November 15, 2013

Office of the U.S. Trade Representative
Trade Policy Staff Committee
600 17th Street NW
Washington, DC 20508

Electronically submitted at www.regulations.gov

RE: SPS Measures: USTR-2013-0033.

To Whom It May Concern:

The Grocery Manufacturers Association (GMA)[1] appreciates this opportunity to provide comments related to the Annual Report on Sanitary and Phytosanitary (SPS) related Foreign Trade Barriers. GMA appreciates the opportunity to bring greater focus on resolving SPS measures that may be inconsistent with international trade agreements.

GMA members export and import food, ingredients and consumer products globally and have a significant interest in fair and transparent trade policy and in improving market access through reducing or eliminating SPS trade barriers. GMA continues to see a proliferation in nontariff trade barriers specifically as they relate to SPS restrictions that are not science based.

Capacity Building

GMA and its member companies support SPS capacity building initiatives that are founded on the basis of public-private partnerships, like the Asia Pacific Economic Cooperation (APEC) Partnership Training Institute Network (PTIN) and the Global Food Safety Partnership (GFSP). GMA and its member companies and their international counterparts have worked hand in hand with the U.S. Government, foreign governments, academia, international organizations, the World Bank, standards organizations, and others to provide coordinated food safety training around the world.

[1] GMA represents the world's leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. The GMA board of directors is comprised of 48 chief executive officers from the Association's member companies. The $2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over $1 trillion in added value to the nation's economy.

GMA applauds and supports the U.S. Government's efforts to put into place programs that provide technical assistance to developing countries to help these countries meet their international obligations with respect to SPS measures and thereby facilitate trade in food and agricultural products. Fora that facilitate active dialogue between industry and regulators, like the APEC PTIN, are especially effective. GMA requests the U.S. government's continued dedication to capacity building in 2014.

GMA will have a major focus on China in 2014. China will host APEC this year and working with other interests in the U.S. government and the private sector, GMA is working to have an APEC focus on food safety while China is the APEC host country. This will provide a unique opportunity to discuss market opportunities and, hopefully, create an atmosphere for positive steps towards resolution of barriers to U.S. food and agriculture exports to China. GMA supports high level dialogue on food safety to bring together the top-level of the food industry and the food safety regulatory authorities from the 21 APEC Economies. Through this dialogue we hope to establish long-term relationships to identify new market opportunities and quickly resolve issues when they arise. GMA also supports PTIN and GFSP capacity building resources to be targeted at China during its APEC host year.

Trade agreements are most effective when they include robust post-implementation mechanisms for the ongoing resolution of SPS-related trade barriers. While these mechanisms are important as a first step, GMA strongly believes that the SPS provisions in trade agreements need to be enforceable.

Cross-Cutting SPS Issues

The SPS Agreement requires countries to base SPS measures on science, but some counties apply SPS measures in order to protect the domestic producers. GMA supports countries' adoption of science-based international standards, such as Codex Alimentarius, in order to facilitate trade. GMA encourages the U.S. Government to leverage international forums, like the WTO, Codex, IPPC, OIE, International Standards Organization (ISO), APEC, and the Trans Pacific Partnership (TPP) to advance the adoption of science-based standards globally. Science- based SPS measures are particularly important in the Trans-Atlantic Trade and Investment Partnership (TTIP) negotiations. GMA appreciates USTR's willingness to engage with U.S. trading partners that do not adopt science-based SPS standards.

- **Export Certification and Related Issues**

In order for GMA members to export processed food and consumer products and in order to import ingredients, many countries, including the U.S., require food imports to be accompanied by a certification from the producer setting out a variety of SPS-related assurances. In the case of food, the exporter must also obtain certification from the exporting country. Many countries additionally require export certificates to include attestations that in many cases result in burdensome and costly paperwork and testing requirements, which are unnecessary. Individually, these barriers are often small and technical. However, these individual trade irritations quickly compound to present a significant source of inefficiency for

US food and beverage exports. Certification requirements should be risk-based and follow the recommendations of the relevant international standard setting organizations (Codex, OIE, and IPPC).

Certificates of free sale (COFS) are a potential trade facilitation measure in which governments accept that imported products meet the regulatory requirements of the country of manufacture. Typically, a COFS can substitute for a domestic food safety risk assessment or standards conformance procedure, and can thus help reduce costs and impediments to trade. However, for formulated nutritional products, COFS can create barriers to trade, particularly when exporting and importing manufacturing requirements differ. This COFS issue has arisen in Vietnam, Egypt, Jordan, Kuwait, UAE, Saudi Arabia, Israel, Turkey, Taiwan, Thailand, Philippines, Columbia, Dominican Republic, Ecuador, Peru, Venezuela, Guatemala, El Salvador, Honduras, Costa, Rica, Panama and Nicaragua. Formulated nutritional products differ from ordinary foods in that, in addition to meeting risk parameters for microbiological and chemical contamination, the specific nutrient content of the foods needs to meet a national standard. Manufacturers invest in state of the art practices to ensure both safety and nutritional values to comply with national standards. Where nutritional content requirements differ across jurisdictions, the imposition of a COFS can prevent or restrict trade. Given that the nutritional product is being manufactured to meet the specific regulatory requirements of the importing country and the needs of its citizens, a COFS is unnecessary and can be barrier to trade.

