



June 12, 2017

The Honorable Robert Lighthizer
U.S. Trade Representative
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: Docket No. USTR-2017-0006- Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico

Dear Ambassador Lighthizer:

The National Association of State Departments of Agriculture (NASDA) appreciates the opportunity to provide the following comments regarding modernization of the North American Free Trade Agreement with Canada and Mexico.

I. About NASDA

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease, and fostering the economic vitality of our rural communities. NASDA members are also responsible for promoting their states' products in international markets, as well as managing regulatory and certification programs that facilitate agriculture and food exports. Because of this, and because of the important role exports play in ensuring a prosperous agriculture sector, promoting exports and increasing international trade is a top priority for NASDA.

In addition, NASDA members lead significant engagement on trade-related matters with the Canadian provincial ministers of agriculture and the Mexican state secretaries of agriculture via the Tri-National Agricultural Accord (Accord). The Tri-National Agricultural Accord represents a longstanding commitment among the senior state and provincial agricultural officials of North America to work together collaboratively on agricultural trade and development issues.

The current Accord arrangement is rooted in a U.S./Canada exchange dating from 1984. The U.S./Canada Accord Working Group also functions as a formal Province/State Advisory Committee (PSAG) to the federal U.S./Canada Consultative Committee on Agriculture (CCA). The PSAG was officially formed in 1999 and established to raise bilateral agricultural trade issues as well as enhance cooperation and coordination

on areas of concern. The Accord (and on U.S./Canada bilateral issues, the PSAG) has served as an effective model for addressing North American trade and development issues.

II. General Comments

North American agriculture and food sectors have made significant gains under NAFTA and we look forward to collaborating with our colleagues in both Mexico and Canada to continue to foster a more integrated and prosperous North American agricultural economy.

Food and agriculture trade under NAFTA is one of trade's biggest success stories. Since the agreement was enacted, U.S. food and agricultural exports to Canada and Mexico have more than quadrupled—growing from \$11 billion in 1993 to over \$43 billion in 2016. NAFTA has played a central role in boosting incomes for millions of U.S. farmers, ranchers, and allied manufacturers—and continues to provide important and profitable markets including for our nation's rural agriculture-based communities.

NAFTA has greatly expanded U.S. food and agricultural trade within North America during the past two decades, with ripple effects that have benefitted the U.S. economy and created jobs. As the Administration develops its objectives for modernizing the NAFTA agreement, it is imperative we preserve—and build upon—the gains agriculture has made under the agreement as we look for ways to modernize it. A modernization of the NAFTA should, first, preserve current market access, including all tariff and duty preferences. A robust trilateral North American trading bloc is imperative to a thriving agricultural economy and we recognize improvements to the agreement can be made. NASDA welcomes the opportunity to identify ways to modernize NAFTA while preserving the core benefits of the agreement. To that end, NASDA supports the following objectives:

- Improved market access through resolution of any outstanding tariff, quota or non-tariff barriers;
- Improved Sanitary and Phyto-sanitary (SPS) provisions, including a Rapid Response Mechanism;
- Strengthened Technical Barriers to Trade requirements;
- Enhanced intellectual property rights;
- Inclusion of biotechnology provisions to ensure transparency and cooperation among parties.

III. Importance of Trade to U.S. Agriculture

In 2015, U.S. food, agriculture, and related industries contributed \$992 billion to U.S. gross domestic product (GDP), a 5.5-percent share. The industry is also a leading employer, supporting 21 million full- and part-time jobs at 11.1 percent of the U.S. workforce.¹ This contribution to the U.S. economy is supported and enhanced by the access that U.S. companies have to the global marketplace through NAFTA and other trade agreements and trade rules.

Thanks in large part to implementation of new trade agreements and the industry's efficient and innovative nature, U.S. food and agricultural exports have produced a trade surplus for nearly fifty years.

¹ United States Department of Agriculture, Ag and Food Sectors and the Economy, accessed at: <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy.aspx>.

Consistent growth over this period has resulted in over \$152 billion worth of exports and, in 2016, created \$193 billion in additional U.S. economic activity. These growing exports have increasingly become a vital share and important source of value to U.S. production.

A key part of this success comes from collaboration with our closest neighbors. Together Canada, Mexico and the United States make up one of the most competitive and successful economic regions in the world. The success of this trading relationship has come largely from economic cooperation, integration, and policy alignment.

The North American market has been vital for the prosperity of U.S. farmers, ranchers and food processors. Since NAFTA was implemented in 1994, U.S. food and agricultural exports to Canada and Mexico have quadrupled. In 2015 the U.S. enjoyed a 65% market share for agriculture products in the NAFTA region, and in 2016 the U.S. exported nearly \$43 billion worth of food and agriculture goods to its NAFTA partners.

