



September 6, 2018

The Honorable Robert Lighthizer
U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508
Docket: USTR-2017-0019-0001

Re: USTR-2018-0026 - Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Dear Ambassador Lighthizer,

On behalf of the American Seed Trade Association (ASTA), thank you for advocating for stronger intellectual property (IP) protection and enforcement globally. Sound, enforceable IP policies are the foundation of the seed industry and enable companies to reinvest returns to create new, innovative tools for America's farmers, land owners, gardeners and others. ASTA continues to push for strong, transparent IP regulations with all of our trading partners.

We appreciate the opportunity to provide our feedback on proposed supplemental action under Section 301(b) of the Trade Act of 1974. **Given the global implications of these proposed tariffs on the U.S. domestic seed industry, ASTA requests the exemption of all HTS codes pertaining to seeds used for sowing from the proposed tariff list.**

Founded in 1883, ASTA 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 member companies research, develop, produce and distribute all varieties of seeds – including grasses, forages, flowers, vegetables, row crops, and cereals. ASTA members' seed products support agricultural producers of food and farm commodities in the U.S. and around the world. Intellectual property rights protection is critical for the U.S. industry to operate and to thrive.

The United States is the largest market for seed in the world, and is also the largest global seed exporter. China is the second largest market for planting seeds after the U.S. According to USDA-FAS, the Chinese seed market was \$17.2 billion in 2016¹. ASTA has worked with the Chinese Ministry of Agriculture (MOA) and the China National Seed Association (CNSA) for over a decade, and signed a Memorandum of Understanding with CNSA with the ultimate goal of stronger intellectual property protection for plant breeders in China. Strong IP protection is critical for U.S. companies to sell seeds into any market, and ASTA is thankful for the U.S. government's complimentary efforts. It has taken more than ten years to build a working relationship with the Chinese government and seed industry. The time invested by USDA

¹ Kim, G. (2017, 1 17). *China's Planting Seeds Market Continues to Grow*. Beijing: USDA Foreign Agricultural Service.

and the U.S. seed industry has laid the groundwork to encourage China to modernize their seed and intellectual property protection laws. If planting seeds are included in the final tariff list under Section 301, this will undo a decade's worth of relationship building and will make China much less motivated to work with U.S. seed companies to open additional markets.

Furthermore, the imposition of tariffs under Section 301 on seed imported from China would cause a massive disruption in the global movement of seed. Seed varieties can cross six international borders before they are sold commercially. This movement is necessary in order to bring the highest quality seed to producers. Seed movement throughout the Asia-Pacific market is critical for the commercialization of new varieties and future seed export growth. Because of the intricate nature of producing and multiplying seed for planting, many American seed companies send seed varieties to China to be multiplied, which is then returned to the U.S. for conditioning and sale to American farmers, gardeners, land owners and others. Ultimately, the majority of the proposed Section 301 tariffs will be levied on seeds owned by small and medium U.S.-based companies, not Chinese-owned corporations. These seeds will then be sold to Americans for planting.

There are two overarching reasons U.S. companies produce seed in China:

- 1. Scale of Production:** U.S. seed companies' contract with Chinese growers to produce seed on a small scale that is challenging for U.S. growers. The production is exclusively performed by growers who are farming very small production areas and producing seed that require intensely intricate pollination practices. While our companies would prefer to do this work domestically, it is next to impossible to produce the volumes required on acres this small.

Additionally, the scale is small enough that mechanical harvesting is not an option. The seeds produced at this scale are varieties that are brought back to the U.S. to be conditioned and sold to American growers. If these products were subject to a 10- 25 percent tariff, that cost would certainly be passed on to the American farmers, gardeners, retailers and landscapers.

An example is flower seeds. The U.S. imports five million dollars' worth of flower seed (HTS 1209.30.00) from China. The breeder seed from the flower seed companies is sent to China for multiplication because each flower seed variety that is grown needs only a few thousand square feet for production. Small scale farmers at this level do not exist in the United States; therefore, an alternative option is required. The import of the multiplied seed are brought back to the U.S., conditioned and sold as packet seeds in box stores, hardware stores, grocery stores, and garden centers throughout the U.S. A 10% increase will directly impact American consumers across the country and have a severe impact on U.S. seed companies. The size of this HTS code will result in an insignificant impact on China, while the widespread distribution of the flower seeds domestically will have a major impact on Americans.

