



June 12, 2017

Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

VIA: www.regulations.gov

RE: NAFTA Negotiations, FR Doc. 2017-0006

Dear Mr. Gresser:

The Corn Refiners Association (CRA) appreciates this opportunity to provide input on the Administration's negotiating objectives for a modernized North American Free Trade Agreement (NAFTA) with Canada and Mexico.

CRA is the national trade association representing the U.S. corn refining (wet milling) industry, which is responsible for over 250,000 direct and in-direct jobs with an annual economic impact of \$54 billion. Corn refiners manufacture starches, sweeteners, corn oil, advanced bioproducts and animal feed ingredients using on average 38.4 million metric tons of U.S. corn a year.

Increased market access under NAFTA has been a tremendous opportunity for the U.S. corn refining industry, including others in the food, agriculture and manufacturing sectors. U.S. exports of refined corn products to Canada and Mexico have grown over 450% since NAFTA was implemented in 1994. Most importantly, Mexico became the leading, irreplaceable market for U.S. corn sweeteners.

While NAFTA has been a success for the corn refining industry, we recognize that the global market has changed dramatically since it was negotiated 25 years ago. Therefore, we would support provisions that expand upon the following NAFTA chapters: National Treatment and Market Access of Goods; Rules of Origin, Customs Procedures; Agriculture and Sanitary and Phytosanitary (SPS) Measures; Standards-Related Measures; and Investment and Dispute Settlement.

Also under a modernized agreement, we would support including provisions that would address the following issue areas: biotechnology, regulatory cooperation, and trade secrets and confidential business information.

CRA is a member of the U.S. Biotech Crops Alliance, the National Association of Manufacturers and the U.S. Food and Agriculture Dialogue for Trade and are supportive of their views with respect to these areas.

Importance of Trade and the North American Market

The United States is the world's largest trade nation, in large part because of our ability to innovate and be a competitive player in the global marketplace. As the world's largest economy, the U.S. depends on trade to help fuel economic growth, support good-paying jobs at home, raise living standards and help Americans provide for their families with affordable goods and services. According to the Office of the U.S. Trade Representative, U.S. goods and services exports directly supports around 11.3 million jobs that pay 13-18 percent more than the national average.¹

Together Canada, Mexico and the United States make-up one of the most competitive and successful regional economic platforms in the world. The success of this trading relationship depends largely on economic and commercial cooperation, integration, and policy alignment.

Mexico and Canada are our first and second largest export markets, totaling nearly half a trillion dollars. In 2016, U.S. industries shipped \$266 billion to Canada and \$231 billion in Mexico in goods. That equates to almost \$40,000 in export revenue for each American factory worker, according to the U.S. Chamber of Commerce.²

Food and agriculture trade under NAFTA is one of trade's biggest success stories. Since the agreement was enacted, U.S. food and agricultural exports to Canada and Mexico have more than quadrupled—growing from \$11 billion in 1993 to over \$43 billion in 2016. Since NAFTA was initiated, the U.S. food and agriculture industry has grown to support millions of good jobs, improved efficiency and innovation, and enhanced our competitiveness in a rapidly changing global economy.