GMA, through the International Council of Grocery Manufactures (ICGMA), has supported and participated in the work of Codex in establishing guidelines for export certifications. Codex's "Principles for Food Import and Export Inspection and Certification," provides that certification requirements should be confined to eliciting information essential to meeting the objectives of the importing country's food inspection and certification system. The Codex guidelines also call for importing countries to specify the reasons for requiring specific attestations to be included in export certifications and to apply their certification requirements in a non-discriminatory manner. The guidelines specify that the importing country may require, for example, access to production facilities and relevant documents of the exporting country.

Many countries, however, do not observe Codex, OIE, or IPPC guidelines when they impose export certification requirements. The following are examples of the types of unwarranted certification and/or import requirements that create unnecessary barriers to U.S. food exports:

- Attestations and testing requirements that are not based on internationally accepted norms, e.g., Argentina's proprietary analytical methods for various chemical and microbiological assays;,
- Attestations and testing requirements that are inconsistent with the risk posed by a given product and are inappropriate for the product type e.g., Peru's restrictive microbiological testing requirements for commercially sterile products; Mexico's requirements for phytosanitary certificates for

some frozen food products; and Vietnam's and India's requirement for phytosanitary certificates for each consignment of roasted coffee beans

- Requirements for exporters to provide information regarding U.S. surveillance programs for various animal diseases when the importing government has ready access to this information through U.S. Government and international organization websites;

- Requests for compositional information for flavors and some food articles, e.g., Korea, China, Russia, Thailand, Argentina, Japan.

As a partial step to help resolve some of the issues associated with the final bullet above, GMA suggests that USTR encourage countries to adopt the Flavor and Extract Manufacturers Association (FEMA) GRAS protocols to harmonize and foreclose on the disclosure issue. FEMA GRAS Group summaries on approximately 2,200 FEMA GRAS™ flavoring substances have also been published by the Joint FAO/WHO Expert Committee on Food Additives (JECFA), an international scientific advisory body managed through the United Nations (See www.who.int/foodsafety/chem/jecfa/en/index.html).

- **Biotechnology**

SPS measures of other countries that restrict biotechnology are a major concern for the U.S. food industry. GMA members face many different trade barriers related to biotechnology across the globe. Some U.S. trading partners have continued to impose restrictions on these products even though repeated dietary risk assessments have shown no food safety concerns. These products have proven safety records and labeling creates a negative impression on consumers.

Especially troubling to GMA are many countries' mandatory labeling requirements on foods derived from biotechnology products. These labeling requirements create barriers to trade by wrongly implying that these foods are unsafe. Labeling requirements for biotechnology foods are of concern because the labeling communicates to the purchaser that the foods containing biotechnology products offer some health risk compared to the non-biotechnology-containing foods. Labeling of biotechnology foods could unnecessarily cause alarm.

Turkey has proposed mandatory labeling for biotechnology foods that creates an unjustified trade barrier and will restrict U.S. exports. Turkey's requirement is an example of an explicit health warning associated with the consumption of biotechnology foods.

Ecuador appears to be moving forward with labeling requirements for biotechnology foods. GMA and member companies are very concerned with not only the mandate for this labeling but also the lack of specificity of the new labeling requirements and the proposed implementation dates. The situation is not clear and has significant potential to result in trade disruptions. GMA encourages USTR to work to have the labeling requirement withdrawn;

failing this, the labeling proposal needs to be clarified and the implementation delayed so that U.S. companies can determine how they can comply or whether to withdraw from market in Ecuador.

Vietnam enacted a new Food Safety Law and a Bio-Safety Decree that provides the basis for at least two proposals labeling of biotechnology products. It appears that discussions within the government of Vietnam continue and this creates the opportunity to engage with Vietnam to eliminate labeling requirement or reduce the negative impact of labeling for biotechnology foods. GMA encourages USTR to negotiate with Vietnam to withdraw or substantially limit labeling of biotechnology foods and products.

