



**U.S. WHEAT
ASSOCIATES**

*National Association
of Wheat Growers*

Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico

USTR-2017-0006

June 12, 2017

Re: Docket No. USTR-2017-0006 – NAFTA Negotiations

U.S. Wheat Associates (USW) and the National Association of Wheat Growers (NAWG) submit the following comments to the United States Trade Representative regarding Docket No. USTR-2017-0006-0001, Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico.

USW and NAWG appreciate the opportunity to provide comments regarding the negotiations to update the North American Free Trade Agreement (NAFTA). USW is the wheat industry's export market development organization, conducting training and educational activities with customers in over 100 countries on behalf of U.S. wheat producers, while supporting all six U.S. wheat classes. NAWG is a federation of 20 state wheat grower associations that works to represent the needs and interests of wheat producers before Congress and federal agencies.

Benefits of Current NAFTA

Mexico is one of the most important export markets for U.S. wheat because of the current NAFTA. In the current marketing year, it is the largest overall export market. It is almost impossible to exaggerate the benefits of the Mexican market for U.S. wheat producers, and NAFTA is the demonstrable cause of those benefits.

Prior to NAFTA, state intervention and import tariffs kept U.S. wheat exports out of the Mexican market. NAFTA ended both and the newly opened market allowed U.S. wheat imports to skyrocket to an annual average of almost 3 million metric tons (more than 100 million bushels) over the past decade. Mexico, was the largest U.S. wheat importer in the world in the 2016/17 marketing year, at 3.1 million metric tons. This is driven by both the open market for wheat as a result of specific NAFTA provisions, as well as the broader growth in the Mexican middle class that is in large part due to the opportunities provided by NAFTA.

Still, Mexican wheat buyers used to rely exclusively on NAFTA suppliers. After a price shock, Mexico lifted its non-NAFTA wheat import tariff and wheat from other origins began to trickle in. From the first single boat carrying French wheat in 2010, non-NAFTA imports became a quarter of all Mexico's wheat

imports by 2015. The United States has the geographical advantage, but if Mexico encourages purchasing from other origins because of political pressure or creates new impediments to U.S. wheat imports, it has plenty of supply alternatives.

Non-Negotiables

The U.S. wheat industry's non-negotiable criteria include that an updated NAFTA cannot include any wheat tariffs, non-tariff barriers, or additional provisions that *might* be used to restrict trade in wheat, such as more aggressive safeguard mechanisms. The trade relationship between the U.S. wheat industry and Mexican milling and processing sectors has become extremely strong since NAFTA's implementation. Under no circumstances will we support jeopardizing or weakening that relationship through potential barriers that could substantially reduce our wheat exports to Mexico.

It should also be noted that the U.S. wheat industry has experienced a significant increase in exports to Mexico because of NAFTA. Wealthier countries seek out high quality imports, and as Mexico has transformed into a middle-class society because of NAFTA, U.S. industries (including the wheat sector) benefit. As negotiations move forward, the Administration's goals should reflect that NAFTA has already delivered major benefits to the United States, Mexico, and Canada. We fully agree with President Trump in hoping that "the end result will make all three countries stronger and better."¹

U.S.-Canada Grain Grading Problem

Currently, Canada is in violation of its existing WTO obligations because of provisions in the Canada Grains Act that requires separate treatment for foreign grain entering the Canadian market, even if the quality, characteristics, and plant variety are identical. This is a major trade irritant for wheat farmers along our northern border, but it is our position that this concern has been adequately addressed *legally* in the various WTO agreements.

Fortunately, there is strong support on both sides of the border for resolving this issue. The Canadian grain industry does not want to risk disruption of their largest market due to escalation of what should be a minor trade issue. U.S. Wheat Associates is actively working with counterparts in Canada to ensure that this issue is corrected.

It is already Canada's responsibility to resolve this issue, and the U.S. government should continue to pressure them to do so as expeditiously as possible. This should be part of an "early harvest" of U.S.-Canada trade issues prior to any new commitments. Canada does not need to wait for a completed NAFTA to come into compliance with its current commitments.