NAFTA: A Success for the U.S. Corn Refining Industry

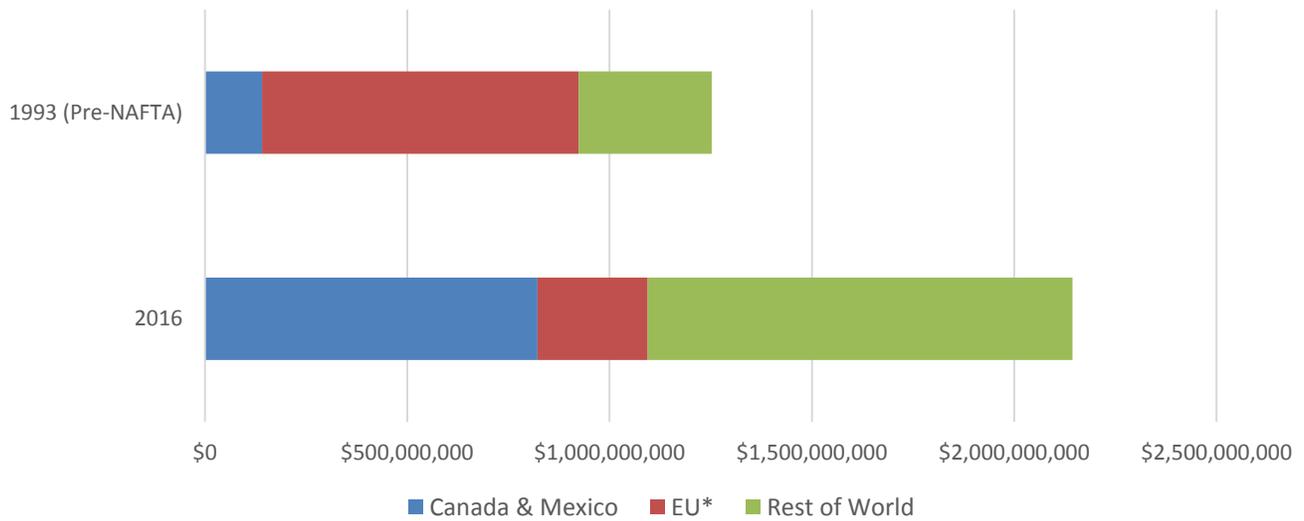
For well over 20 years, the European Union (EU) served as the leading market for U.S. exports of refined corn products, most notably corn gluten feed. But that changed dramatically once the EU changed their regulations for processed food and feed, which resulted in a back-log of acceptance of new biotech traits, thus creating significant trade disruptions and denying the opportunity for U.S. feed and grain exports.

With NAFTA in force, the U.S. corn refining industry was able to find new market access for not only our feed products but also higher value products such corn sweeteners. By 2010, Mexico became the U.S. corn refining industry's leading export market, thanks in large part to elimination of duties and quotas, but also because of inclusion of provisions covering the areas of agriculture, sanitary and phytosanitary measures, standards-related measures, investment and dispute settlement.

¹ Office of the U.S. Trade Representative, Benefits of Trade accessed at: <https://ustr.gov/about-us/benefits-trade>.

² U.S. Chamber of Commerce, "NAFTA Triumphant: Assessing Two Decades of Gains in Trade, Growth, and Jobs" accessed at: https://www.uschamber.com/sites/default/files/documents/files/nafta_triumphant_updated_2015.pdf

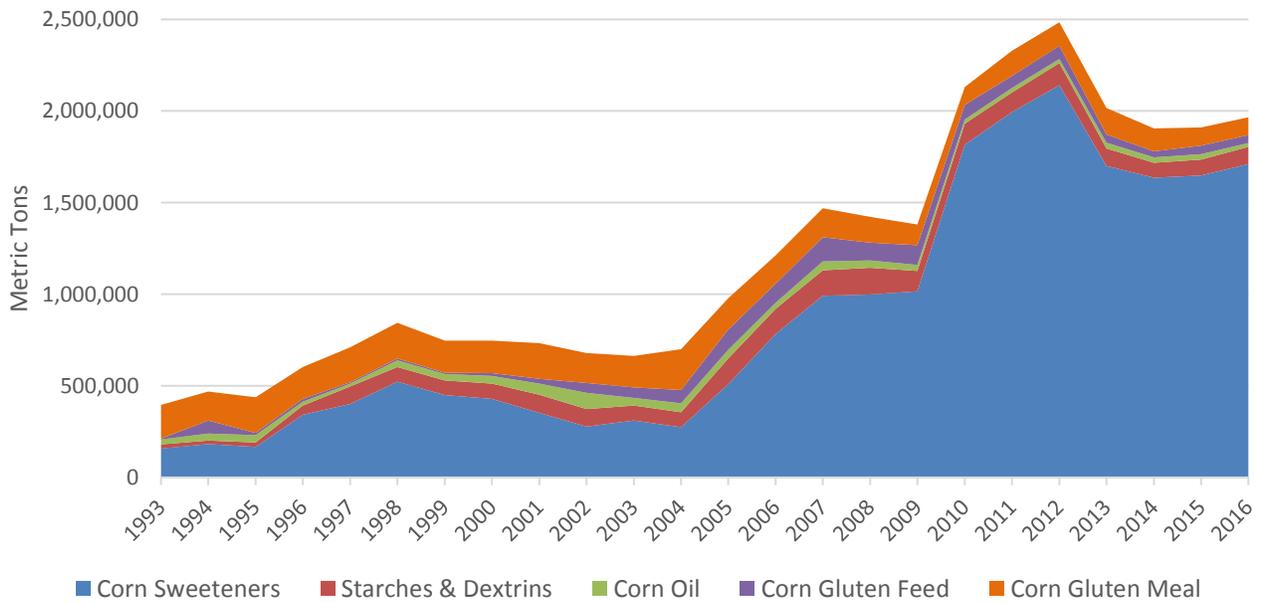
U.S. Refined Corn Product Exports by Value



