September 27, 2018

The Honorable Robert E. Lighthizer
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington DC 20250

Dear Ambassador Lighthizer and Secretary Perdue:

In accordance with section 105(b)(4) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, and section 135(e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Agricultural Technical Advisory Committee for Trade in Grains, Feed, Oileeds and Planting Seeds on the Trade Agreement, reflecting the consensus advisory opinion on the proposed Agreement.

Sincerely,

Donald E. Latham
Chair
Grains, Feed, Oilseeds, and Planting Seeds ATAC

Trade Agreement with Mexico

Report of the
Industry Trade Advisory Committee on Grains, Feed, Oilseeds, and Planting Seeds
September 27, 2018

As we noted in our June 27, 2017 advice on NAFTA modernization, the U.S. food and agricultural sector relies on its close commercial ties with Mexico and Canada to support millions of U.S. jobs, improve efficiency and innovation, and enhance competitiveness in a rapidly changing global economy. NAFTA has played a central role in boosting incomes for millions of U.S. farmers, ranchers, processors, agribusinesses and retailers. At the same time, we readily acknowledged that many elements of the global economy have changed since NAFTA has been in place and modernizing the agreement to enhance market access and promote transparency and efficient trade should be the key objectives of this negotiation.

Our overriding objective was to ensure all efforts be expended to "do no harm" and expand upon current market access and other provisions that enhance U.S. market share in both Canadian and Mexican markets, while promoting economic integration and supporting farm incomes. The agricultural negotiating team comprising USDA and USTR staff and leadership should be applauded for their exemplary efforts in negotiating a strong agreement for agricultural trade between the United States and Mexico.

At the outset, the Committee must respectfully note that the absence of Canada is of great concern and tempers our support for the provisions of the agreement in principle between our government and the government of Mexico. This Committee's advice was and continues to be predicated on the modernization of the trilateral NAFTA agreement, not a bilateral agreement between the U.S. and Mexico, and/or potentially a separate bilateral agreement or no agreement with Canada. Both of these markets are critical to the commodities and industries represented on this Committee and without inclusion of both Mexico and Canada, we can only offer qualified support for this proposed agreement.

In addition, the Committee strongly cautioned that it was imperative that other negotiating objectives or independent trade policy actions that could result in retaliations should be avoided at all costs. Unfortunately, our concerns were confirmed with the retaliatory tariffs on food and agricultural products instituted by Canada and Mexico in response to the U.S. government decision to impose steel and aluminum tariffs under Section 232 authorities. While technically separate from NAFTA negotiations, the U.S. actions followed by the predictable Canadian and Mexican response are not consistent with the pledge by the Administration to "do no harm" to U.S. agriculture. These tariffs currently affect livestock products that use grains and oilseeds as inputs, and there is a risk of direct retaliation on products covered by this committee should Mexico (or Canada) decide to change targets, as Mexico proposed (under the "carousel" approach) when retaliatory tariffs were threatened during the Mexican trucking dispute. These tariffs must be removed independent of the NAFTA negotiations if we are to see any relief from the retaliatory tariffs imposed by Canada and Mexico.

In addition, the Committee noted the recent furor over the proposed executive order to withdraw from NAFTA prompted the Mexican government to look to Brazil, Argentina and other origins

for alternative sources of grains and oilseeds. U.S. market share for milled and rough rice in Mexico's import market is down to pre-NAFTA levels as Mexico's government has sought to diversify sources of supply and hedge risk. The Mexican government has successfully sought to diversify sources of major products, including those covered by this Committee. This Committee firmly believes that any additional effort to withdraw from NAFTA without a trilateral replacement will result in further reliance on other suppliers, irrespective of the merits of a new agreement.

Below are the views of the GFOPS ATAC on specific areas of interest.

National Treatment and Market Access

As noted above, the agreement in principle has preserved existing market access for the products represented by this Committee. We appreciate the efforts to ensure that there are zero tariffs and/or quotas for these products. An example is the duty-free access for wheat to the Mexican market that has allowed Mexico to grow from a sporadic and small export destination before NAFTA to the largest customer of U.S. wheat today. NAFTA also turned Mexico into the number one market for U.S. rice and solidified Canada among the top five export markets. Today, 30 percent of U.S. rice exports go to our NAFTA partners.
The Committee supports provisions for parties to work together in the WTO to promote increased transparency and to improve and further develop multilateral disciplines on the three pillars of agricultural trade (domestic support, export competition and market access).

