

NORTHWEST HORTICULTURAL COUNCIL

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Office of the U.S. Trade Representative
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Washington, D.C.

Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement (FR Doc. 2013-07430)

The Northwest Horticultural Council represents the growers, packers and shippers of apples, pears and cherries in Idaho, Oregon and Washington. The farm gate value of the fresh deciduous tree fruit production in the Pacific Northwest this past season was approximately \$3.5 billion with exports projected to reach roughly \$1.2 billion. Historically, some 90 percent of U.S. apple, 92 percent of U.S. pear, and 65 to 75 percent of U.S. sweet cherry exports originate from the Pacific Northwest. The following comments are provided to assist the interagency Trade Policy Staff Committee in developing negotiating priorities for the proposed Transatlantic Trade and Investment Agreement (Federal Register Doc. 2013-07430).

Obtaining commercially meaningful market access improvements to the European Union for apple, pear and cherry growers as a result of the proposed trade negotiations is our guiding negotiating objective.

Apple and pear exports to the EU from the Pacific Northwest have declined significantly in recent years due primarily to differences between the two country's regulatory requirements for pesticides and food additives and the requirement by EU retailers that suppliers follow a plethora of nongovernmental food safety standards.

During the 2006/07 season the Pacific Northwest exported some 1.33 million cartons of apples valued at \$28 million (f.o.b. packing house) to the EU. By the 2011/12 season, shipments had dropped to 423,000 cartons valued at \$9 million, a 68% decline in both value and volume. According to the Pear Bureau Northwest, in 2007/08, the Pacific Northwest shipped 5,644 metric tons (282,200 cartons) of fresh pears to the European markets valued at \$5.56 million (f.o.b. packing house). This past season, the export volume was 1,568 metric tons (78,400 cartons) worth \$1.7 million, a 72% decline in volume and 69% decline in value.

The European Union's tree fruit growers are the world's largest producers of cherries and the second largest producers of apples and pears. The EU's annual production of apples is 2.5 to 3

times that of the United States. Pear production in the European Union is 3 to 3.5 times greater than U.S. production, while sweet cherry production is 1 to 2 times greater. In addition to the EU's advantage in production volume, the cost to transport apples and pears from Rotterdam to major U.S. East Coast population centers is approximately \$1,000 less than trucking an equivalent volume of fruit from the Pacific Northwest to the U.S. East Coast.

Historically, Europe has protected its fruit growers through tariffs, entry prices, trigger volume and tariff safeguards and government subsidies. Will trade distorting domestic and export subsidies be disciplined under the proposed Transatlantic Trade and Investment Agreement? If not, it would be helpful to obtain an in depth accounting from the EU as to its expenditure (and that of individual member states) on subsidies provided to various crops.

Tariff Rates

Immediate duty-free access for tree fruit, of the kind obtained during the Chile, Australia, and Dominican Republic-Central America FTA negotiations, should be a negotiating objective under the proposed Transatlantic Trade and Investment Agreement with the European Union.

The European Union's tariff on apples (HTSUS 0808.10.00) changes throughout the year with the highest rate, 9%, in place from August through December and a 4% tariff in effect during January through March. The United States does not apply any tariff on imported apples.

The European Union charges minimal tariffs (4 percent) on in-quota early season sweet cherries (HTSUS 0809.20.00). After that quota is exceeded the cherry tariff increases up to 12%. The U.S. does not charge any tariff on imported cherries.

The European Union's tariff on pears (HTSUS 0808.20) changes throughout the year with the highest rate (10.4%) in place from August through December, an 8% tariff applies during January and a 5% tariff from February through March. Imported pears enter the U.S. market duty free from April 1 to June 30 and are assessed only 0.3 cents/kilogram duty any other time.

Entry Price System

Under the terms of the Uruguay Round agreement on agriculture, the EU reference price system for imports of fruits and vegetables was replaced with an entry price system. Products valued over the entry price are charged a fixed tariff. Products valued below the entry price are charged a tariff equivalent in addition to the fixed tariff. The tariff equivalent is graduated for products valued between 92 and 100 percent of the entry price. The fixed tariff and the full tariff equivalent are levied on imports valued at less than 92 percent of the entry price, making imports of lower-priced produce unfeasible.

The European Union's entry price system on U.S. apples, pears and sweet cherries should be eliminated and accompanying safeguard mechanism should be abolished. This system effectively ensures that lower-priced fruit from outside the EU is excluded from the market, thereby establishing a protective floor for market pricing. The EU will very likely argue that U.S. fruit does not enter below the entry price and therefore the protective system is of little consequence to the U.S. This argument supports our view that the trade barrier is unnecessary and should be eliminated under this ambitious trade agreement.

Sanitary and Phytosanitary Objectives

Pesticide MRLs: Newly restrictive pesticide residue requirements applied in a harmonized fashion across the EU member states first began broadly impacting U.S./EU trade in specialty

crops in September 2008 with the implementation of maximum residue limit (MRL) rules under Council Directive 91/414/EEC. Subsequent and increasingly limiting pesticide regulatory rules (e.g., Regulation (EC) No 1107/2009) will continue to impact and restrict trade between the U.S. and the EU. The EU risk assessment process is not the same as that conducted by the United States Environmental Protection Agency. This can lead to the establishment of a different (and often much lower) regulatory maximum residue level (MRL) for a particular pesticide and therefore a potential barrier to trade.

