

North American Market Working Group
of the U.S. Food and Agriculture Dialogue for Trade

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: 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 Mr. Gresser:

The North American Market Working Group of the U.S. Food and Agriculture Dialogue for Trade appreciates this opportunity to provide its views with respect to the request of the Office of the U.S. Trade Representative for public comments on the negotiating objectives for modernization of the North American Free Trade Agreement (NAFTA) with Canada and Mexico.

The U.S. Food and Agriculture Dialogue for Trade informs and enables engagement nation-wide among a broad cross-section of U.S. stakeholders in trade. We are over 100 companies and associations representing America's farmers, ranchers, processors, and agri-businesses who regularly convene in Washington D.C. to lead and guide the work of the Dialogue and its Working Groups.

The North American Market Working Group includes more than 100 participants and provides a venue for stakeholders with strong interests in the North American market to share views, learn about, and address challenges and opportunities for trade policy in North America. NAFTA is the highest of priorities for our work.

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. The food and agriculture industry is a leading economic driver, supporting 21 million full- and part-time jobs from coast-to-coast. In processed food and beverage manufacturing alone, the industry employs 2.1 million people. In fact, our industry represents the largest source of employment in U.S. manufacturing. 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 for our nation's rural agriculture-based communities.

We recognize that NAFTA is now over 23 years old and that improvements to the agreement can be made. We welcome the opportunity to identify ways to modernize NAFTA while preserving the core benefits of the agreement. NAFTA has greatly expanded U.S. food and agricultural trade within North America during the past two decades, with ripple effects that have benefited the U.S. economy and created jobs. **A modernization of NAFTA should, first, preserve current market access and the conditions that support integrated value chains, including all tariff and duty preferences and rules that allow U.S. businesses to compete in the North American market.**

In addition, under a modernized NAFTA, the North American Marketing Working Group supports the following objectives:

- Improved market access through resolution of any outstanding tariff, quota or non-tariff barriers;
- WTO+ Sanitary and Phyto-sanitary (SPS) provisions, including a Rapid Response Mechanism;
- Strengthened Technical Barriers to Trade rules;
- Enhanced intellectual property rights and due process procedures;
- Adoption of trade-facilitative origin requirements;
- Improved protections for investments;
- Establishment of provisions to foster an open, fair and predictable regulatory environment;
- Regulatory convergence for renewable fuels;
- Adoption of provisions unique to the modern economy (e.g. e-commerce);
- Inclusion of biotechnology provisions to ensure transparency and cooperation among parties; and,
- Resolution of other high-priority bilateral concerns negatively affecting trade.

This submission is divided into two parts. The first section highlights the significance of trade to the U.S. food and agriculture industry, in particular the importance of our trading relationship with Canada and Mexico. The second section identifies our top priorities to improve and modernize NAFTA along with supporting information.

Sincerely,

*North American Market Working Group
of the U.S. Food and Agriculture Dialogue for Trade*

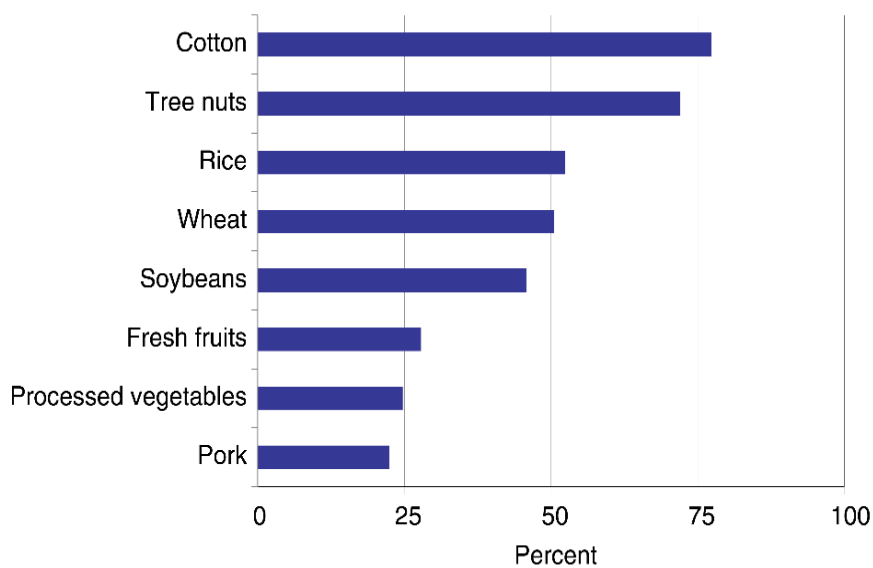
Importance of Trade to the U.S. Food & Agriculture Industry