However, as part of an updated regulatory cooperation framework, there is an opportunity to include greater collaboration between the Canadian Grain Commission (CGC) and the U.S. Federal Grain Inspection Service (FGIS) to ensure that grain standards do not constitute unnecessary barriers to trade.

Until Canadian law is changed this will be a meaningless effort. The main benefit of greater access to the Canadian market is the opportunity for some northern farmers to sell their wheat into the Canadian supply chain. Since much of this is exported, the current ability of U.S. farmers to sell directly to processors still requires segregation and therefore restricts cross-border trade.

Of course, this would only be a clarification of existing obligations and should in no way be seen as a concession by Canada, which should take steps to resolve its current non-compliance outside the NAFTA process.

¹ <https://www.whitehouse.gov/the-press-office/2017/04/26/readout-president-donald-j-trumps-call-president-pe%C3%B1a-nieto-mexico-and>

Looking Beyond North America

From an agriculture perspective, except for a few important issues with Canada, NAFTA is a great deal. Our NAFTA partners are some of the most pro-trade, science-based, forward-looking countries in the world when it comes to the rules of the global marketplace. This was not the case when NAFTA was originally negotiated, but now there is an opportunity to set a gold standard in a way that goes beyond even the provisions of the Trans-Pacific Partnership (TPP).

On average, 50 percent of all U.S.-grown wheat is exported, making trade one of our top priorities. While the U.S. wheat industry was disappointed when the US government pulled out of the TPP deal, which had many positive measures and created access to new markets, we also look to future trade deals beyond renegotiating NAFTA. Ideally this updated agreement will be used as a blueprint to move forward with other potential trading partners. We need a deal that will be strongly supported by the wheat industry and other American agriculture groups to garner support for this and any future deal. Administration officials have repeatedly expressed frustration with unfair competition and a desire to reevaluate U.S. trade agreements. There are certainly areas that can be improved to the benefit of U.S., Canadian, and Mexican agriculture, and these negotiations are an opportunity to improve precedent.

The United States, Canada, and Mexico share enough similar interests that there should be more opportunity for trade facilitative requirements than is likely with most other trading partners. If the biggest U.S. trade agreement has strong science-based provisions, it should strengthen the U.S. negotiating position in future trade negotiations.

In our view, it will be important to signal to future negotiating partners what kinds of agreements the United States intends to pursue under this Administration. The wheat industry is highly unlikely to support any agreement negotiated with primary objectives focused on deficits, import restraints, new tariffs and enforcement tools used to prevent trade rather than working to correct violations.

From our perspective, U.S. trading partners would be much more interested in agreements that reflect President Trump's view that a fair NAFTA deal means "Open markets. Open borders for trade" and "Fairness, no government subsidies so that it makes it impossible for our people to compete."²

An updated NAFTA should be consistent with that view and it should put countries on notice that we will demand (and we will comply with demands) that open markets really means open markets. That using SPS and technical barriers to trade (TBT) to protect industries while still appearing to provide duty-free access will not be tolerated. That the United States intends to improve the rules of trade so that violations can be addressed quickly and effectively.

Room for Improvement

Even though there are numerous benefits to the existing agreement, it is over 20 years old and there are certainly updates that the U.S. wheat industry would support. For example, the provisions in the Trans-Pacific Partnership (TPP), especially regarding agriculture products, should be a reference point against which a new agreement will be judged. However, there are several areas where even that high standard agreement could be strengthened.

First, the sanitary and phytosanitary (SPS) provisions of TPP provided more tools to address problems. For the wheat industry, the key provisions we consider beneficial were the 7-day notification requirement for adverse results during import checks, extensive transparency requirements, the pre-dispute technical consultation mechanism, and enforceability. These would have been a considerable improvement over the current framework and they should be included in concept and improved upon in the NAFTA update.

² <http://www.reuters.com/article/us-usa-trade-nafta-idUSKBN17S2DG>

New SPS Chapter

Within the new and improved SPS chapter, the U.S. position should be preserving science and risk-based structures while accelerating resolution of trade irritants. In this regard, the TPP SPS rules are solid, as noted above. It is our view that the burden should be on the government restricting trade to find a resolution as quickly as possible, so even faster notification requirements and more transparency will be better. Furthermore, the cooperative technical consultations mechanism seems like a promising venue to resolve irritants short of a full dispute settlement process, and the dispute settlement process itself should be strengthened so that countries are motivated to resolve issues quickly.

