May 10, 2013

BY ELECTRONIC FILING

The Honorable Demetrios Marantis
United States Trade Representative
Office of the U.S. Special Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Docket Number USTR-2013-0019 − Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement

Dear Ambassador Marantis:

The American Feed Industry Association (AFIA) appreciates the opportunity to comment on the above-referenced docket issue. AFIA is the world's largest organization devoted exclusively to representing the business, legislative and regulatory interests of the U.S. animal feed industry and its suppliers. Founded in 1909, AFIA represents the total feed industry, and its members include more than 550 companies and state, regional and national associations. Member companies are livestock and poultry feed, as well as pet food manufacturers, integrators, pharmaceutical companies, ingredient suppliers, equipment manufacturers and companies which supply other products, services and supplies to feed manufacturers. The U.S. feed industry plays a critical role in the production of healthy and wholesome meat, milk, fish and eggs, and has a long history of providing safe ingredients and animal feed for use domestically and abroad. AFIA member firms manufacture 75% of the 165 million tons of U.S. feed annually.

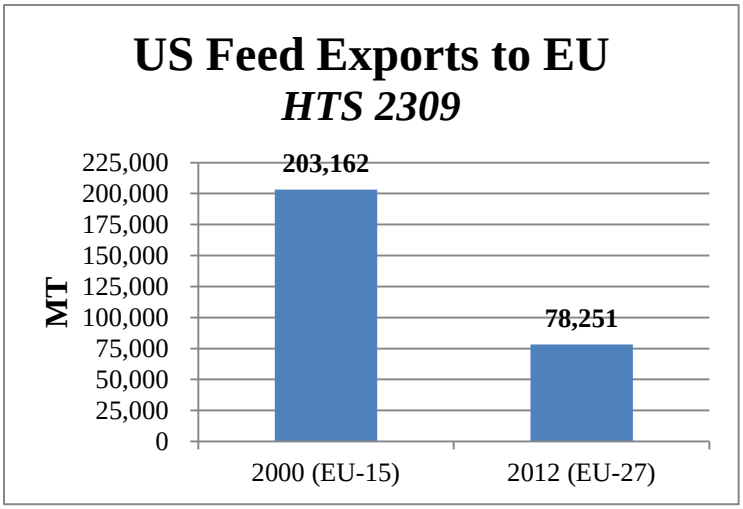
AFIA is encouraged by the Administration's intention to enter into negotiations for a Transatlantic Trade and Investment Partnership (TTIP) agreement with the European Union (EU). However, we remind USTR that any Free Trade Agreement (FTA) between the U.S. and the EU must follow the intent and comprehensive scope of a high-standard, truly reciprocal 21st-century agreement. In doing so, the agreement must aim to better coordinate regulatory compatibility between the two parties, a coordination that is based on science.

The EU's Regulatory Regime Conflicts with International Standards

The most significant grievance the U.S. feed industry has with EU is its regulatory regime, a system which often conflicts with not just the interests of the U.S., but also with World Trade Organization (WTO) rules and relevant international standard-setting organizations, such as Codex and OIE.

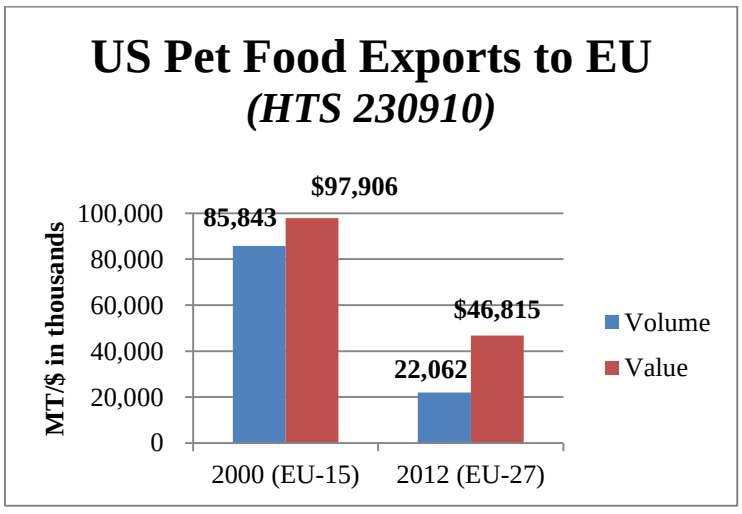
In 2002¸ the EU published Regulation (EC) 1774/2002, which established new requirements for animal byproducts used for animal consumption. These new requirements immediately

restricted U.S. exports of animal protein products and pet food. While the U.S. Department of Agriculture's (USDA) Animal & Plant Health Inspection Service (APHIS) has been working with the EU to address these restrictions – and some progress has been made with two new regulations [Regulation (EC) 1069/2009 and Regulation (EC) 142/2011] – there still remain serious restrictions limiting access of these U.S. products to the EU market.
U.S. exports to the EU of animal feed (HS Code 2309), including pet food, livestock and poultry feed, mixed feed and feed ingredients, have significantly decreased since the establishment of the EU regulations in 2002. Exports of these products have gone from 203 TMT in 2000 (EU-15) to 78 TMT in 2012 (EU-27), a 62% decrease in volume, and this is with the addition of 12 new countries into the EU.



Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics

In evaluating just the effects on U.S. pet food exports to the EU since the establishment of these regulations in 2002, U.S. exports to the EU went from 85.8 TMT/$97.9 million in 2000 (EU-15) to 22 TMT/$46.8 million in 2012 (EU-27).



Source: Global Trade Atlas

It is difficult to speculate the extent to which U.S. animal feed, feed ingredient, and pet food exports can recapture lost EU market share should these burdensome and onerous restrictions and hurdles be eliminated. However, it is clear that the U.S. feed and pet food industries continue to confront barriers to entering the EU market. One U.S. company in particular has been trying to access the EU with its aquaculture feed products for over five years. This firm remains unable to ship because the EU requires attestations and certifications that neither feed nor aquaculture-competent authorities in the U.S. feel are necessary or appropriate for the product in question. In this particular case, the EU is requiring a Chapter 1 health certificate; a certificate that does not represent this specific feed product accurately. APHIS cannot sign off on this certificate because the product contains aquatic proteins, and the National Oceanic & Atmospheric Administration (NOAA) cannot sign off on this certificate because the product contains more than just aquatic proteins. The EU does not have an appropriate health certificate that works within the bounds and responsibilities of the U.S. competent authorities for this type of product, leaving them with their hands tied.

Attestations are Not Scientifically Founded

Export certificates for feed and pet food products containing processed animal protein contain unnecessary attestations making the export of such products to the EU extremely difficult. For example, the EU Health Certificates below, as indicated in Commission Regulation (EU) No 142-2011, all have attestations stipulating the animal byproducts used in the products in question be fit for human consumption. Byproducts from animals showing no signs of illness or disease should be acceptable for inclusion in feed and pet food even if they are not fit for human consumption or have not been raised for the purpose of human consumption.

This EU requirement is onerous and costly and is not science-based. It adds cost where there is no benefit of safety. Feed and pet food products containing processed animal protein from animals deemed 'fit for human consumption' are more expensive and compete with the human food supply. In addition, the cost of these extra certifications and using specified suppliers is estimated by some manufactures to be double the cost of other animal byproduct suppliers. There are no international standards -- OIE or otherwise – that suggest feed and pet food products with processed animal protein that are 'fit for human consumption' are safer than those that are not. The OIE Model Veterinary Certificate for products of animal origin defines 'animal feed' as a product intended for animal consumption, i.e. "Animal Feed: means any product of animal origin (single or multiple), whether processed, semi-processed or raw, which is intended to be fed to animals." If the concern is about the product entering the human food supply chain, there are other measures within the supply chain to ensure human food and feed are not comingled, and these steps do not significantly limit a manufacturer's ability (financially or otherwise) to source the animal protein inputs for the feed products.

- *Chapter 1: Processed animal protein not intended for human consumption, including mixtures and products other than pet food containing such protein.*
- *Chapter 3A: Canned pet food*
- *Chapter 3B: Processed pet food other than canned pet food*
- *Chapter 3C: Dog chews*
- *Chapter 3D: Raw pet food for direct sale or animal by-products to be fed to fur animals*
- *Chapter 3E: Flavoring innards for use in the manufacture of pet food*

- *Chapter 3F: Animal by-products for the manufacture of pet food*
- *Chapter 4B: Blood products not intended for human consumption that could be used as feed material*

Along with the rest of the U.S. agricultural industry, the feed and pet food industry suffers from the consequences of the EU's biotechnology regime. The EU's restrictions on the use of products of agricultural biotechnology lack support under the key provisions of the WTO SPS Agreement. Article 3 of the SPS Agreement centers around Members basing their SPS measures on international standards, guidelines and recommendations. Articles 5.1, 5.2 and 5.3 of the SPS Agreement stipulate the SPS measure be based on scientific risk assessment. Article 5.6 states adopted SPS measures are not to be more trade-restrictive than required to achieve their appropriate level of protection. There are no international standards or scientific risk assessments that justify the EU's restrictions on biotechnology in feed and pet food. In an effort to "protect life and health," per the WTO's SPS Agreement, the EU has effectively instituted SPS measures that are excessive and beyond protection, and are more effectively used to limit trade. Until this problem of using regulations to limit trade between the U.S. and the EU is solved, the U.S. feed and pet food industry will continue to be at a disadvantage in the EU market.

Conclusion

AFIA understands there are important considerations to weigh and issues to be addressed in the negotiation of such an agreement between the U.S. and the EU. This includes, but is not limited to, the EU's willingness to acknowledge publicly it accepts an FTA that is comprehensive in scope with regulatory components based on sound science. AFIA strongly believes negotiation of such an agreement must include public acknowledgement by each party without reservation that sanitary and phytosanitary (SPS) and technical barriers to trade – and ensuing certifications – must be held to the highest global standard and enforced through a strong, consistent program among all participants.

AFIA appreciates the opportunity to provide comment and supports the promotion of growth and job creation through cooperation with the EU. If you have any questions or AFIA can provide any other input or assistance, please don't hesitate to contact me.

Sincerely,

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