The United States is a global leader in food and agriculture production. Over the past 150 years, advances in technology and innovations in the production, processing, transportation, and retailing of food have created unprecedented economic growth at home and provided safe, affordable food to billions of people worldwide.

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.

Over the past 25 years the share of U.S. production that is exported around the globe has steadily risen in terms of both value and volume. Overall, the export share of U.S. agricultural production averaged 20 percent from 2011 to 2013 based on volume, proving that food and agricultural exports are a successful and valuable part of the U.S. economy.

Export share of U.S. farm production, 2011-13



Source: USDA, Economic Research Service calculations based on data from U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Database; and USDA, National Agricultural Statistics Service, various reports.

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. 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.

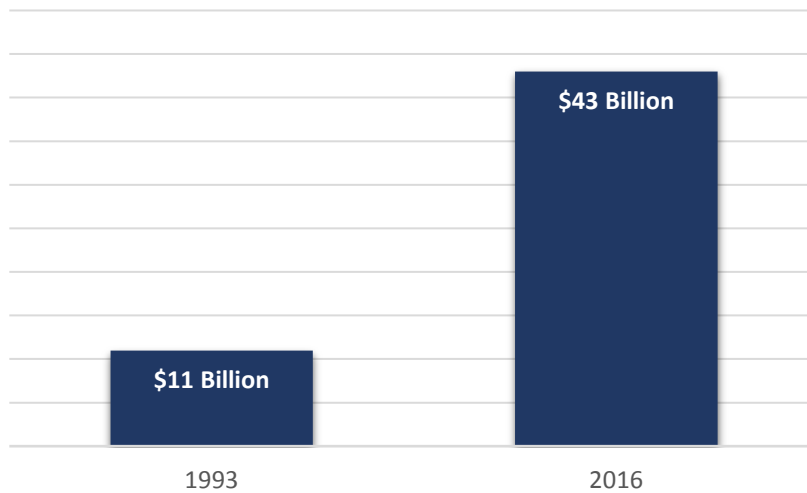
¹ United States Department of Agriculture, Ag and Food Sectors and the Economy, accessed at: <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy.aspx>.

The North American Market

The North American market has been a bonanza for U.S. farmers, ranchers and food processors. Since the 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

