



June 12, 2017

Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20006

Submitted Electronically via Federal eRulemaking Portal (<http://www.regulations.gov>)

Re: Requests for Comments: Negotiating Objectives Regarding Modernization of North American Free Trade Agreement with Canada and Mexico; Docket ID No. USTR-2017-0006-0001

Dear Sir or Madam,

Founded in 1883, the American Seed Trade Association (ASTA), located in Alexandria, Virginia, is one of the oldest trade organizations in the United States. Its membership consists of over 700 companies involved in seed production and distribution, plant breeding, and related industries in North America. ASTA members research, develop, produce and distribute all varieties of seeds – including grasses, forages, flowers, vegetables, row crops, and cereals. ASTA member's seed products support agricultural producers of food products and farm commodities in the United States and around the world.

ASTA appreciates the opportunity to submit comments to the Office of the United States Trade Representative on the modernization of the North American Free Trade Agreement (NAFTA). Fundamentally, the NAFTA agreement is sound, with U.S. seed exports to Canada and Mexico increasing since the agreement was signed. Therefore, our relationship with these two countries is essential. However, the agreement was negotiated and signed over two decades ago. Since then there have been changes and advances in international trade and free trade agreements, leaving room for possible improvements to NAFTA.

The U.S. is the largest market for seed in the world and is also the largest seed exporter. Seed varieties can cross six international borders before they are commercialized. This movement is critical to bring the highest quality seed to producers. Without seed exports, U.S. companies would lose \$1.7 billion in sales annually. Mexico and Canada are our two largest export markets and vital trading partners. Of the \$1.7 billion in U.S. exports, NAFTA countries account for \$600 million in annual exports and make up 57% of U.S. corn-seed export sales.

Any negotiated changes to the NAFTA should do no harm. U.S. agriculture has prospered under this agreement and the U.S. seed industry cannot afford to have trade with Canadian and Mexican markets hindered.

The following three issue areas are of highest importance to the U.S. seed industry.

Sanitary and Phytosanitary Measures

As there has been a move to reduce global tariffs, non-tariff barriers (particularly SPS barriers) to trade are becoming increasingly common. Any renegotiation of the NAFTA should ensure that trade between

the Parties is not disrupted by non-tariff trade barriers. It is critical that the Parties' respective sanitary and phytosanitary (SPS) measures are transparent and based on scientific principles.

Each Party should follow the International Standard for Phytosanitary Measures for Seed (ISPM 38) agreed to and ratified in April 2017 by the International Plant Protection Convention, of which all three countries are a party. The ISPM provides guidance to National Plant Protection Offices (NPPOs) on the criteria for harmonizing import requirements and export/re-export procedures, taking into account the unique needs of commercial seed as well as seed used for research, breeding and multiplication. This standard aims to ensure that proper risk assessments are conducted and that the resulting regulations are warranted. A renegotiated NAFTA should provide a mechanism to facilitate the implementation of the Seed ISPM.

When phytosanitary standards are not uniform or based on the best possible science, it creates uncertainty in the marketplace and is a serious barrier to trade. Complying with constantly changing phytosanitary import regulations that are inconsistent across the NAFTA countries is challenging and costly for companies. Each truck of commodity grain seed is worth upward of \$50,000. If that truck is rejected at the U.S.-Mexico border because of a new or inconsistent regulation, it costs the company \$3,000 in return shipping charges. Rejected and delayed shipments cause quality reductions and dissatisfied customers, resulting in future losses. These issues can cost a medium-sized, grain seed company over a million dollars annually.

SPS measures should not discriminate between Parties where similar conditions are present. Moreover, the pest risk analysis process should be open to public comments from any Party and supporting documentation should be provided to interested persons in a timely fashion after the final regulation is approved, when requested by an exporting Party. ASTA strongly supports language urging Parties to share notices of final SPS measures with each other prior to enactment, and then publish them in an official journal or website immediately after the measure is adopted to ensure exporters are aware of and can comply with a Party's requirements. Many countries place additional phytosanitary requirements that are not on their official websites or in the APHIS Phytosanitary Export Database (PExD) on import permits. For example, Mexico does additional general testing on seed entering the country for pathogens that are not communicated either on import permits, official websites, or in PExD. ASTA regularly finds that additional declaration requirements which have not been established through a transparent risk assessment process are not technically justified and countries use this lack of transparency as a way to circumvent the risk assessment/pathway analysis requirements. These issues can be resolved by establishing a Committee on Sanitary and Phytosanitary Measures between negotiating Parties. This would help ensure that the least-restrictive to trade measures are adopted by each Party.

