

## Priorities for Trade Agreements

**Importance of International Trade to the U.S. Seed Industry:** The U.S. planting seeds sector is a thriving science-based industry with an estimated \$17 billion market value. With an annual export value of over \$1.7 billion, the U.S. is both the largest market for seeds in the world and the largest global exporter of seed. The U.S. also imports \$900 million in seed annually, reflecting the fact that many U.S. seed companies rely on counter-seasonal production and advantageous climates to carry out breeding programs and commercial seed production. Seed varieties cross as many as six international borders from development of a new variety to final sale, entering and leaving the United States multiple times in the process.

Strong and consistently applied regulatory frameworks enforced through free trade agreements are critical for the international movement of American seed products. Following are the top priorities of the U.S. seed industry to which all trade agreement Parties should agree and adhere.

**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 Sanitary and Phytosanitary Measures chapter of the US-Mexico-Canada trade agreement provides excellent standards for science-based, predictable, and transparent SPS measures that we would support including 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.

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.

**Intellectual Property Rights (IPR):** The International Union for the Protection of New Plant Varieties (UPOV) sets guidelines for IPR for new varieties of plants. Acceding to the 1991 Act of the UPOV Convention has been a requirement found in all U.S. free trade agreements since NAFTA so plant breeders have access to globally harmonized protection for their new varieties.

Communications 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.

**Agriculture Biotechnology:** Seed innovation is based on an increased understanding of plant genomes, refinements in plant breeding methods, and identification of new plant characteristics 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. Agreements should include provisions that encourage consistent, science-based policies around agricultural innovation, in particular, innovations in plant breeding, and should include benchmarking goals and provide flexibility to accommodate new innovations as they develop.

Plant breeding innovation and new breeding methods, such as genome editing, are critical to the development of new seed varieties. These innovative breeding methods can result in products that are the same or similar to products developed through long-used conventional breeding tools. We encourage a regulatory policy approach for these products that is proportionate, risk appropriate, and science based. Under the USMCA, a Biotechnology Working Group under the Agriculture Working Group was established to exchange information and consider work, including on existing and proposed domestic laws, regulations and policies related to the trade of agricultural biotechnology products. This approach could be used as a basis for other agreements as well. It is also important to retain and enforce the structural reform commitments relating to the regulation of biotechnology in the China Phase One Agreement.

**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 and risk-based 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
- Certificate of Free Sales not required

Regulatory cooperation affects the seed industry in several different areas including seed treatments, 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.

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