**U.S. Food & Agriculture Exports to
Canada & Mexico**

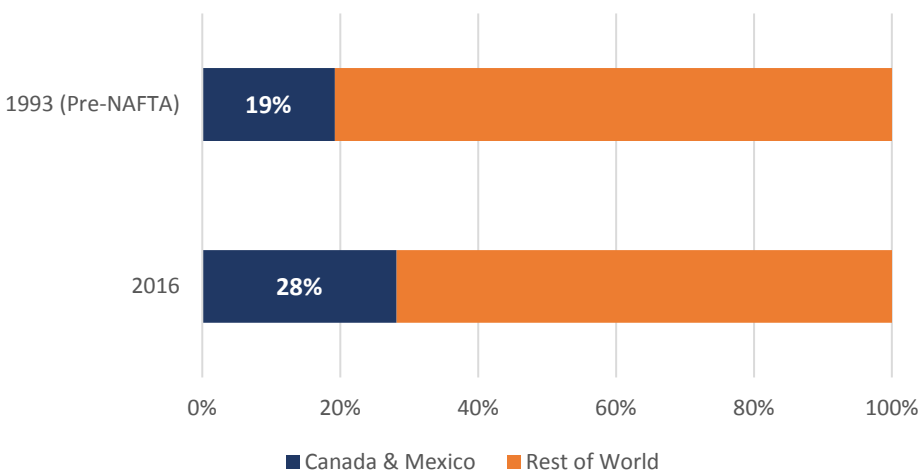


quota restrictions thanks to provisions in NAFTA. Rising trade in a wider range of agricultural products, substantial levels of cross-border investment, and important changes in consumption and production are proof that the U.S., Canadian and Mexican food and agricultural sectors are far more integrated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

Data Source: U.S. Census Bureau 1

In addition, the share of U.S. food and agricultural exports destined for Canada and Mexico grew from 19% in 1993 to 28% in 2016, according to the U.S. Census Bureau.

Share of U.S. Food & Agriculture Exports



Data Source: U.S. Census Bureau 2

In Canada, NAFTA has created an integrated and inter-dependent market place for U.S. food manufacturers, farmers and ranchers. According to the U.S. Department of Agriculture, "U.S.-Canada agricultural trade is marked by a substantial amount of intra-industry trade, particularly in value-added products."² This includes co-production of processed foods such as pet foods, bakery products, breakfast cereal, and pastas. In addition, there is significant intra-industry trade in wheat and beef products.

In Mexico, NAFTA has opened protected Mexican markets and secured U.S. industry enhanced market access by reducing Mexican tariffs and quotas. Prior to NAFTA, Mexican tariffs for agriculture products were highly prohibitive. NAFTA allowed U.S. farmers and ranchers to reap the benefits of open trade, and thus, U.S. agricultural exports to Mexico have quintupled since NAFTA entered into force. Today, the United States supplies three-quarters of Mexico's agri-food imports.

Reduction in tariffs and quotas in the Mexican corn market has led to increased market share for U.S. producers. For example, because of NAFTA, the U.S. holds a dominant 52 percent share of the Mexican corn market, and 97% of Mexican corn imports come from the United States. This is because Mexico does not produce enough grains and oilseeds to meet internal demand; therefore, the country's food and livestock producers depend on the U.S. to supply sizable volumes of these commodities to make value-added products, primarily for the domestic market. A similar dynamic exists in other sectors such as meats and dairy products wherein Mexico satisfies a large portion of its import needs with products from the U.S.

The U.S. benefits from this relationship in turn by importing fruits and vegetables from Mexico due to Mexico's expertise in producing a wide range of produce with a favorable climate and a growing season that largely complements the U.S. growing season, with Mexican production generally falling in the summer as U.S. production rises.³

² Reference: Steven Zahniser and Zachary Crago, U.S. Department of Agriculture, Economic Research Service, "NAFTA at 15: Building on Free Trade," March 2009, accessed at: <http://www.ers.usda.gov/media/160163/wrs0903.pdf>.

³ United States Department of Agriculture, Economic Research Service, Vegetable & Pulses accessed at: <https://www.ers.usda.gov/topics/crops/vegetables-pulses/> and Fruit and Tree Nuts access at: <https://www.ers.usda.gov/topics/crops/fruit-tree-nuts/>

What Happens to Tariffs on Trade between U.S. and its NAFTA Partners without NAFTA?

If NAFTA (and the underlying Canada-U.S. Trade Agreement) were to be dissolved, Canada and Mexico would have the right to re-impose tariffs on U.S. goods up to the WTO most favored nation level – levels which would destroy the markets we have worked so hard to establish. These tariff levels would make U.S. products highly uncompetitive (see chart below).

