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February 3, 2012

L. Daniel Mullaney
 Assistant U.S. Trade Representative for Europe and the Middle East
 Office of the U.S. Trade Representative
 600 17th Street, N.W.
 Washington, D.C. 20508

Re: U.S.-EU High Level Working Group on Jobs and Growth

Dear Mr. Mullaney:

The American Soybean Association (ASA) is pleased to respond to your request for comments regarding the work of the U.S.-EU High Level Working Group on Jobs and Growth. ASA is the national trade association that represents our Nation’s 600,000 soybean farmers on national and international policy issues. Soybeans and soy products are our country’s leading agricultural export with an export value of over \$26 billion last year.

The European Union is an important market for exports of U.S. soybeans and, to a lesser extent, soybean oil and soybean meal, with U.S. soy exports to the EU in marketing year 2011 valued at over \$1.4 billion. However, as a result of discriminatory biotech labeling, renewable energy standards, and other policies, we have seen U.S. soy exports decline by an astonishing 70% in quantity and 44% in value since 1998, as illustrated in the table below. The decline in value is moderated only by the significant increase in the price of commodities that has occurred since 1998. Marketing year 1998 is chosen as the base year of comparison because this is the year before the EU instituted its discriminatory biotech traceability and labeling policies.

U.S. Soy Exports to EU-27, Marketing Year 1998 compared to Marketing Year 2011 – Value in Millions in U.S. dollars, Quantity in Metric Tons

	MY 1998 Value	MY 2011 Value	Percentage Change	MY 1998 Quantity	MY 2011 Quantity	Percentage Change
Soybeans	2,043,807	1,202,347	-41	7,673,119	2,374,228	-69
Soy Meal	489,904	216,434	-56	2,161,477	587,624	-73
Soy Oil	11,096	2,627	-76	19,169	1,118	-94
Total	2,544,808	1,421,409	-44	9,853,765	2,962,971	-70

Source: U.S. Census and Foreign Agricultural Service Data

One of the primary reasons for the decline in U.S. soybean exports to the EU over the past 14 years is the imposition of regulations and legislation by the EU and a number of its Member States that have restricted access to the EU market for soybeans and soybean products derived from agricultural biotechnology. These measures are described in greater detail below. In ASA's view, their combined impact has reduced U.S. access to and competitiveness in EU markets. Failure to reverse or modify these measures has also resulted in adoption of similar regulations and restrictions on imports of biotech commodities by other countries, causing additional losses in U.S. soybean and soybean product exports.

The current and past U.S. Administrations have repeatedly raised concerns and objections with EU officials regarding the incompatibility of the EU's biotech regulations and legislation with its WTO obligations. Notably, the U.S. filed a case with the World Trade Organization in 2003 challenging the EU's de facto moratorium on approving new biotech events. Despite prevailing in this case and a subsequent appeal, the U.S. has seen only marginal improvement in the transparency and timeliness of EU biotech approvals. In addition, 20 U.S. trade associations requested the last Administration in November 2003 and the Obama Administration in 2009 to file a WTO case against the EU's traceability and labeling regulation as a violation of its SPS and TBT obligations under the Uruguay Round Agreement. No action has been taken to date in response to these requests.

Regarding the feasibility of changing EU biotech policies, ASA and other private sector organizations, including companies that trade and process agricultural commodities, have worked relentlessly to modify or reverse the EU's regulations on approving, importing, and labeling biotech products. Despite these efforts, EU policymaking continues to be reactive, intended only to resolve inconsistencies between their restrictive biotech rules and their commercial needs. While EU farmers increasingly recognize that they are increasingly less able to compete for the growing world market for biotech commodities, they also appear resigned to the fact that the weight of public opinion remains strongly opposed to major policy change.

A second area of major concern to U.S. soybean producers is implementation of the EU's Renewable Energy Directive (RED). As described below, the RED inaccurately represents the greenhouse gas emissions reduction attributable to the use of biodiesel derived from U.S. soybeans, which would disqualify biodiesel from the EU's biofuel use mandate and tax benefits provided by EU Member States. The RED also would require that U.S. soybeans and other biodiesel feedstocks be certified to have been produced in compliance with an arbitrary set of sustainability standards. This requirement fails to take into account the compliance of U.S. crop production systems with national conservation laws that meet or exceed the RED standards, and would severely disadvantage the competitiveness of U.S. soybean exports to the EU.

