

September 16, 2022

Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C.

**Docket Number USTR-2022-0008** Request for Comments on the U.S.-Kenya Strategic Trade and Investment Partnership (STIP)

To Whom it May Concern:

The American Seed Trade Association (ASTA) welcomes the opportunity to provide comments on USTR's the U.S.-Kenya Strategic Trade and Investment Partnership (STIP). The international movement of seed is critical to the growth and prosperity of our member companies. Our comments are focused on the following issues: agriculture; environment; transparency and good regulatory practices; standards collaboration; customs and trade facilitation; and other practices that undermine fair market opportunities. ASTA's recommendations suggest methods to ease regulatory trade barriers related to import policies, technical barriers, phytosanitary measures, biotechnology and new plant breeding technologies, and intellectual property rights protections.

Founded in 1883, ASTA is one of the oldest trade organizations in the U.S. Its membership consists of nearly 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 membership includes approximately 85% of all private seed companies operating in the U.S. Ninety-five percent of ASTA's active members are small businesses as defined by the Small Business Administration. ASTA values and promotes diversity of membership, in terms of company size, products and geographic area served. Seed products from ASTA members support agricultural producers of food products and farm commodities in the U.S. and globally.

**The U.S. Seed Industry in a Global Context**

The U.S. seed industry is highly specialized and diversified with hundreds of varieties per crop species. Our member companies produce everything from grass and turf seed to row crop seed, to vegetable and flower seed, to true potato seed. The U.S. seed market was valued at \$15.39 billion in 2022, which is about 25% of the global seed market (Mordor Intelligence: Global Seed Market (2022-2027)). In 2021, U.S. planting seed exports exceeded \$1.6 billion to 144 countries (USDA FAS GATS). The industry enjoys the global reputation of providing seed with the highest quality assurance standards and the most innovative technologies and genetic resources. The biggest constraint for ASTA member companies internationally is when a foreign market's regulations are not transparent, science-based or enforceable. This creates an uncertain business environment and leaves U.S. companies vulnerable to issues with seed certification and variety registration, phytosanitary requirements, intellectual property rights protection, and uneven treatment of biotech seeds or products of new breeding technologies. Strong and consistently applied regulatory frameworks, enforced through free trade agreements and other bilateral and multilateral fora, are critical for the international movement of American seed products.

ASTA members invest more than \$2 billion annually in research and development. Seeds are a high value and specialized crop. American seed companies produce high quality seeds by employing-strict quality management practices. This process begins with advanced research and breeding programs and production practices ranging from large-scale to hand-pollinated, and concludes with conditioning, treatment and testing of seed before final sale. The process from research to final sale takes place in multiple countries as companies take advantage of different regions' climate and available workforce. As a result, seed regularly moves between as many as six countries before it is planted by a farmer. Therefore, the US seed industry is committed to support the development of national and regional seed systems, professional seed industries and capacities.

Following are the top priorities of the U.S. seed industry for consideration in the Proposed U.S.- Kenya Strategic Trade and Investment Partnership:

**Ensure Transparent and Science-Based Sanitary and Phytosanitary (SPS) Measures:** It is critical that the respective sanitary and phytosanitary (SPS) measures of each country ("Party") are transparent and based on scientific principles. The SPS chapter of the U.S.-Mexico-Canada trade agreement provides excellent standards for science-based, predictable, and transparent measures that are important for inclusion in future agreements.

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. 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. Trade agreements should provide a mechanism to facilitate the implementation of the Seed ISPM.

Seed health and testing remains a high priority for the U.S. seed industry globally. As plant diseases and viruses become more complex, the use of consistent and transparent testing methodologies and interpretation of results between National Plant Protection Organizations is critical. Use of third-party laboratory facilities can help reduce backlogs of testing among national laboratories and standardize testing protocols. In 2021, the International Plant Protection Convention (IPPC) released "Requirements for national plant protection organizations if authorizing entities to perform phytosanitary actions" (ISPM 45). We support adoption of ISPM 45 across the Parties.

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 via an electronic platform such as the World Trade Organization website, 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 on import permits that are not on their official websites or in the APHIS Phytosanitary Export Database (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.

**Minimize Protectionist Policies that Impact U.S. Seed Exports:** The U.S.-Kenya STIP should prevent protectionist policy with regards to seed production and imports. Rather, policies should incentivize foreign investment and capacity building. In many cases, non-scientific regulatory practices will function as a non-tariff barrier for seed importation due to the overly burdensome or impossible testing requirements. We encourage countries to adopt international seed standards such as those from the International Plant Protection Convention or International Union for the Protection of New Varieties of Plants to reduce non-scientifically justified practices that do not align with U.S. standards.

