the process can be lengthy, places resource constraints on governments and is seldom seen as practical. Mechanisms that link commercial and official actions, improve value chain-wide communication, and increase the application of sound science are needed to provide for the least trade distortive and improved national actions related to SPS and TBT measures.

Trade agreements offer an opportunity to provide industry with timely, transparent action by governments that can serve to enhance risk management and market efficiencies, reduce trade friction and avoid WTO disputes. We encourage and support inclusion in all trade agreements a RRM that improves controls related to SPS and TBT measures so that official actions work for consumers, farmers, ranchers and global commerce. A RRM fits into the concept of “WTO-plus” obligations that go beyond the WTO SPS Agreement on issues like risk assessment, risk management, transparency, border checks/laboratory testing and facilitating trade through regulatory coherence measures. A RRM would take the dispute from a bilateral one to extend to broader oversight as well as effective engagement of commercial parties.

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A RRM should not conflict with the WTO SPS and TBT dispute process, but rather it is intended to make the consultation and oversight process work in TPP so industry does not have to wait years for governments to resolve SPS or TBT disputes either bilaterally or in the WTO. Acting in many ways like a “small claims court”, a RRM mechanism is needed to swiftly resolve misapplication of SPS and TBT measures, limit trade friction and improve capacity to manage SPS and TBT risks in the least trade distortive manner.

A RRM should provide for shipment-specific trade facilitative obligations that address frustration of trade in perishable and time sensitive shipments of agricultural products as result of implementation of SPS and TBT measures. A RRM would make the consultation and oversight process work in TPP so industry and consumers do not wait an unnecessary period of time (often years) for governments to resolve SPS or TBT disputes either bilaterally or in the WTO. An RRM obligation that includes a rapid notification and a consultation process to supplement and expedite shipments in TPP would allow for the swift resolution of the misapplication of SPS and TBT measures and limit trade friction and improve capacity to manage SPS and TBT risks in the least trade distortive manner. The RRM must be established so as to not conflict with but also reinforce the other TPP or WTO processes. An RRM obligation would be crafted to include notice and direct participation by commercial parties and put in place a non-binding expert review that would be recorded and available for future use in mitigation of similar related trade frustrations.

We suggest specific elements of the RRM include:

First, a process of immediate detailed notification to the importer or exporter of record (shipper or consignee) of risk detection, assessment and management measures. A notification that details methodology, findings, enabling authority and recourse or compliance measures related to the action taken should be provided by the official body within three days of request by either the importer or exporter of record. Further conveyance of the notification should be at the option of the requesting party. The notification should be recognized as potentially providing for further review or actions acceptable to the relevant official body that may support or mitigate the action.

Second, ensure an expedited review at the request of the importer or exporter. The expedited review would be conducted by neutral experts from TPP countries of issues raised by nationals and provided in 15 days. The expedited review will result

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in a non-binding, public recommendation (and only business confidential information deleted). There is precedent for this in WTO.

A RRM provides for a specific, practical and reasonable component of what is emphasized and articulated by many agricultural trade stakeholders as a critical need: full enforceability includes a commitment to timely and transparent action to address actions that delay shipments of perishable and needed agricultural products. Further, to that end, it is imperative that all elements of the agreement's SPS provisions, including the WTO-plus components, be fully enforceable.

We appreciate your consideration of these comments and look forward to any opportunity to further work with you and support the work of the International Trade Administration. Please do not hesitate to call on us.

Sincerely,



Gary C. Martin
Co-Chair

President and CEO
North American Export Grain Association
Washington, D.C.



William W. Westman
Co-Chair

Vice-President, International Trade
American Meat Institute
Washington, D.C.

Attachment: U.S. Business Coalition for TPP – members on the Task Force for Food and Agriculture.

Food and Agriculture Task Force

Members of the U.S. Business Coalition for TPP

Allen F. Johnson & Associates
American Farm Bureau Federation
American Meat Institute (AMI)
American Soybean Association
Archer Daniels Midland Company (ADM)
Biotechnology Industry Association (BIO)
Cargill, Incorporated
Corn Refiners Association
Cotton Council International
Distilled Spirits Council of the United States, Inc.
Emergency Committee for American Trade (ECAT)
Florida Citrus Mutual (FCM)
Grocery Manufacturers Association (GMA)
International Dairy Foods Association
Louis Dreyfus Commodities
Mars, Inc.
Mondelēz International
Monsanto
National Cattleman's Beef Association
National Chicken Council
National Corn Growers Association
National Fisheries Institute
National Grain and Feed Association
National Oilseed Processors Association (NOPA)
National Pork Producers Council (NPPC)
National Potato Council
National Turkey Federation
North American Export Grain Association (NAEGA)
Northwest Horticultural Council
Pet Food Institute
The Coca-Cola Company
U.S. Wheat Associates
Wasserman & Associates o.b.o California Apple Commission