ASA and other private sector organizations have formally requested that DG-Energy revise its greenhouse gas emissions savings value using U.S. data that would qualify U.S.-based biodiesel for EU biofuel benefits and use mandates. We have also worked closely with the U.S. Department of Agriculture and USTR to develop and implement a strategy under which DG-Energy has agreed to enter into bilateral negotiations on treating U.S. feedstock production on an aggregate basis for

purposes of complying with the sustainability requirements of the RED. Until such an agreement can be reached and implemented, we are presenting information relative to U.S. conservation laws and practices to industry and government officials in key Member States and requesting that imports from the U.S. continue to be accepted on an interim basis. As with the EU's biotech policies, raising the potential loss of the U.S. soybean market due to implementation of the RED is a critical priority for the U.S-EU High Level Working Group on Jobs and Growth.

EU Policies Restricting Importation and Use of U.S. Agricultural Commodities Derived from Biotechnology:

1. Delays in approvals of new biotech traits despite positive assessments by the European Food Safety Agency (EFSA).

The European Union approved importation of Roundup Ready soybeans and one BT corn in 1996, the same year these commodities were first commercialized in the United States. However, by 1998, a perceived public backlash against using biotech-derived crops in food products resulted in repeated rejections of new approvals by the EU Council of Ministers. This impasse created a widening gap between approvals in the U.S. and other biotech exporting and importing countries and approvals in the EU. In April 1998, the EU instituted a moratorium on approvals of new biotech events pending establishment of a new European Food Safety Agency (EFSA). However, even after EFSA began reviewing and approving applications, its findings were routinely ignored.

In 2003, as a result of the inability of U.S. corn exporters to access the EU market, the U.S. filed a WTO case against the EU's non-transparent and ineffectual approval system. A WTO panel ruled in favor of the U.S. in 2005, and these findings were upheld by an appeal procedure in 2006. The last Administration conducted lengthy negotiations with the EU on resolving its approvals process, and a number of applications for biotech events have been approved since then. However, in each case, the decision to approve has been made by the European Commission after the Council of Ministers has failed to achieve a qualified majority of votes by Member State governments. Of the total of 109 biotech crop events submitted to the EU authorization process, only 36 have been approved to date, while 73 remain within the EU authorization process.

2. Commercially infeasible requirements on biotech content in food products under EU Traceability and Labeling (T&L) Regulations.

The EU first implemented a law requiring special "GMO labeling" of food products containing greater than one percent in biotech-derived ingredients in 1999. In 2004, it adopted a regulation expanding the scope of this requirement to provide that foods containing more than 0.9 percent in biotech content are required to be labeled. Moreover, the regulation also required that importers be able to trace the origin of commodities used in food products to document that they were not derived from biotech crops.

Simultaneous with the above, numerous EU officials and many officials of its Member State governments have repeatedly made very public statements, starting in 1997 and continuing today,

asserting that biotech agricultural commodities are “unsafe,” “bad for the environment,” “not tested enough,” and other pejorative assertions. These public statements, combined with the above-described mandatory “GMO labeling,” were a very effective WTO-contravening barrier to usage of U.S.-origin biotech agricultural commodities such as soybean oil or soy protein food ingredients.

The effect of this “GMO labeling” regulation and simultaneous demagoguery by EU government officials has been to force European and U.S. food manufacturers to reformulate their products using non-biotech ingredients in order to avoid the required use of a pejorative label that would not be accepted by most EU consumers. This has resulted in the loss of an estimated 500,000 metric tons per year market for U.S. soybean oil in the EU (equivalent to 2.6 million metric of soybean imports per year) as food manufacturers have turned to non-biotech vegetable oils imported from other countries. The inability of soybean processors in Europe to sell the oil derived from U.S. soybeans into the food market because of discriminatory biotech labeling policies has caused them to reduce their imports of U.S. soybeans.