The agreement includes stronger language on export subsidies than the original NAFTA, which only focuses on "moving towards export subsidy elimination." It prohibits a party from adopting or maintaining an export subsidy on any agricultural good destined for a NAFTA party. This accelerates the commitment to eliminate all export subsidies under the WTO's Nairobi Ministerial Decision.

It establishes a Committee on Agricultural Trade to promote trade in agricultural goods, monitor and promote cooperation on implementation and administration of the Agriculture Chapter and provides a forum to address issues, exchange information, and foster cooperation in areas of mutual interest. It also encourages transparency and consultations when a new measure on agriculture affects trade.

As such the Committee supports provisions under the Agriculture Chapter: Article 3.3: International Cooperation; Article 3.4: Export Competition; Article 3.5: Export Restrictions – Food Security; Article 3.6: Domestic Support; Article 3.7: Committee on Agricultural Trade; Article 3.8 Consultative Committee on Agriculture: Article 3.9 Agricultural Special Safeguards; Article 3.10 Transparency and Consultations.

Grading

The Committee particularly appreciates the provisions under Article 3.11: Agricultural Grading, which provides for reciprocal treatment of grading for imported products as domestic goods as well as the assignment of grades requiring the same quality grading certificate and information.

In addition, the Committee supports provisions that prohibit any party from making domestic registration of grain and oilseed varieties a requirement for importation, or a consideration in the assignment of quality grades or classes to imported grain and oilseed. In its June 27, 2017 letter of advice, the Committee referenced several concerns with respect to the Canadian Varietal Registration System. These provisions would help resolve the major concerns we raised but are of limited value without Canada as part of the agreement.

This inclusion of language on grading and varietal registration is a particularly important step for wheat growers. If applied on a trilateral basis, this language would help create a level playing field for northern wheat producers who would like to have the option to sell into the Canadian supply chain, just as Canadian farmers can sell into the U.S. supply chain. If this agreement remains bilateral between the United States and Mexico the language is unlikely to have any effect on cross-border trade, though the precedent could be valuable for future negotiations with Canada.

Sanitary and Phytosanitary (SPS) Measures

The Committee placed a high priority on the enhancement of the framework of rules and disciplines under the foundational SPS language of NAFTA. We noted our strong support for inclusion of the SPS provisions under the then Trans-Pacific Partnership (TPP) including:

- Strengthening disciplines on science and risk analysis
- Provisions on equivalence in regulatory systems
- Disciplines on import checks
- Transparency in rulemaking
- Adoption of trade facilitative residue levels and adventitious presence mechanisms

This Committee considers the agriculture and SPS chapters of the U.S.-Mexico agreement to be the highest standard of any trade agreement, including the provisions the United States agreed to in the TPP. This committee commends the Administration for negotiating this high standard SPS chapter that builds on the already strong SPS chapter agreed to during the TPP negotiations. The emphasis on international standards and science-based risk assessment as the basis for taking an SPS action is critical. High standards on transparency, import notifications, and technical consultations prior to disputes, among other provisions, should be helpful to the products covered by this committee and in establishing a baseline for future trade negotiations.

The agreement provides enforceable SPS obligations that build upon WTO rights and obligations. In fact, it goes beyond WTO, NAFTA and TPP obligations while still allowing each party to establish its own level of protection, but committing to avoid unnecessary barriers to trade.

The parties are to base measures on international standards or assessment of risk and relevant scientific principles. The agreement allows for provisional measures if an international standard or risk assessment does not exist. However, parties commit to seeking additional information necessary for a more objective assessment of risk. Measures are to be applied only to the extent necessary to protect human, animal and/or plant life/health and in a manner that is not a disguised restriction to trade.

Additional improvements are provisions limiting the duration of provisional measures; enhancing transparency and the compatibility of measures among members; and mandating a review of emergency measures after six months.