**Uphold Strong Intellectual Property Rights (IPR) Protections:** The International Union for the Protection of New Plant Varieties (UPOV) sets guidelines for IPR for new varieties of plants. ASTA commends Kenya for acceding to the 1991 Act of the UPOV Convention, which has been a requirement found in all U.S. free trade agreements since NAFTA. The Act ensures plant breeders have access to globally harmonized protection for their new varieties. This provides the best protection and assurance for U.S. and Kenyan plant breeders conducting business internationally, while still affording the farmer's exemption.

Research and development investments in plant breeding are generally long-term, require significant amounts of capital resources and involve substantial risks. In order to attract the size and scope of investment necessary to develop improved products, either varietal, hybrid, or from the use of new innovative breeding methods, seed companies and investors must have the opportunity to earn competitive returns on their original investment.

Communication between Parties and cooperation between IP systems ensures the IP framework of one Party is not hindered by the IP framework of another Party. Requiring Parties to offer searchable electronic trademark databases and participation in online systems such as the UPOV PRISMA system for plant variety protection data exchange will offer cohesion across borders.

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

**Enabling policies for Plant Breeding Innovation and Agriculture Biotechnology:** the farmers success is dependent on having a wide array of high quality, high producing seed varieties available when making their planting choices. Improving seed varieties is based on an increased understanding of plant genomes, refinements in plant breeding methods, and identification of improved plant characteristics. The continuation of innovation in improving seed varieties is crucial for both the U.S. seed industry and global food security. Agreements should include provisions that encourage consistent, science-based policies

around agricultural innovation (in particular, innovations in plant breeding and agriculture biotechnology), benchmarking goals and flexibility to accommodate new innovations as they develop.

We encourage a regulatory policy approach for products of new breeding methods, such as genome editing, that is risk proportionate, and science based. These innovative breeding methods can result in products that are the same or similar to products developed using older breeding tools. Kenya is making positive progress in adopting enabling regulatory approaches to plant breeding innovation such as genome editing. An agricultural biotechnology section similar to that under the USMCA would strengthen bilateral coordination and cooperation. Further, the U.S. – Kenya STIP can be a mechanism to reinvigorate the implementation of the Common Market for Eastern and Southern Africa (COMESA) Regional Policy on Biotechnology and Biosafety. ASTA strongly supports language that seeks to facilitate smooth trade of products of biotechnology and to align on regulatory principles with regards to products of plant breeding innovation such as genome editing. Further, ASTA supports the inclusion of a mechanism to avoid trade disruptions, to engage collaboratively on regulatory and trade policy development.

**Increase Regulatory Cooperation:** An objective of many free trade agreements has been the establishment of provisions to foster an open, fair and predictable regulatory environment for U.S. businesses by promoting the use of widely accepted good regulatory practices. This includes core principles such as transparency, impartiality, and due process, as well as coordination across governments to ensure a coherent regulatory approach. A chapter on regulatory cooperation should include the following elements:

- Science-based and risk-proportionate approach
- Transparent and predictable process
- Mutual recognition of standards
- Avoidance of duplication
- Clear and concise labeling practices for commercial seed consignments
- Inclusion of bilateral regulatory achievements

Regulatory cooperation affects the seed industry in several different areas, including treated seed, emerging technologies and innovations. Seeds that are treated with crop protection products in the U.S. may face restrictions in another country based on differing product registrations. Regulatory cooperation on crop protection registration will benefit farmers in all countries by providing greater access to the most effective, latest tools.

**Enhance Market Access:** Seeds of a kind for sowing are found in chapters 07, 10, and 12 of the Harmonized Tariff Schedule. American seed companies benefit from reduced or eliminated tariffs on seed imported to or exported from the U.S.

In closing, ASTA appreciates the opportunity to work closely with USTR on matters of importance to the global movement of seed. As an influential member of the East Africa Community and COMESA, Kenya can play a key role in towards regional policy alignment and trade facilitation. We look forward to engaging further as the key negotiating objectives for agriculture and trade in the continue to develop.



Sincerely,

A handwritten signature in black ink that reads "A. W. LaVigne". The signature is written in a cursive style with a large, prominent "A" and "L".

Andrew W. LaVigne  
President and CEO  
American Seed Trade Association