A perfect example of a barrier to trade emerging as a result of the divergent regulatory risk assessment systems involves diphenylamine (DPA), used in the U.S. and many countries around the world, including some EU member states, for scald control on apples and pears. In November 2009, the EU Commission made a decision to stop the sale of products containing DPA and a complicated regulatory process has since unfolded. On April 23, 2013 the Standing Committee on pesticides residues voted to set a temporal MRL for DPA at 0.1 ppm. (The U.S. and Codex Alimentarius Commission tolerance for DPA is 10 ppm on apples and 5 ppm for pears.) The regulation establishing the new MRL will enter into force in July 2013 and enforcement of the new MRL will commence as soon as December 2013. The EU decision to establish the MRL at 0.1 ppm will effectively close the European Union to apple and pear imports from the United States effective November of 2013. A solution to this regulatory barrier to trade is urgently needed.

The above is one example of why we believe greater regulatory compatibility should be achieved in matters related to agricultural chemical registrations. As a member of the Minor Crop Farmer Alliance, the Northwest Horticultural Council supports the April 10, 2013 testimony by that organization to the U.S./EU High Level Regulatory Cooperation Forum, an excerpt of which states:

“Even slight variations for the same agricultural chemical as may be imposed by either the United States Environmental Protection Agency (EPA) or its European Union (EU) counterpart can preclude or disrupt trade by leading to unnecessary product rejections at point of entry or, after entry, to consumer product recalls. This might easily be accomplished by the regulatory agencies of both political entities establishing reasonable and clear tolerance levels for agricultural chemicals when they might be inadvertently present on a food or used purposely in compliance with the producing nation’s regulatory framework.

Variations related to MRL levels are mere symptoms of the sharp differences that have developed over the years between our country and the EU in terms of their respective systems for regulating pesticides. This highly variable regulatory environment urgently requires comprehensive reform aimed at facilitating commercial trade, while keeping in place high standards of consumer health safety. These two important policy goals—commercial trade and consumer safety—are not mutually exclusive.

We suggest that the United States and the European Community collaborate to achieve greater global harmonization of agricultural chemical standards without delay.”

EU Apple and Pear Systems Approach Priority: For many years European Union apple and pear growers have been unhappy with the terms under which they are allowed to ship fresh fruit to the United States. The current conditions for access were established decades ago and mitigate against the serious plant health threat posed by some pests that exist in Europe but not in the

United States. These pests could be transported to the U.S. on commercial fruit shipments and cause serious and permanent pest presence and damage to U.S. apple and pear orchards if they were to become established.

In November of 2010 the EU submitted a systems approach protocol to USDA/APHIS that would address the pear leaf blister moth (*Leucoptera malifoliella*), the plum fruit moth (*Cydia funebrana*), the summer fruit tortrix moth (*Adoxophyes orana*), a leaf roller (*Argyrotaenia pulchellana*) and, in some countries, the Mediterranean fruit fly (*Ceratitis capitata*). The protocol would cover production located in seven EU countries (Belgium, Germany, France, Italy, Portugal, Spain, the Netherlands). These countries represent roughly 60% of total EU apple production and 89% of EU pear production.

EU officials have made the establishment of an EU apple and pear systems approach protocol one of their highest sanitary and phytosanitary priorities for resolution under the U.S.-EU Transatlantic Trade and Investment Agreement. The U.S. Department of Agriculture is moving forward on the EU's request.

We strongly disagree with the U.S. moving forward with its science based regulatory approach on plant health given the EU's precautionary principle approach to pesticide MRL's and the recent decision to lower the import tolerance on DPA to 0.1 ppm. If APHIS moves forward with a systems approach protocol for EU apples and pears our growers will be subject to increased competition here in the United States while the EU closes access to its market for U.S. apples and pears.

U.S. Cherry Plant Health Objective: The European Union requires U.S. cherries to be free of *Monilinia fructicola* (brown rot) and requires documentation that controls have been applied in the field. This restriction limits the supply of U.S. cherries that qualify for export to the EU.

According to reports in the peer reviewed sources, M. fructicola occurs in Europe apparently without official controls on the disease or on movement of fruit within the EU from those countries where positive detections have been made. Absent a demonstration of sound technical evidence that the disease is not present in Europe or that there are regulatory quarantine practices in place to mitigate against the spread of the disease within the EU, the restriction on U.S. cherries should be removed.

Import Sensitive Products

The U.S. canned pear industry is import sensitive and has been treated as such under many FTAs, including the Chile and Australia FTAs. Canned pears (HTS 2008.40) should be considered an import sensitive product under the proposed Transatlantic Trade and Investment Agreement and be placed in the basket of U.S. products deserving of the maximum protection available.

Conclusion

Obtaining commercially meaningful market access improvements to the European Union for U.S. apple, pear and cherry fruit under the proposed Transatlantic Trade and Investment Agreement is the governing objective we urge USTR to pursue for the Pacific Northwest tree fruit sector.

To improve market access conditions the following will be required:

- Immediate elimination of tariffs affecting apples, pear and cherries
- Elimination of the entry price and safeguard system
- Development of a solution to the DPA trade barrier

In addition, appropriate treatment for import sensitive products such as canned pears is a well established component of past trade agreements that the United States has negotiated and such treatment for canned pears should be enshrined in the proposed Transatlantic Trade and Investment Agreement.

Finally, absent a strong commitment to find a solution to the EU pesticide and U.S. plant health regulation issues raised in our comments, U.S. growers will likely experience increased competition from EU tree fruit imports and the loss of the European Union as an export market. Such an outcome would be unacceptable.

Sincerely,

NORTHWEST HORTICULTURAL COUNCIL

A handwritten signature in black ink, appearing to read "Mark Powers". The signature is fluid and cursive, written in a professional style.

Mark Powers
Vice President

cc NHC FTC
Todd Fryhover, President, Washington Apple Commission
B.J. Thurlby, President, Washington State Fruit Commission
Kevin Moffitt, President & CEO, Pear Bureau Northwest