3. Prohibitions on importation of biotech commodities by certain EU Member States.

Following the initial approval of biotech events in 1996, various EU Member States have occasionally passed national laws prohibiting importation of commodities containing these events. These countries have included Austria, Greece, Poland, France, and Hungary. The U.S. has asked the EU to take steps to reverse these restrictions, which contravene its own decisions, but there have been no efforts to comply with EU policy on the part of these Member States.

4. Application of National Seed Catalog and Coexistence requirements to planting of biotech crops by Certain EU Member States.

Once a new biotech crop event has received formal planting approval in the European Union, some of the EU’s Member States have seed catalog laws which require any new crop variety to either yield X% more than existing crop varieties whose seed is sold in that country or require any new crop variety to produce (grain) possessing “high enough” quality for the seed of that new variety to be entered into the catalog of seed varieties allowed to be sold in that country. Several EU nations have used these catalog laws to prevent planting of biotech crops on their soil after the EU had issued a planting approval for that biotech crop. This will be an even bigger problem in the future, as some prospective biotech crops are not designed to increase yield, but will instead express a more-valuable component, such as a specialty vegetable oil.

Several of the EU’s Member States have coexistence laws which make any European farmer who plants some EU-approved-for-planting biotech crop seed presumptively liable for economic “damages” due to cross-pollination of a neighbor’s crop based on the presumption that those neighboring farmer will suffer some ill-defined adverse economic impact from the biotech crops. These laws contravene the EU’s own earlier planting approval decisions, but there have been no efforts to comply with EU policy on the part of these Member States.

The Renewable Energy Directive (RED):

1. Will impose inaccurate greenhouse gas emissions reduction requirements for biodiesel produced from U.S. soybean oil and other feedstocks.

The Renewable Energy Directive (RED) was adopted in 2009 and was to have been transposed into national law by Member States by the end of 2010. It established a minimum requirement of 35 percent for greenhouse gas emission savings from biofuels, effective in 2013, with the level increasing to 50 percent in 2017 and 60 percent in 2018. It also established default values for biofuels derived from individual feedstocks, with the value for soybean-based biodiesel set at 31 percent. The calculation of this default value was based on production, processing and transportation data for Brazil, which is the EU's largest soybean supplier.

Unless this determination is revised, it will disqualify biodiesel produced from U.S. soybean oil from eligibility for the EU biofuel use mandate and from EU Member State tax credits and other biofuel incentives. As a result, a \$1.5 billion market for U.S. soybean oil would be lost.

ASA and other private sector organizations have provided analysis prepared by Omni Tech International that uses U.S. production and transportation data to prove that the actual greenhouse gas emissions savings for U.S.-based biodiesel should be set at 58 percent at the absolute minimum, or well above the 31 percent value established under the RED and the 35 percent threshold for 2013. We submitted this data to DG-Energy in July 2011 with a formal request that they establish an actual value for U.S. soy biodiesel. We have not received a satisfactory response on this issue yet from either DG-Energy or the EU's Joint Research Commission.

2. Will require U.S. compliance with unwarranted, onerous, and commercially infeasible sustainability certification requirements.

The second requirement of the RED is that suppliers document that biofuel and biofuel feedstock imports comply with sustainable production criteria under an approved scheme. This system would require U.S. exporters to document feedstock production back to the farm level, including audits of individual farms to ensure compliance.

The U.S. Department of Agriculture and USTR have provided DG-Energy with documentation that current U.S. conservation laws equal or exceed the sustainability requirements of the RED. USDA has also provided statements to this effect to the private sector for use in discussions with importers and government officials in EU Member States. Efforts to maintain access to the EU market are ongoing.

The U.S. Government has also requested DG-Energy to enter into negotiations on a bilateral agreement that would accept U.S. conservation laws as the basis for an aggregate certification of compliance with RED sustainability requirements. While DG-Energy has agreed to begin talks, actual negotiations have not begun. In the interim, U.S. soybean exports to the EU have been dropping significantly.

We hope these comments are useful to the Working Group as it develops proposals for improving the trade relationship between the United States and the European Union. If you require any additional detail on these issues, please do not hesitate to contact us.

Sincerely yours,

A handwritten signature in black ink that reads "Steve Wellman". The signature is written in a cursive style with a long horizontal flourish at the end.

Steve Wellman
President