With a few exceptions, intraregional food and agricultural trade is completely free of tariff and quota restrictions thanks to provisions in NAFTA. Rising trade in a wider range of agricultural products, substantial levels of cross-border investment, and important changes in consumption and production are proof that the U.S., Canadian and Mexican food and agricultural sectors are far more integrated and productive thanks to NAFTA.

IV. Opportunities for NAFTA Modernization

The U.S. food and agriculture sector relies on its close commercial ties with Mexico and Canada, to support millions of U.S. jobs and enhance the U.S. trade position. NAFTA has played a central role in boosting incomes for millions of U.S. farmers, ranchers, processors, agri-businesses and retailers – and continues to provide important and profitable markets for our nation’s rural agriculture and food processor-based communities. However, we also believe that NAFTA can be modernized to the standards that enhance our market access and promote transparency and efficient trade.

NASDA highlights the following matters relevant to the modernization of the NAFTA that preserve and expand U.S. competitiveness.

Preserve and Enhance Mechanisms for State-Provincial Consultation

The Accord and especially the PSAG have served as important opportunities to address North American trade and development-related issues. Because of the regulatory role state and provincial agriculture officials have related to matters important to international trade (i.e. animal health, plant pest and disease, food safety, etc.), their expertise and perspectives are important for facilitating trade and addressing challenges that may arise. The reinvigorated role of the PSAG with respect to the U.S./Canada CCA has been an especially productive forum for trade-related challenges between the two countries. As the administration develops its objectives for modernizing the agreement, we encourage this important mechanism to be preserved. In addition, we support the creation of a similar mechanism--via the Accord’s U.S./Mexico bilateral working group--for consultation with the U.S./Mexico CCA.

National Treatment and Market Access for Goods (Chapter 3)

We support maintaining all existing commitments in a “do no harm” manner and expanding upon current market access, tariff concessions and other provisions that enhance U.S. market access and market share in both the Canadian and Mexican markets, and that promote economic integration and support farm incomes. In addition, we support provisions, including the following, to modernize the NAFTA:

Proposed Improvement

Specific areas for improved market access include, but are not limited to:

- **Dairy**: With respect to market access to Canada, eliminating the remaining tariffs and tariff rate quotas (TRQs), removing Special Milk Class 6 and 7 and addressing non-tariff barriers for U.S. milk producers.
- **Wine**: Ensuring U.S. wine producers have equal access to Canadian groceries and distribution; prohibiting markup exemptions; removing NAFTA provisions that allow Ontario and British Columbia to sell only wines from that province; remove NAFTA provisions that allow Québec to require that wine sold in grocery stores must be bottled in Québec.

Customs Procedures (Chapter 5)

The Customs Procedures Chapter ensures goods traded among the NAFTA countries will move quickly across borders, governed by facilitative and transparent procedures that require customs authorities to treat goods fairly and reduce opportunities for conflicts of interest in customs administration. We propose a number of provisions that will enhance customs rules and procedures.

Proposed Improvement

- Simplify record keeping and auditing procedures;
- Adopt TRQ Administration standards seen in the Trans-Pacific Partnership, including provisions to administer TRQs on a first come, first served basis where supported by specific industry sectors, to ensure that TRQs do not count toward the WTO limit;
- For reconstructed and new Customs facilities at land borders, consolidate facilities with Mexico and Canada in order to reduce costs of construction and staffing, and achieve greater flow capacity;
- Develop a single NAFTA customs document for all three nations; and,
- Strive for mutual recognition of quality inspections.

Agriculture and Sanitary and Phytosanitary (SPS) Measures (Chapter 7)

NAFTA was one of the first global free trade agreements that established a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary (SPS) measures. Since implementation of the NAFTA, SPS chapters are standard in U.S. trade negotiations.

Protectionist sanitary and phytosanitary measures that lack a scientific basis and are not based on a risk assessment continue to unjustifiably restrict access for U.S. food and agricultural exports in numerous foreign markets. While the WTO Sanitary and Phytosanitary Agreement established important science-based principles to challenge such restrictions, enhanced provisions are needed to ensure that SPS issues are resolved in a timely manner and do not result in significant unnecessary delays to our sector's perishable exports.

Proposed Improvement

NASDA supports modernizing the SPS chapter, consistent with, but improving on the Trans-Pacific Partnership (TPP) text, to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner, while at the same time preserving the ability of NAFTA partner regulatory agencies to take necessary steps to ensure food safety, and protect plant and animal health.