	Percent					
	Agriculture		Non-Agriculture		All Products	
	NAFTA	No NAFTA	NAFTA	No NAFTA	NAFTA	No NAFTA
U.S. Tariffs on Mexican & Canadian Goods	0 ⁴	4.8 (Bound) 5.2 (Applied MFN)	0	3.3 (Bound) 3.2 (Applied MFN)	0	3.5 (Bound) 3.5 (Applied MFN)
Mexican Tariffs on U.S. Goods	0	45 (Bound) 15.6 (Applied MFN)	0	34.8 (Bound) 5.7 (Applied MFN)	0	36.2 (Bound) 7.1 (Applied MFN)
Canadian Tariffs on U.S. Goods	0 ⁵	16.6 (Bound) 16.7 (Applied MFN)	0	5.3 (Bound) 2.2 (Applied MFN)	0	6.8 (Bound) 4.2 (Applied MFN)

Source: WTO World Tariff Profiles, 2016 https://wto.org/english/res_e/tariff_profiles_e.pdf

⁴ Does not include special import relief measures on tomatoes and sugar.

⁵ The agricultural provisions of the U.S.-Canada Free Trade Agreement (CFTA), in effect since 1989, were incorporated into the NAFTA. Under these provisions, all tariffs affecting agricultural trade between the United States and Canada, with a few exceptions for items covered by tariff-rate quotas (TRQ's), were removed before January 1, 1998.

Priorities for U.S. Competitiveness in North America

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 agriculture 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.

We would like to bring to your attention to the following matters relevant to the modernization of the NAFTA that preserve and expand U.S. competitiveness.

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. Importantly, these commitments promote economic integration and support U.S. farm incomes. In addition, we support provisions to modernize the NAFTA, including:

Proposed Improvement

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

- **Dairy**: Removing Special Milk Classes 6 and 7 and addressing non-tariff barriers impacting the U.S. dairy industry, and eliminating remaining tariffs and tariff rate quotas (TRQs)
- **Poultry**: Building upon market access achievements from the Trans-Pacific Partnership (TPP) by increasing quotas for U.S. chicken and chicken product and turkey and turkey product exports to Canada.
- **Wine**: Prohibiting markup exemptions; Ensuring U.S. wine producers have equal access to Canadian groceries and distribution; 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.
- **Distilled Spirits**: Strengthen and update the rules governing the practices of Canada’s provincial state-trading enterprises, importation monopolies and state-owned beverage alcohol retailers to ensure that they do not discriminate against U.S.-origin distilled spirits. These include, for example, enhanced commitments with regard to pricing to ensure transparent and standardized product mark-ups for all “like” and “directly competitive and substitutable” products, and more robust disciplines with regard to “cost of service” charges. Maintain recognition for “Bourbon” and “Tennessee Whiskey” and expand recognition to include “American Rye Whiskey.”

Additional Input

We oppose any imposition of mandatory country of origin labeling provisions. Mandatory country of origin labeling for beef and pork products from Canada and Mexico was fully adjudicated at the World Trade Organization through the Dispute Settlement process and addressed by the U.S. Congress. Any reconsideration of mandatory Country of Origin Labeling would be harmful, self-defeating and only detract from the overall negotiating process.

In addition, we oppose the imposition of price controls on food and agricultural products and seek to limit selective taxation on specific commodities or types of goods.

Rules of Origin (Chapter 4)

The Rules of Origin chapter creates rules of origin defining what it means for a product to be originating from NAFTA partner countries, and thereby eligible for NAFTA benefits. We support trade facilitative rules of origin requirements for individual sectors, while maintaining sector specific rules of origin where appropriate. Furthermore, we see opportunities to enhance rules of origin requirements.

Proposed Improvement

- Provisions allowing duty-free treatment for certain goods with a de minimis value of non-originating content should be negotiated, and the United States should pursue a reduction in the number of products excluded from the de minimis content rule. As in modernized Free Trade Agreement's, the de minimis threshold in the NAFTA Rules of Origin chapter should be increased from 7 percent to 10 percent, where supported by the relevant segments.
- Adoption Tran-Pacific Partnership Product (TPP) Specific Rules of Origin for most food tariff classifications under NAFTA. These classifications are more consistent across product lines, allow for use of minor non-originating materials that are common in today's supply chains, and yet still provide a substantial qualification eligibility standard to be met for products.
- Include non-controversial NAFTA Track IV amendments, including those on chemical blends and reactions affecting Chapters 29 and 38 of the Harmonized Tariff Schedule.