Within the SPS chapter, there should be a focus on improving the framework for residue levels, adventitious presence, low level presence, and other *regulated* concerns that could disrupt trade. This should be done in a way that facilitates trade, such as through equivalence agreements, simultaneous approvals, and standardized approval criteria.

These mechanisms should also be designed with an eye towards other countries, both in terms of setting an example that could be followed in future agreements and preventing disruption due to asynchronicity in North America.

Regulatory Cooperation

The wheat industry supports current efforts across North America to improve cooperation on regulatory matters affecting trade between NAFTA members. These should be strengthened, particularly on SPS provisions in concert with new requirements that would help avoid trade disruption.

One area of particular concern for the wheat industry in northern wheat producing states is ensuring that cross border trade between the United States and Canada is reciprocal and integrated where appropriate. Regulatory cooperation on product approvals – including regulated products of plant breeding and crop protection usage – should aim for science-based trade facilitation. Another potential area for cooperation relates to grading and marketing standards.

A related concern is the possibility that future agreements of any kind between individual NAFTA members and outside parties could somehow disrupt cross-border trade within NAFTA. There should be a provision in the NAFTA update that would deem any agreement that prevents cross-border trade flows to be non-compliant with NAFTA and subject to dispute settlement. This could be rules of origin provisions in another FTA, a phytosanitary protocol that prevents product in one NAFTA member country from entering supply chains in another, exclusive traceability provisions, or any other barrier to cross-border trade into export channels.

Retroactive Compensation

One area of weakness in trade agreements is that there is little to no leverage to resolve an issue prior to the end result of a dispute settlement case, and even then the results are only forward looking. One way to give the dispute settlement system stronger leverage is to allow panels to include cumulative previous damage caused when calculating retaliation levels. Currently, a country can avoid compliance for years, but because compliance in the dispute settlement context is only forward looking, it becomes easy to comply, and oftentimes the damage has already been done.

A reasonable solution is compensatory retaliation as opposed to simply forward-looking compliance. When a country wins a dispute, it has the option to retaliate. With compensatory retaliation, that country would also be able to retaliate for damages incurred since the trade barrier took effect, or at least since the dispute was filed or brought to consultations.

Hopefully the countries will rarely, if ever, exercise that option, but the threat of it would certainly create incentives for countries to resolve disputes quickly rather than drag on what are clearly losing battles. It might also encourage governments to act more quickly to initiate disputes for the potential leverage of greater compensation. Most importantly, it would give countries greater pause before imposing trade barriers in the first place. Finally, having this option is an issue of fairness, since by the time an issue is resolved, a non-compliant trade barrier will often have caused millions or billions in damage to industries in the complaining country.

Withdrawal Provisions

Finally, the U.S. Constitution grants authority to regulate foreign commerce to Congress. Even though Congress passed NAFTA implementing legislation after presidential negotiation, Article 2205 does not allow Congress any input in withdrawal, with the President able to unilaterally withdraw and create massive trade disruption without input from those with Constitutional authority over foreign commerce. The NAFTA update should require that governments must use the same procedures to withdraw from the agreement as to implement it.

Conclusion

The wheat industry appreciates the opportunity to comment and hopes that USTR takes these proposals seriously as it develops its negotiation objectives. NAFTA is a monumentally important agreement for the wheat farmers and the potential damage from withdrawal is much greater than the potential gains from modernizing the agreement for North American trade.

Under no circumstances should there be additional opportunity for tariffs on wheat trade between the countries, particularly on wheat moving into Mexico. USTR should also work to resolve the U.S.-Canadian grading issue as expeditiously as possible.

There is an opportunity to vastly improve the standards of U.S. free trade agreements for agriculture through this update. We strongly encourage the consideration of the improvements outlined above as USTR looks for ways to go beyond agreements negotiated thus far by improving both cooperative and confrontational mechanisms to keep trade free, fair, and open.