

April 11, 2022

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

Docket Number USTR-2022-0002: Request for Comments on the Proposed Fair and Resilient Trade Pillar of the Indo-Pacific Economic Framework

To Whom it May Concern:

The American Seed Trade Association (ASTA) welcomes the opportunity to provide comments on USTR's proposed Fair and Resilient Trade Pillar of the Indo-Pacific Economic Framework (IPEF). The international movement of seed is critical to the growth and prosperity of our member companies. Our comments detail specific recommendations to ease regulatory trade barriers in the region related to import policies, technical barriers, phytosanitary measures, biotechnology, and intellectual property rights protection in key foreign markets.

Founded in 1883, the American Seed Trade Association (ASTA) is one of the oldest trade organizations in the United States. Its membership consists of nearly 700 companies involved in seed production and distribution, plant breeding, and related industries in North America. ASTA members research, develop, produce and distribute all varieties of seeds – including grasses, forages, flowers, vegetables, row crops, and cereals. ASTA membership includes approximately 85% of all private seed companies operating in the U.S. Ninety-five percent of ASTA's active members are small businesses that report annual sales of less than \$15 million. ASTA values and promotes diversity of membership, in terms of company size, products and geographic area served. Seed products from ASTA members support agricultural producers of food products and farm commodities in the U.S. and around the world.

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 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 2021, 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 seeds 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.

Strong and consistently applied regulatory frameworks, enforced through free trade agreements and other bilateral and multilateral fora, are critical for the international movement of American seed products. Following are the top priorities of the U.S. seed industry for consideration in the Proposed Fair and Resilient Trade Pillar of the Indo-Pacific Economic Framework:

Expand IPEF Country Participation

In addition to the nine countries currently in discussions to join IPEF negotiations, we recommend consideration of Thailand, the Philippines, and Pakistan, which are also important trading partners for the seed industry.

Minimize Protectionist Policies that 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 such as those from the International Plant Protection Convention or International Union for the Protection of New Varieties of Plants to reduce 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. Over the past two years, ASTA has observed an increase in proposed national legislation in certain Indo-Pacific countries that would limit importation of seed.

Ensure Transparent and Science-Based 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 U.S.-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.

Seed health and testing remains a priority for the U.S. seed industry globally. As plant diseases and viruses become more complex, the use of consistent testing methodologies and interpretation of results between National Plant Protection Organizations is critical. Use of third-party laboratory facilities can help reduce backlogs of testing among national laboratories and standardize testing protocols. In 2021, the International Plant Protection Convention (IPPC) released “Requirements for national plant protection organizations if authorizing entities to perform phytosanitary actions” (ISPM 45). We support adoption of ISPM 45 across the Parties.

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.

Uphold Strong Intellectual Property Rights (IPR) Protections: 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. The 1991 Act provides the best protection and assurance for U.S. plant breeders conducting business internationally, while still affording the farmer’s exemption.

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.

Support Plant Breeding Innovation and Agriculture Biotechnology: Seed innovation is based on an increased understanding of plant genomes, refinements in plant breeding methods, and identification of improved 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 agriculture biotechnology, 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 improved 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. The agricultural biotechnology section under the USMCA, provides the basis for other agreements as well. ASTA strongly supports language that seeks to facilitate smooth trade of products of biotechnology and to align on regulatory principles with regards to products of plant breeding innovation such as genome editing. Further, ASTA supports the inclusion of a mechanism to avoid trade disruptions, to engage collaboratively on regulatory and trade policy development.

Increase 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-based and risk-proportionate 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

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

Enhance 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.



In closing, ASTA appreciates the opportunity to work closely with USTR on matters of importance to the global movement of seed. We look forward to engaging further as the key negotiating objectives for the trade pillar of the Indo-Pacific Economic Framework continue to develop.

Sincerely,

Andrew W. LaVigne
President and CEO
American Seed Trade Association