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.
- Where supported by specific industry sectors, adopt TRQ Administration standards seen in the TPP, including provisions to administer TRQs on a first come, first served basis, 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 (pedimento) for all three nations.
- Strive for mutual recognition of quality inspections.

Energy and Basic Petrochemicals (Chapter 6)

Since the inception of NAFTA and constitutional reforms in Mexico, the energy sector has changed dramatically. The renewable fuels sector is an important part of the global energy mix and a profitable export for U.S. companies -- and with improved technology and new technologies and infrastructure improvements the sector has increased export potential.

Proposed Improvement

Further open markets for U.S. renewable fuels from agricultural commodities:

- With Canada by increased regulatory alignment of biodiesel markets; and,
- With Mexico, to take advantage of regulatory changes for gasoline in Mexico and converge standards for ethanol blended gasoline between the U.S. and Mexico. Achieving regulatory convergence for E10 across the U.S.-Mexico border by allowing ethanol blended gasoline at 10% by volume in Mexico could enhance environmental and economic benefits in both countries.

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 have become a 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

We support modernizing the SPS chapter, consistent with, but improving on the TPP text, to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner. At the same time, it is important to preserve 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 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.

- Enhance 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.

Additional Input

To maintain consistency with more recent trade agreements, the we also recommend moving the Agriculture goods trade section to “Chapter 3: National Treatment and Market Access for Goods” and revising the current chapter’s name to “Sanitary and Phytosanitary (SPS) Measures.”

Standards-Related Measures (Chapter 9)

We recognize 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. Therefore, we seek 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 (TBT) chapter as laid out in the *New Chapters* section below.

A modern TBT chapter in NAFTA, that strengthens commitments in the current NAFTA and builds on other previously negotiated outside and texts, presents an opportunity to address systemic challenges that can create unnecessary TBTs that reinforce or substitute for tariffs and prevent U.S. exports from reaching markets. Such a chapter should serve as the basis for future U.S. trade agreements, as well. TBT commitments should have the highest standards for:

- Transparency: The U.S. regulatory system requires robust public participation in the development of standards, technical regulations, and conformity assessment procedures. Enabling a broad range of stakeholders to participate in the development of standards-related measures in NAFTA countries can help ensure that standards do not discriminate against U.S. manufactured goods, and will encourage wider acceptance of U.S. approaches to standards.
- Fair Conformity Assessment: Overly-restrictive conformity assessment procedures can hinder U.S. exports, for example by requiring testing procedures to be conducted in the importing country after U.S. labs have already validated a product, or by imposing burdensome requirements on foreign testing facilities as a means of discouraging imports.
- Sector-specific Standards: NAFTA can help promote U.S. sector-specific standards and bring consensus on the best approaches, creating opportunities for U.S. businesses to participate as our NAFTA partners set standards to ensure they are not discriminatory or unnecessarily burdensome. Members of the Dialogue support sector-specific TBT annexes, including related to confidentiality of prepackaged food formulas.

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 U.S. 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 U.S. 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 U.S. 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-U.S. 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.
- Provide a mechanism for resolving inconsistencies among panels.

Cross-Border Trade in Services (Chapter 12)

In the 23-years since NAFTA implementation began, the cross-border trade of services has become a significant component of U.S. exports. Over that period, bilateral and multilateral free trade agreements have sought to develop agreements on rules governing the trade of services. The U.S. Food and Agriculture Dialogue for Trade recognizes the work of the WTO's ongoing Trade in Services Agreement (TISA) negotiations and the improvements to the trade in services made in the TPP. Building on these advances, NAFTA should incorporate TISA and TTIP proposals to add clarity to commitments on direct selling of foods and nutritional products.

Intellectual Property (Chapter 17)

Trademarked U.S. brands, brand names, icons, logos, mascots, and other identifying marks and labels differentiate U.S. products in the global market and communicate to consumers the high-quality, safety and reliability of U.S. goods.