The Phytosanitary Chapter from TPP closely mirrors the desires of the seed industry to ensure the swift mitigation of these barriers. ASTA would like to see the SPS chapter (Chapter 7) from TPP included in any future trade agreements or renegotiations of existing trade agreements.

Intellectual Property

Every seed a seed company sells includes the genetic blueprint to make more seeds. Therefore, respect for intellectual property rights (IPR) and the ability to enforce one's IPR is critical are prerequisites for a seed company to conduct business. U.S. seed companies use a combination of IPR tools to effectively protect themselves, including Plant Variety Protection, trademarks, patents, and trade secrets.

Producing seed in Mexico is a key part of U.S. seed companies' business models because mild weather allows for yearlong seed production. This enables seed companies to meet winter demand. However, Mexico is not a signatory to the International Union for the Protection of New Varieties of Plants (UPOV)'s 1991 convention. UPOV sets guidelines for IPR for new varieties of plants. Mexico not updating their UPOV agreement leaves U.S. seed companies with a gap in protection. Ascending to UPOV 1991 has been a requirement found in all U.S. free trade agreements since NAFTA. The U.S. and Canada are both signatories, but Mexico has not updated its IP agreement since UPOV 1978. Any renegotiation of NAFTA should require Mexico to join UPOV 1991.

Communications between Parties and cooperation between IP systems ensures the IP of one Party is not hindered by the IP framework of another Party. Requiring Parties to offer electronic trademark systems will offer cohesion across borders.

ASTA strongly supports language that grants the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices. A stringent enforcement and penalty system is key to the protection of trade secrets.

Regulatory Cooperation

ASTA would like to emphasize the importance of regulatory cooperation among Canada, Mexico, and the U.S. in any renegotiations of NAFTA. Currently, NAFTA does not have language to encourage regulatory cooperation between the various Parties. However, there are several mechanisms used by NAFTA member countries – such as the Technical Working Group (TWG) on Pesticides and the Canada/US Regulatory Cooperation Council – that can serve as models for regulatory cooperation moving forward in future trade agreements. With major reductions in tariffs seen globally, non-tariff barriers to trade are increasingly common. These barriers can be in the form of non-harmonized regulations that keep U.S. goods out of another country.

As an example, seeds that are treated with crop protection products in the U.S. may face restrictions in Canada or Mexico based on differing product registrations. Regulatory cooperation on crop protection registration will benefit farmers in all countries by providing greater access the latest tools.

Seed innovation is based on an increased understanding of plant genomes, refinements in breeding techniques, and identification of new traits so that farmers have a wide array of high quality, high producing seed varieties available when making their planting choices. The continuation of such innovation is crucial for both the U.S. seed industry and global food security. A modernized NAFTA should contain a mechanism through which the U.S., Canada and Mexico can work toward consistent policies around agriculture innovation and, in particular, innovations in plant breeding such as genome editing methods. This mechanism should include benchmarking goals and provide flexibility to include new innovations as they develop.

For products of modern biotechnology, the regulatory agencies of the United States, Canada, and Mexico have demonstrated to each other that, while their systems for regulating such products may differ in some areas, they have consistently arrive at the same conclusions regarding the human and animal food safety of products that are evaluated by all three governments. The three countries should approach NAFTA as an opportunity streamline the process and costs of assessing food and feed safety by establishing a trilateral agreement for mutual recognition of food and feed safety assessments. Further, the three countries should establish a common approach to managing Low-Level Presence

(LLP), particularly as it relates to products authorized in a non-NAFTA country and a food and feed safety assessment has been completed.

ASTA appreciate the opportunity to engage with the administration on this critical topic to our industry. We look forward to working together throughout the process and serving as a resource for the negotiators as we move forward toward a modernization of the NAFTA.

Sincerely,

A handwritten signature in black ink, appearing to read "A.W. LaVigne".

Andrew W. LaVigne
President & CEO