As negotiations for the Trans-Atlantic Trade and Investment Partnership (TTIP) begin, the restrictions on U.S. exports to the European Union (EU) resulting from EU policies and member state practices regarding the approvals process and labeling requirements for biotechnology should be a major focus. EU biotech policies and practices have resulted in the loss of U.S. exports to the EU across virtually every component of the U.S. food and agriculture sector. Rather than taking on burdensome, expensive and pejorative labeling regimes mandated by the EU, some GMA member companies have determined that, to remain in the EU market, they must reformulate some food products to exclude biotechnology ingredients. In other cases, decisions have been made to relocate production facilities outside of the U.S. The TTIP negotiations are an important opportunity for the United States to press EU to remove these barriers that adversely affect exports of food agriculture products and restore access for GMA member company products.

Attached is chart showing the status and summary of labeling requirements by country regarding biotechnology products. The number of countries with varying labeling provisions makes it challenging and expensive for GMA members that export to two or more of these countries. GMA believes that these foods should not be labeled except where nutrition or allergens are involved.

- **Bovine Spongiform Encephalopathy (BSE)**

We note that U.S. BSE status was upgraded in May 2013 to "negligible" under the OIE rating scheme. However, significant barriers to exports of U.S. beef and beef products remain. The market to China is closed. Restrictions on exports of beef and beef products remain in force markets in Japan, Korea and Taiwan.

These restrictions adversely affect GMA members' opportunities to restore exports of beef and beef products to 2002 levels. GMA members that produce products containing processed beef continue to experience closed markets to U.S. beef and beef products, or in some cases, experience additional regulation of U.S. beef products. Moreover, the discrepancy in BSE-related measures in different markets represents a separate trade burden and undercuts the comparative advantage of U.S. exporters.

Some countries also ban other bovine and/or ruminant commodities which GMA members export, like pet food with bovine ingredients and bovine gelatin, as well as many other commodities based on unfounded BSE concerns, like poultry.

Even though the Korea-U.S. Free Trade Agreement (FTA) is in place, meat exports continue to be an issue. This is one example of the importance of the U.S.'s continued engagement with its trading partners to secure the removal of these bans. GMA appreciates USTR's efforts to negotiate bilateral practices with trading partners in order to open their markets to U.S. beef products.

- **Avian Influenza (AI)**

Similarly, despite the U.S.'s food safety controls with respect to poultry, many countries have imposed unwarranted import bans on U.S. poultry products based on unfounded concerns over AI. These import bans result in blocking GMA members' products that contain processed poultry ingredients. GMA also appreciates USTR's efforts to negotiate bilaterally with trading partners in order to open their markets to U.S. poultry products.

- **Pesticide Residues**

Many U.S. trading partners set pesticide Maximum Residue Limits (MRLs) at unreasonably low thresholds, have failed to establish a MRL for certain pesticides that have established Codex or U.S. MRLs, or have a significant backlog of reviews for newer, safer pesticides. This situation has created significant trade barriers for U.S. horticultural exports and affects the ingredient sourcing decisions of GMA members. MRL enforcement policies in the EU, Japan, and Taiwan are of particular concern. USTR should continue to encourage countries to adopt the Codex MRLs or to defer to the scientifically based U.S. MRL until it is able to conduct its own risk assessment.

China

On October 29, 2013, the China Food and Drug Administration released the Food Safety Law (Draft for Review). Stakeholders are to submit comments by November 29, 2013 and GMA will submit comments. Finalization of the provisions of this law and implementing regulations will be of major concern and attention for GMA and member companies. As this moves forward, it will be important for China to notify new implementing regulations and provide the opportunity for stakeholders to comment before final decisions are made. These new implementing regulations will need to be based on scientific data and information to ensure that the food supply is indeed safe. Science-based regulations and the use of the international standards of the Codex Alimentarius Commission will help to bring predictability to trade with China. Phased implementation and enforcement of new regulations will be essential to provide time to meet new requirements and minimize disruptions to trade.

General Cost Considerations

Estimating the potential increased economic value of trade through the removal of SPS unjustified barriers for the purpose of this report is difficult because the barriers block access to otherwise commercially viable markets. In order to remain economically viable, companies respond to market challenges through production and sourcing decisions.

Companies relocate production outside the U.S., or reformulate products in order to enter or remain in certain markets. These decisions may result in reducing domestic production, closing plants and cutting jobs. When U.S. companies choose to move production overseas to avoid reformulation or import restrictions, it is at significant cost to the U.S. economy and domestic jobs. Yet, there is significant untapped market potential for high value agriculture products. Resolving SPS restrictions and improving global understanding and use of risk analysis and risk management are key elements to opening those markets.

Summary

Thank you for the opportunity to comment on the significant impact of SPS-related barriers affecting GMA member companies. GMA is optimistic that continued documentation of these concerns will result in an aggressive and coordinated interagency strategy to reduce these SPS barriers and open markets for U.S. food and consumer products.

Sincerely,

Richard D. White
Director, Codex and International Standards Policy