- 2. Labor Intensity:** The majority of the seed produced in China by U.S. companies is hand planted, hand pollinated, hand hoed, and hand harvested. Imposing tariffs on U.S. seed imported from China will not incentivize companies to source the labor domestically. Given the challenges of harvesting and cultivating seed by hand, U.S. seed companies will continue to do this work in other countries with lower field and labor costs than can be found in the U.S.

first-the seed®

1701 Duke Street • Suite 275 • Alexandria, VA 22314 • Phone: (703) 837-8140 • Fax: (703) 837-9365

U.S. vegetable seed companies produce many hybrid varieties such as peppers (HTS 1209.91.60) and tomatoes in China. The companies producing these seeds are small to mid-sized companies who contract labor in China, as these varieties require hand pollination. The seeds are then brought back to the U.S., where American workers condition and package the seeds to prepare them for their final destination. Imposing tariffs on the seeds imported back to the U.S. from China could force vegetable seed companies to move their current U.S.-based manufacturing and global distribution to alternative countries. This would result in a loss of domestic businesses and jobs in the U.S.

There is strong concern within the seed industry that if these tariffs are levied on U.S. seed imports from China, the Chinese government will retaliate and levy its own tariffs on American seeds being exported to China. The U.S. is the largest seed supplier to China, which imported 55,148 tons of planting seeds valued at \$297 million in MY 2015/16. The majority of these seed imports are grass and forage seed. The U.S. is the largest grass seed exporter to China, accounting for about 77 percent of China's total grass seed imports in MY 2016/17. If retaliatory tariffs are levied against U.S. goods, the U.S. grass seed industry would suffer massive market losses, particularly in California, Florida, Oregon, and Texas.

The seed industry is especially concerned about the economic impact that the administration's proposed tariffs would have on small and medium-sized American seed companies. For 2019, small and medium sized seed companies estimate tariff related losses could range from \$80,000 to \$2,000,000 per company, depending on the company's footprint in China. American seed companies will have no choice but to pass that additional cost burden onto U.S. consumers. There is no doubt that for the impacted seeds listed below, American farmers would pay significantly higher prices.

In conclusion, ASTA is grateful for the work done by the Office of the U.S. Trade Representative for addressing intellectual property protections in China. However, ASTA strongly recommends the exclusion of the following HTS codes from the proposed tariff list:

- **0713.10.10** - Seeds of peas of a kind used for sowing
- **0713.20.10** - Seeds of chickpeas (garbanzos) of a kind used for sowing
- **0713.31.10** - Seeds of beans of a kind used for sowing
- **0713.32.10** - Seeds of small red (adzuki) beans of a kind used for sowing
- **0713.33.10** - Seeds of kidney beans, including white pea beans of a kind used for sowing
- **0713.39.11** - Seeds of beans nesoi, of a kind used for sowing
- **0713.40.10** - Lentil seeds of a kind used for sowing
- **0713.50.10** - Seeds of broad beans and horse beans of a kind used for sowing
- **0713.90.11** - Seeds of leguminous vegetables nesoi, of a kind used for sowing
- **1209.10.00** - Sugar beet seeds of a kind used for sowing
- **1209.21.00** - Alfalfa (lucerne) seed of a kind used for sowing
- **1209.25.00** - Rye grass seeds of a kind used for sowing
- **1209.29.10** - Beet seed, other than sugar beet seed, of a kind used for sowing
- **1209.29.91** - Seeds of forage plants of a kind used for sowing, not elsewhere specified or included

first-the seed®

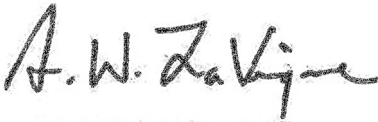
1701 Duke Street • Suite 275 • Alexandria, VA 22314 • Phone: (703) 837-8140 • Fax: (703) 837-9365

- **1209.30.00** - Seeds of herbaceous plants cultivated principally for their flowers
- **1209.91.10** - Cauliflower seeds of a kind used for sowing
- **1209.91.20** - Celery seeds of a kind used for sowing
- **1209.91.40** - Onion seeds of a kind used for sowing
- **1209.91.50** - Parsley seeds of a kind used for sowing
- **1209.91.60** - Pepper seeds of a kind used for sowing
- **1209.91.80** - Vegetable seeds, nesoi, of a kind used for sowing
- **1209.99.20** - Tree and shrub seeds of a kind used for sowing
- **1209.99.41** - Seeds, fruits and spores, of a kind used for sowing, nesoi

The inclusion of these HTS codes will adversely affect small and medium U.S. seed companies who multiply their seed in China. The 10-25 percent tariff on these seed imports will ultimately be passed on to the final user – American farmers and consumers.

The American Seed Trade Association stands ready and willing to work with the U.S. Trade Representative to provide any additional information on the global seed industry that might be useful. Please let us know if you have any additional questions regarding these comments and this request.

Sincerely,



Andrew W. LaVigne
President & CEO

first-the seed®

1701 Duke Street • Suite 275 • Alexandria, VA 22314 • Phone: (703) 837-8140 • Fax: (703) 837-9365