Importantly, the agreement establishes a mechanism to resolve unwarranted barriers that block the export of U.S. food and agricultural products and it seeks to establish cooperation, communication and consultation between parties to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner.

While the provisions do not specifically address the issue of adoption of trade facilitative residue levels and adventitious presence mechanisms, they do provide additional avenues to address them. We concur that this chapter represents a significant improvement of the WTO SPS Agreement and the TPP and should serve as foundational language for other free trade agreements.

The Committee also appreciates that this chapter will not require change should Canada not join the U.S.-Mexico Understanding.

In the collective view of the Committee, we strongly support the SPS provisions in the agreement in principle, particularly, Article 9.6: Science and Risk Analysis; Article 9.7: Enhancing Compatibility of Sanitary and Phytosanitary Measures; Article 9.9; Equivalence; Article 9.10: Audits; Article 9.11: Import Checks; 9.12: Certification; Article 9.13: Transparency; Article 9:14: Emergency Measures; Article 9.15: Information Exchange; Article 9:16: Cooperation; Article 9.17: Committee on Sanitary and Phytosanitary Measures; Article 9:18: Technical Working Group; and Article 9.19: Technical consultations; and Article 9:20: Dispute Settlement.

Agricultural Biotechnology

The Committee strongly supports the provisions of the Agriculture Chapter under Section B – Agricultural Biotechnology. The Committee had strongly endorsed inclusion of a new chapter on biotechnology with the following components:

- A mutual recognition agreement among the Parties on the safety determination of biotech crops intended for food, feed and further processing.
- 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.

The Committee strongly appreciates the recognition of modern biotechnology and the regulatory implications of both *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection. We believe these provisions will complement the efforts of the parties to work cooperatively on policies for products produced through new plan breeding techniques.

We appreciate the provisions of Article 3.B.3: Trade in Products of Agricultural Biotechnology and Article 3.B.4; LLP Occurrence to establish an approach to reduce the likelihood of disruptions to trade in products of agricultural biotechnology.

While the Committee is disappointed that there was no inclusion of provisions for a mutual recognition agreement on safety determinations, we appreciate provisions under Article 3.B.5: Working Group for Cooperation on Agricultural Biotechnology that provides a forum to exchange information on a number of issues, including risk or safety assessments that will provide for continued dialogue on this concept would further help facilitate trade for products of agricultural biotechnology. Finally, we believe this is foundational language that should be incorporated in other free trade negotiations.

Coherent National Renewable Fuel Standards

Since NAFTA went into effect in 1994, the U.S. ethanol industry has grown dramatically, expanding production more than eleven-fold from a modest 1.2 billion gallons in 1994. Today, the U.S. is now the most reliable and affordable source for clean-burning, high-octane ethanol in the world. This industry supports more than 340,000 jobs and promotes the growth of rural America and the farm economy through the use of more than 5 billion bushels of U.S. corn to make ethanol and associated coproducts. In 2016, this industry produced more than 15 billion gallons of ethanol and 47 million tons of distillers grains, contributing more than $30 billion to our nation's economy. In addition, the United States exported over 1.2 billion gallons of ethanol at a value of more than $2 billion and 11.5 million tons of DDGS.

Today, Canada and Mexico are two of the U.S. ethanol industry's strongest trading partners, with Canada emerging as the destination for nearly 25 percent of all U.S. ethanol exports, and Mexico recently emerging as the top destination for U.S. DDGS exports. This industry's successful entry and trade into the Canadian and Mexican markets are a direct result of NAFTA's elimination of tariffs on goods such as ethanol and distillers grains.

NAFTA modernization provided an excellent opportunity to recognize and support modernized energy policy. The Committee recommended that the Administration maintain the current policy of zero tariffs on ethanol amongst the three countries. We appreciate that has been maintained as it relates to Mexico. Members of the Committee also encouraged provisions to prevent the introduction of any potential technical barriers to trade. Currently, while the transportation fuel markets and ethanol blend dynamics differ in Canada, Mexico, and even within the U.S., there appear to be few, if any, true barriers to trade. We would reiterate that the agreement continues to keep these fuel markets as open and as workable as possible for our U.S. producers.

