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

Docket Number USTR-2021-0016: Request for Comments on Significant Foreign Trade Barriers for the National Trade Estimate Report

To Whom it May Concern:

The American Seed Trade Association (ASTA) welcomes the opportunity to provide comments on the foreign trade barriers impacting the U.S. seed industry. The international movement of seed is critical to the growth and prosperity of our member companies. Our comments detail specific trade barriers related to import policies, technical barriers, phytosanitary measures, and intellectual property rights protection in key foreign markets.

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 nearly 700 member companies produce everything from grass and turf seed to row crop seed, to vegetable and flower seed, to true potato seed. The United States seed market was valued at $14.51 billion in 2020, which is about 25% of the global seed market (Mordor Intelligence: Global Seeds Market (2021-2026)). In 2020, U.S. planting seed exports exceeded $1.6 billion to 144 countries. 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 products or products of new breeding technologies.

ASTA members invest more than $2 billion annually in research and development. Seeds are a high value and specialized crop, not a commodity. 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 different 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. The U.S. seed industry must be able to move seeds and genetic material globally to innovate and meet production demands.

Protectionist Policies Impact U.S. Seed Exports:

Many nations want to achieve self-sufficiency in seed production. Countries will adopt policies and regulatory systems that protect their domestic seed industries from foreign competition, rather than enact free trade policies to support comparative advantages in global seed trade.

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 from the International Plant Protection Convention, such as ISPM 38, to limit non-scientifically justified practices that do not align with U.S. standards.

Some countries' seed laws will place limitations on foreign direct investment and foreign seed imports or require local production after a period of time. This year, ASTA has observed an increase in proposed legislation that limits importation of seed including in the following countries: India (*Revision of Seed Development Policy, 1988),* Philippines (*Administrative Order No. 9 on Local Hybrid Rice Seed Production Policy*), and Pakistan (*New Amendment of the Seed [Business Regulation] Rules, 2021 under the Seed Act, 1976)*. If enacted as written, these measures will limit export opportunities for the U.S. seed industry.

Specific barriers faced by the U.S. planting seed industry in key export markets are detailed here:

Mexico:

Mexico is the second largest market for U.S. seed exports.

The biotechnology trait approval process has been delayed since 2018, creating uncertainty in the market and making it difficult for seed companies to plan for production needs. The U.S.-Mexico-Canada Agreement's biotechnology chapter includes a commitment for all parties to review applications for biotech crops on a year-round basis and calls for the establishment of a Working Group for Cooperation on Agricultural Biotechnology; we encourage this implementation.

Intellectual property rights commitments under USMCA require Mexico to join the International Union for the Protection of New Plant Varieties (UPOV) 1991 convention. Mexico has not yet done so and has four years to comply from USMCA's entry into force. Without the UPOV 1991 convention, it is difficult for companies to ensure the intellectual property from their breeding activities are fully protected.

Mexico has a history of enacting non-scientifically justified phytosanitary requirements for U.S. seed. Many of Mexico's seed health tests are not harmonized with international standards, which results in inconsistent test results and false positives causing long delays or rejected shipments. ASTA has made some progress here, by working with APHIS, SENASA, and the Mexican seed industry to educate the regulatory agencies in Mexico via phytosanitary workshops and educational exchanges. A current project is underway between the U.S., Mexico, and Canada to harmonize testing methodologies for *Tomato brown rugose fruit virus* under the auspices of the North American Plant Protection Convention. We encourage further collaborative efforts among governments to align approaches to new phytosanitary challenges.

China:

China is the third largest market for U.S. seed exports.

In 2018, China made positive changes to their foreign investment policies, allowing vegetable and flower companies to be wholly owned by a foreign entity; corn and wheat companies to be 66% foreign owned in a Foreign Trade Zone and 49% foreign owned elsewhere. Soy, rice, and biotech companies are prohibited from any foreign ownership. While this enables greater market access for U.S. seed companies, the requirements are still restrictive.