Adoption of expanded WTO SPS-Plus standards will include:

- Creation of a rapid response mechanism, including tighter standards and deadlines for adverse import checks (TPP SPS Chapter, Article 7.11);
- Adoption of cooperative technical consultations (CTC) and increased reporting, transparency and record keeping among CTC members;
- Creation of a more robust single inquiry point standard for SPS contacts (including increased transparency of SPS requirements, data bases for SPS regulations etc.);
- High standards for risk assessment and risk management, including language that elaborates on current WTO provisions (TPP SPS Chapter, Article 7.9);
- Adopt trade facilitative residue levels and adventitious presence mechanisms;
- Include low level tolerance principles; and,
- Enhanced enforcement mechanisms for unjustified SPS barriers, including a potential compensation, three strikes policy or retroactive damages to help enforce and hold trading partners accountable to persistent and unscientific SPS measures.

Standards-Related Measures (Chapter 9)

NASDA recognizes that non-tariff and technical barriers to trade are increasingly used to manage trade flows, limit market access for U.S. exporters and serve as protectionist barriers. NASDA seeks technical standards that are fair, transparent, and promote recognition and convergence of technical standards between NAFTA countries, as well as a new Technical Barriers to Trade chapter as laid out in the New Chapters section below.

Investment/Review and Dispute Settlement in AD/CVD Matter/Institutional Arrangements and Dispute Settlement Procedures/ (Chapters 11, 19 & 20)

The core protections and enforcement tools that U.S. trade and investment agreements provide American companies doing business overseas are critical to ensure that U.S. food and agricultural manufacturers

can access foreign markets and are not harmed by the unfair actions of foreign governments. Investment and dispute settlement measures provide additional certainty and insurance for U.S. companies investing and expanding in foreign markets.

Inclusion of such investment provisions in trade agreements creates a level playing field for American companies by providing their overseas investments the same basic protections that their foreign competitors already enjoy in the United States as a matter of domestic law: non-discriminatory and fair and equitable treatment, and the right to receive compensation in the event of expropriation.

Further, we support preserving Chapters 19 and 20. Without rapid and legally binding dispute resolution, market access for US agricultural exporters to Canada and Mexico will be illusory, as tariffs and non-tariff barriers can be raised arbitrarily—as they have been in the past for US exports of beef, pork, chicken, corn syrup, apples, sugar, beer, rice and other U.S. exports—without effective recourse to local courts.

Proposed Improvement

Create an insurance policy against anti-American trade policy attacks on U.S. agriculture by including investor-state dispute settlement (ISDS) provisions that:

- Are modeled on the TPP's Chapter 9 ISDS mechanism (TPP Investment Chapter, Article 9.8);
- Improve the speed of the current ISDS process;
- Reduce costs of the current ISDS mechanism; and,
- Provide a mechanism for resolving inconsistencies among panels.

Intellectual Property (Chapter 17)

Build upon the TPP language as a means to address and prevent the misuse of geographical indicators to erect de facto non-tariff barriers to common agriculture products.

New Chapters

In addition to current chapters outlined in NAFTA, NASDA sees opportunities to expand upon NAFTA and raise regional standards by including the following new chapters in a renegotiated text.

Regulatory Cooperation (NEW Chapter)

An objective of several past and proposed FTAs has been the establishment of provisions to foster an open, fair predictable regulatory environment for U.S. businesses by promoting the use of widely-accepted good regulatory practices including core principles such as science-based risk assessment, transparency; impartiality and due process as well as coordination across governments to ensure a coherent regulatory approach. A modernized NAFTA should seek to achieve these standards by considering regulatory cooperation principles that:

- Draw from regulatory coherence provisions in TPP, Asia-Pacific Economic Cooperation (APEC), U.S-Korea Free Trade Agreement (KORUS) and initial Transatlantic and Trade Investment Partnership (TTIP) text to build a model good regulatory practices chapter;

- Promote regulatory cooperation outcomes, with sector specific regulatory outcomes modeled on the Technical Barriers to Trade KORUS and TPP Annexes;
- Seek mutual recognition agreements for safety determinations for production-enhancing technologies such as veterinary medicines and vaccines and crop protection products;
- Find a way to facilitate trade in specific sectors and on specific issues; and
- Make the Canada-U.S. Regulatory Cooperation Council (RCC), U.S.-Mexico High-Level Regulatory Cooperation Council (HLRCC), and trilateral regulatory cooperation bodies permanent.