The Committee is extremely disappointed that language in the U.S proposed 2.0 Energy Chapter that contained positive provisions to assist the renewable fuels industry to promote the benefits of increased use of ethanol in fuel with both country partners was dropped. This language was aspirational and addressed several important areas:

- Promoting increased regulatory transparency and avoiding disruptions of energy regulatory measures

- Enhance cooperation to advance North American energy competitiveness through market-oriented integration of energy markets
- Reduce or eliminate trade and investment distorting measures
- Foster exchange of aggregate market data and promotion of new energy technologies
- Promote research and development of renewable energy
- Promote energy diversification
- Encourage robust North American trade in biofuels by promoting regulatory compatibility for fuel blending requirements through policy and technical exchanges

The Committee would strongly advocate reconsideration of these measures that could be incorporated in a final agreement on energy with all three parties and/or inclusion of these concepts in other related chapters, such as Technical Barriers to Trade or Good Regulatory Practices or a trilateral side letter on Cooperation to Advance North American Energy Competitiveness.

Technical Barriers to Trade (TBT)

The agreement incorporates a TBT Agreement and thereby requires parties to apply decisions and recommendations adopted by the WTO TBT Committee that apply to standards, conformity assessment, transparency, and other areas. It requires transparency and public consultation. Parties are to publish drafts of technical regulations and conformity assessment procedures and allow stakeholders in other countries to provide comments. It also allows authorities to address any significant issues raised by stakeholders and explain how the final measure achieves the stated objectives. And it establishes a Committee on Technical Barriers to Trade to monitor and strengthen implementation of the Chapter, to support coordination between the parties, and to encourage the exchange of information. As TBT issues have grown in significance to agricultural trade, we support the inclusion of a robust TBT chapter.

Intellectual Property Rights

In its June 27 letter, the Committee noted the importance in terms of respect for intellectual property rights (IPR) and the ability to enforce IPR is critical to and a prerequisite for a seed company to conduct business. U.S. seed companies use a combination of IPR tools to effectively protect themselves, including Plant Variety Protection, trademarks, patents and trade secrets.

The Committee also pointed out that acceding to the 1991 Convention of the International Union for the Protection of New Varieties of Plants (UPOV 1991) has been a requirement in all U.S. free trade agreements concluded since NAFTA. The U.S. and Canada are both signatories to UPOV 91 but Mexico is a member of the 1978 UPOV Convention. The Committee is pleased to note that ascension to UPOV 91 is included in the agreement.

Other Beneficial Chapters

Outside of the chapters discussed above, there are several other chapters that could improve the trade environment for agricultural products. For example, the Good Regulatory Practices chapter is an innovative approach that should provide more predictability and transparency in the development of regulations relevant to U.S. agriculture and its associated products. The Customs and Trade Facilitation chapter builds on the success of the WTO Trade Facilitation Agreement and includes better rules to prevent trade delay or disruption. The U.S.-Mexico agreement also

contains the strongest language on state-owned enterprises (SOEs) that has been negotiated in a trade agreement. SOEs have been a problem in grain trade, from the Canadian and Australian Wheat Boards to import monopolies or traders controlled by states.

Review Mechanism

The committee views the Review and Automatic Extension Provision as introducing needless uncertainty into the trade relationship. There is already a procedure under Article [22].06 of the Final Provisions chapter that provides for withdrawal from the agreement. The chance to review the agreement after six years and provide recommendations could be a helpful opportunity to improve trade flows, but automatic termination without a proactive extension by all parties heightens the risk of brinkmanship and a trade policy environment detrimental to U.S. exporters.

Dispute Settlement

This committee recommended a much stronger dispute settlement mechanism in its advice on NAFTA negotiations. Instead of strengthening our ability to enforce trade commitments, USTR proposed weaker language that would give a respondent an effective veto over enforcement. The dispute settlement chapter agreed to between the United States and Mexico is largely consistent with the original NAFTA dispute settlement language, which proved to be an ineffective enforcement tool; subsequent FTAs and the WTO Dispute Settlement Understanding included stronger enforcement mechanisms. This committee disagrees with going backwards to weaker commitments.