Proposed Improvement

- Promoting language that protects confidential business information.
- Inclusion of WTO-plus provisions to protect lawfully registered and legally trademarked brands, brand names, icons, logos, mascots, and other identifying marks and labels from de facto confiscation or restrictions, including the application of unjustified SPS and/or TBT measures.
- Prevent restrictions on marketing, promotion, branding and quantity of formulations within a brand.
- Build further upon TPP language as a means to address and prevent the misuse of geographical indications to erect de facto non-tariff barriers to end-use common names for agriculture products.

Final Provisions (Chapter 22)

U.S. industry seeks certainty and predictability in global and domestic markets. Often times, U.S. goods are contracted for sale to global buyers months or years before the products are to be delivered. Unexpected changes to domestic regulatory environments, trade agreements and international conventions increase the risk and cost of exporting and accessing global markets.

Proposed Improvement

- Enhance withdrawal protocols to make withdrawal from the agreement equivalent to accession.
- Require all NAFTA countries to follow the same procedures for withdrawal as they followed for ratification and implementation.

New Provisions

In addition to current chapters outlined in NAFTA, the North American Market Working Group of the U.S. Food and Agriculture Dialogue for Trade sees opportunities to expand upon NAFTA and raise regional standards by including the following new provisions in a renegotiated text.

Regulatory Cooperation & Good Regulatory Practices

An objective of several past and proposed 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 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.
- Make the U.S.-Canada Regulatory Cooperation Council, U.S.-Mexico High Level Regulatory Cooperation Council and trilateral regulatory cooperation bodies permanent and instruct ambitious sectoral regulatory agendas.

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 hazard/risk 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 that provide the same level of protection. For example, in the areas of food and agriculture, harmonization of food and feed safety systems; fortification standards; organics 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 science-based, clear, concise, and allow consumers to receive meaningful information about the safe use of products, while avoiding unnecessary requirements that may mislead or confuse 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.

Biotechnology

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 28 countries are traded widely, there remains a lack of synchronicity among countries, particularly between countries that approve these products and those that import them. This unpredictable regulatory and trade environment has resulted in trade disruptions that have caused adverse 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.
- 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.

Note: Majority of the members of the U.S. Biotech Crops Alliance International Working Group, which supports the above language, are also members of the U.S. Food and Agriculture Dialogue for Trade.

E-Commerce

Since the ratification of NAFTA, information and electronic commerce have changed dramatically. NAFTA partners have an important opportunity to encourage promotion of internet-based commerce. In particular, the U.S., Canada and Mexico should strive to meet the standards laid out in the TPP Electronic Commerce Chapter that promote trade facilitation through the electronic exchange of information, including:

- Establishing requirements that support a single, global internet, including ensuring cross-border data flows, consistent with governments' legitimate internet in regulating for purposes of privacy protection.
- Establishing rules against localization requirements that force businesses to place computer infrastructure in each market in which they seek to operate, rather than allowing them to offer services from network centers that make businesses sense.

- Encouraging national authorities to recognize electronic signatures and certifications wherever possible (*TPP Electronic Commerce Chapter, Article 14.5*).
- Supporting the electronic exchange of official trade documents including, but not limited to bills of lading, origin certifications, quality certificates and sanitary and phytosanitary certificates.

Technical Barriers to Trade

We support provisions for a Technical Barriers to Trade (TBT) 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 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.
- When disclosure is required, promote the confidentiality of food and feed formulations.
- Incorporate a section detailing regulatory best practices for wine and distilled spirits with regard to labeling and certification requirements.

Conclusion

With the productivity of the U.S. food and agricultural sector growing faster than domestic demand, the U.S. food and agriculture industry—and the rural communities that depend on it—rely heavily on export markets, most notably the North American markets, to sustain prices and revenues. The North American Market Working Group of the U.S. Food and Agriculture Dialogue for Trade looks forward to working with the Administration in preserving and enhancing the gains our industry has achieved in the North American market to strengthen our competitiveness around the globe.