In addition, the Regulatory Cooperation Chapter should promote standards that embrace:

- Public Notice and Comment: Rule-making should be informed by robust public notice and comment procedures at all stages of rulemaking
- Science-Based Approach: A science-based approach should always serve as the basis for regulations that address risk assessment including both hazard and exposure analysis. International standards and scientific data should be considered when developing new regulations.
- Post Market Surveillance: Authorities shall use Post Market Surveillance rather than registration systems. Manufacturers should have primary responsibility to assure the safety products. Simple notification to authorities can be useful, but in-market supervision and enforcement is the most effective system of regulation.
- Transparency: Approval processes should be transparent and equitable, with mutual recognition of other authoritative bodies' risk assessments and/or demonstrated safety based on history of use.
- Mutual Recognition of Standards: Harmonization and/or mutual recognition/reliance of standards and regulations should provide the same level of protection. In the areas of food and agriculture, harmonization of food safety systems, organic standards and pesticide residue tolerances would provide greater assurances among buyers and consumers, and reduce supply chain costs.
- Avoidance of Duplication: Regulations should avoid duplicative testing or approval requirements for products or ingredients that have already been evaluated based on sound science. Acceptance of a manufacturer's or supplier's Declaration of Conformity will increase efficiency and reduce costs and strains on industry and government resources.
- Clear and Concise Labeling: Labeling regulations should be clear, concise and allow consumers to receive meaningful information about the safe use of products, while avoiding unnecessary requirements that provide little value to consumers.
- Inclusion of Bilateral Regulatory Achievements: Adopt regulatory achievements made in the Regulatory Cooperation Council of Canada (RCC) and the High Level Working Group for Mexico.
- GMPs: Mutual recognition of Good Manufacturing Practices (GMPs) where required.
- Where appropriate, promote the removal of certificates of free sale.

Biotechnology (NEW Chapter)

NAFTA came into force two years prior to the commercialization of the first biotech crops in 1996. Since that time, biotech acreage across multiple crops has grown rapidly as farmers have seen the benefits of increased yields and improved environmental performance and are choosing year after year to plant biotech crops.

While products derived from agricultural biotechnology are grown in 26 countries (ISAAA, 2016) and are traded widely, there remains a lack of synchronicity between countries, particularly countries that approve these products and those that import them. This unpredictable regulatory and trade environment has resulted in trade disruptions that have caused economic impacts across the value-chain.

We support the U.S. government in seeking provisions under a modernized NAFTA that address biotechnology through:

- Entering a mutual recognition agreement on the safety determination of biotech crops intended for food and feed; and,
- Developing a consistent approach to managing low-level presence (LLP) of products that have undergone a complete safety assessment and are approved for use in a third country(ies) but not yet approved by a NAFTA member.

Technical Barriers to Trade (NEW Chapter)

NASDA supports provisions for a Technical Barriers to Trade Chapter that will build on the WTO TBT Agreement and ensure that it facilitates trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and sound regulatory practices. We support provisions that:

- Ensure that state and provincial agencies, stakeholders and interested parties have the opportunity to participate in the development of technical regulations, standards and conformity assessment procedures by government bodies.
- Require government parties to publish new technical regulations, conformity assessment procedures and provide the opportunity for public comments and responses raised by comments.
- Encourage parties to recognize the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.
- Encourage parties to cooperate, where feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become the basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade.
- Require parties to provide “national treatment” to one another’s conformity assessment bodies. Testing and certification performed by another party’s qualified conformity assessment body will be accepted as confirmation that its products, services, or systems meet requirements of the other party. (U.S. exporters will have their goods tested or certified only once before accessing other parties’ markets, reducing cost and burdens for U.S. businesses).

- Recognize and reinforce science-based regulations to prevent non-tariff barriers that lack scientific merit.
- Require parties to comply with provisions governing “less trade restrictive measures” and adopt “alternative measures that are less trade restrictive” that have been demonstrated to achieve the intended policy objective when they exist.

V. Conclusion

NASDA appreciates the opportunity to provide these comments as the administration develops its objectives for negotiations to modernize NAFTA. The integrated, trilateral North American trading bloc has been instrumental in the economic vitality of every state’s agriculture producers and rural communities. It is imperative any actions to modernize the agreement preserve the gains agriculture has made under the agreement as we look for opportunities to improve the trading relationship. NASDA stands ready to assist the administration in advancing opportunities for U.S. agriculture and food producers to access markets around the world.

Sincerely,



Barbara P. Glenn, Ph.D.
Chief Executive Officer

CC: The Honorable Sonny Perdue, U.S. Secretary of Agriculture