Corn seed from the United States is currently prohibited to sell into China. As China moves towards mechanized production, Chinese companies are looking to import seed of new corn varieties, especially those that can withstand mechanized production. ASTA is working with the Chinese seed industry on a pilot project that would allow U.S. corn seed to be imported for the first time. The Chinese corn seed market is worth $4 billion. This pilot project is the first step in accessing that market but has not yet received necessary approvals by the Chinese Ministry of Agriculture and Rural Affairs.

Intellectual property rights protection remains a challenge in China and many companies do not sell their elite seed varieties to the market due to fear of theft. Proposed changes this year to China's seed law and plant variety protection regulations include elements of the UPOV 1991 convention, but it is not expected that China will fully accede to the convention.

India:

India is an important market for U.S. seed companies, who export to India seed of many species for research, product development, and for seed production. However, the country's intellectual property environment and legal frameworks remain a significant challenge for further U.S. investment, hindering innovation for U.S. companies.

The 2019 Seed Bill under consideration includes government price control measures for seed, which is anti-competitive and will have an adverse impact on innovation and the availability of quality seed to farmers. Trait royalties on biotech cotton were declared void by the Ministry of Agriculture, removing the incentive for breeders to invest in agronomic performance improvement measures. Proposed regulations to the Seed Development Policy, 1988 include recommendation to discontinue the Open General License for vegetable seeds, and mandate that companies produce the seeds in India within a two-year import period. ASTA and other seed associations have actively engaged in discussion on this proposal with the Indian government.

Since 2019, the Indian Plant Variety Protection (PVP) office has required inbred lines to be submitted along with hybrid PVP submissions, to produce hybrid seed locally to compare with seed submitted in the application. This poses serious IP leakage concerns and is not per rules of the UPOV. This requirement by the PVP office has been legally challenged and a case is pending. In the meantime, the New Delhi High Court has issued a moratorium preventing the PVP office from enforcing this new requirement. Unfortunately, the PVP Office is still not accepting hybrid

applications without parent seeds, effectively violating the stay order from the Court, and preventing companies from filing new PVP applications.

European Union:
The EU and the U.S. seed markets are highly integrated, and both the EU27 and the U.S. rank as each other's first trade partners in seeds. Together the EU and the U.S. represent approximately half of the world seed market.

Currently, the regulatory regimes in the U.S. and EU for seed varieties developed through genome editing are not aligned. ASTA and our European counterpart Euroseeds encourage use of risk appropriate and science-based policy, and compatibility pertaining to products developed using plant breeding innovation. The implementation of risk proportional criteria to assess when specific premarket review and clearance process is justified for plant varieties developed using certain plant breeding techniques would help ensure transparency, predictability, and legal certainty for Plant Breeding Innovations (PBI) that are similar to naturally occurring or conventionally bred varieties.

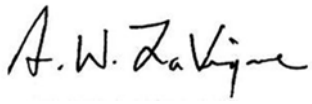
Brazil:

Brazil is an important market for U.S. exports, for research and development, and for counter-seasonal production.

Brazil's extensive and non-scientifically justified pest inspection list slows down the importation of U.S. seed. ASTA members have worked with APHIS to provide Brazil with scientific data showing the lack of justification of some of the listed quarantine pests. ASTA has worked with a scientific expert to conduct research to determine which pests are recommended for removal from the list. For the remaining pests, pest risk assessments will need to be completed which could take upward of five years. To avoid these delays the U.S. and Brazil need to work together on a technical level to remove any unnecessarily listed "pests of concern".

In closing, ASTA appreciates the opportunity to work closely with USTR, USDA Foreign Agriculture Service and USDA APHIS on matters of importance to the global movement of seed. We look forward to seeking solutions to these foreign trade barriers that will provide increased market access to the U.S. seed industry.

Sincerely,



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