43-1615 North Routledge Park
London, Ontario
Canada

December 24, 2003

Re: Dockets 2002N-0276 & 2002N-0278

London Agricultural Commodities, Inc. is a large volume exporter and importer of grain and grain products to and from the U.S.A. We would like to file the following comments concerning the Bioterrorism Act that went into effect on December 12, 2003.

When the initial proposed Act was published we immediately felt that the facility registration process was going to be a burden to not only our industry but to others in food-related industries. Since that time, the registration process seems to be proceeding without too much interruption to trade, and we are pleased with the registration process thus far.

However, it would appear that there has been so much emphasis put on foreign facility registration that the registration process within the boundaries of the U.S.A. is lagging. While foreign facilities have had to register in order to carry on daily business, the F.D.A. has failed to impose penalties or warning letters to domestic facilities that have failed to comply with the Act. Facilities in the U.S.A. are just as much (if not more) of a security risk to food in the U.S.A. than food from foreign facilities. Food in the U.S.A. can be tampered with more easily and on a more widespread basis from within its own borders than from without. Essentially, by not imposing penalties or warning letters to facilities within the U.S.A., the F.D.A. is discriminating against foreign facilities. This is further emphasized by the fact that Prior Notice does not require the facility number of the U.S.A. destination facility. By not making the U.S.A. facility number a required piece of information on the Prior Notice, the F.D.A. is acknowledging that the domestic receiving facility may or may not be registered.

As we attempt to comply with Prior Notice, an issue that we have been experiencing not being able to obtain the facility number from some of the U.S.A. facilities that we deliver to. One reason for this is that some of these facilities have been led to believe by the F.D.A. that their facility number is a confidential number. On no less than four occasions have we been told by different U.S.A. facilities that they will not provide their facility number because F.D.A. has instructed the registrant of the facilities that the numbers are confidential and should not been given out. We investigated further into this by calling the F.D.A. help line and they confirmed the confidentiality of the facility number (it was made clear that we were not asking about the account number or pin number). We then had three other people from different companies call and ask the same question and they were told the same.

While the account number and pin number are obviously confidential, it is ludicrous that facilities are being told by F.D.A. that the facility number is confidential. In order for an exporter to the U.S.A. to be assured compliance with Prior Notice the exporter must be entitled to the facility number of the shipping and receiving facilities. This is essential for assurance that the facility the exporter is shipping from is registered with the F.D.A. and that receiving facility's name and address are correct. Without these assurances, the exporter risks having their shipment refused at the border and/or incurring penalties imposed by the F.D.A.

We feel there needs to be a clear definition of what the account number is, what the pin number is, and what the facility number is. The F.D.A. should issue a statement clarifying these points and eliminating the confidentiality of the facility number because until the F.D.A. does so, the exporter is not being treated fairly and will be at significant monetary and business continuity risk.

While acknowledging that the Facility Registration process is adequate, the Prior Notice system is seriously flawed. The F.D.A. knew that Prior Notice would be coming on line on December 12, 2003, and yet it is clear that they were completely unprepared due to the multiple failures of the Prior Notice System.

Many exporters have recognized the importance of using the F.D.A. Prior Notice System on line in order to manage the costs of the implementation of the Bioterrorism Act.
In Ontario, the U.S.A. points of entry are within 2 hours of many of the facilities that goods are being shipped from. The customs brokers are requiring documentation to be faxed to them a minimum of 3 hours before the truck arrives at the border and, in some cases, more than 3 hours is required. For exporters it quickly becomes uneconomical to do export business if the trucks we hire are waiting for 3 or more hours prior to their arrival at the border. Obviously, the carriers will demand increased freight rates to compensate them for the waiting time. Exporters are also experiencing increased rates from our customs brokers due to the withdrawal of line release (including the increased paperwork associated with that) and charging for each Prior Notice relating to each entry. For some shipments, one truckload may require upwards of 50 Prior Notices which significantly increases brokerage costs.

Beyond the waiting times that Prior Notice requires, waiting times due to traffic volume has increased at the bridge at Detroit because of the inability to move Prior Notice shipments through the Tunnel. These delays have made it is very difficult to deliver to U.S.A. facilities that do not have 24 hours of operation.

Exporters who are in compliance with F.D.A. Prior Notice should also be concerned about the implications of exporters who cause border crossing delays because they do not comply. Time delays at the border crossings will continue cost exporters and importers and may cause U.S.A. processing facilities to have unplanned downtime due to lack of raw material.

Prior Notice on rail shipments is also an issue. For exporters who do the Prior Notice for shipments we can provide the confirmation number to the customs broker in order to do the entry with customs. However, the railcar may or may not arrive at the border within the five day allowance for Prior Notice compliance. This is a situation that the exporter may not be aware of if a railcar goes astray, is bad ordered, is delayed due to weather, or delayed due to railroad operational problems. This problem is not necessarily limited to one car, but may be upwards of 50 cars. This potentially creates issues for the railroad but ultimately the exporter will be responsible for any charges issued by the railroad for delays the train may have due to the expiry of the proper Prior Notice.

Members of C-TPAT have entered into a Memorandum of Understanding with CBP and have submitted security profiles to Customs. When companies apply for this program, it is to help expedite shipments with the understanding that security is a priority. The F.D.A. needs to recognize that there are other programs in place that can enhance the Bioterrorism Act in a much more efficient way and in a way the doesn't cause the Act to become a barrier to trade.

The online Prior Notice System has not been functioning properly since Prior Notice came into effect. The System Status update page continually shows the system operating as "normal" when in fact the system is down. The waiting time for the helpline is also very long. The minimum time that the wait has been during any calls to talk to the helpline has been 15 minutes. The F.D.A. has recently declared the period between Dec 12 and March 2004 to be an "educational period". The F.D.A. obviously recognizes that their Agency was not ready for the implementation of the Act. The "educational period" has now added to the costs for exporters to the U.S.A. because in many cases, staff was hired to be ready for December 12, 2003. Clearly the F.D.A. underestimated the impact the Act would have on their own Agency. As an exporter who has prepared for the implementation of the Bioterrorism Act, we must now question the ability of the F.D.A. to accurately estimate the impact of the Act on the food industry. More importantly, they appear to have underestimated the impact of monitoring food shipments at the border.

As a good corporate citizen we feel that Canada should be exempt from the Prior Notice System. The F.D.A. is well aware that Canada has the appropriate agencies in place (including the Canadian Food Inspection Agency and the Canadian Grain Commission)

that provide assurance over the safety of Canadian foodstuffs. Prior Notice for all food destined for the U.S.A. from Canada is an unachievable goal unless there are major changes to the Act. Since September 11th the U.S.A. Ports of Entry from Ontario have already been stressed due to lines ups and lack of infrastructure. With the elimination of line-release and the implementation of Prior Notice any efforts to safely allow traffic to flow to and from the U.S. on a continued timely basis will never be achieved. Since September 11th both the Canadian and U.S.A. governments have implemented programs such as FAST to make border crossings quicker and safer. However, the Bioterrorism Act defeats the purpose of programs like FAST.

We believe that facility registration should continue to be required in order to export to the U.S.A. However, we feel that trade and the security of U.S.A. food would be better monitored through a program similar to the U.S.D.A. End Use Certificate Program for wheat. Under this program the importer of record must, within 10 business days, file an End Use Certificate which identifies the customs entry number, date, weight, end user, and the type of wheat entering the U.S.A.

Respectfully yours,

LONDON AGRICULTURAL COMMODITIES, INC.

Susan Bird
Logistics Coordinator