Data Source: U.S. Census Bureau 1

*For consistency, includes current EU-28 nations in 1993 data collection.

U.S. Refined Corn Product Exports to Mexico & Canada



Data Source: U.S. Census Bureau 2

Priorities for U.S. Competitiveness in North America

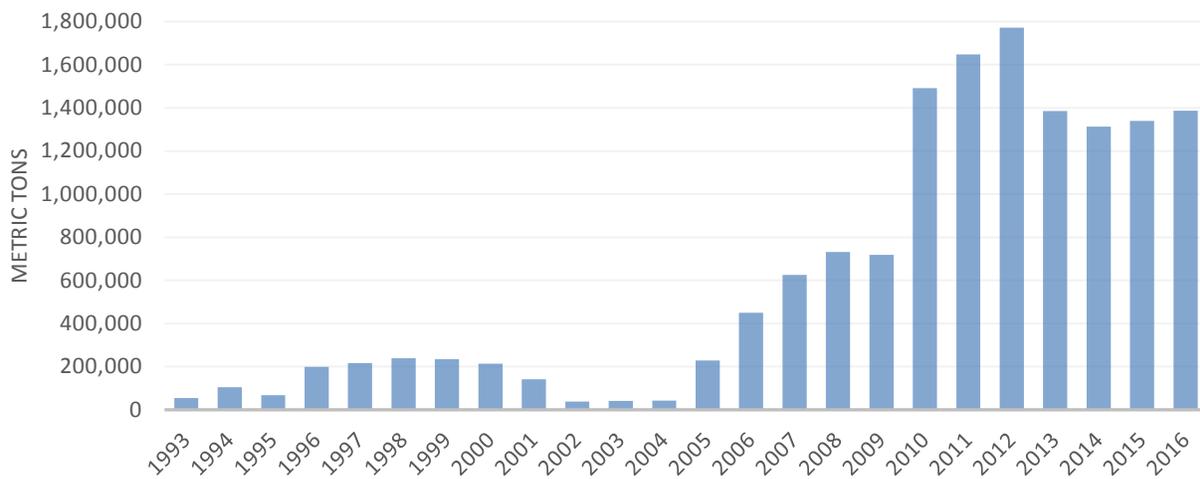
NAFTA has played a central role in securing a reliable market for U.S. refined corn products, helping meet the needs of the food, beverage, industrial and animal feed sectors throughout North America while supporting over 4,000 U.S. jobs. However, we also believe that NAFTA can be modernized in ways that will enhance our market access and promote transparency and efficient trade.

We would like to bring to your attention the following matters relevant to the modernization of NAFTA that will preserve and expand competitiveness of the U.S. corn refining industry.

National Treatment and Market Access for Goods

We support maintaining all existing market access commitments that were gained for U.S. food and agriculture goods including refined corn products. In addition, we welcome the opportunities to expand upon provisions in ways that will enhance U.S. market access and market share in both the Canadian and Mexican markets, and that further promote economic integration.

U.S. Corn Sweetener Exports to Mexico



Data Source: U.S. Census Bureau 3

While NAFTA was implemented in 1994, sweetener trade between the U.S. and Mexico did not achieve duty-free access until 2008. Liberalization under NAFTA has led to active sweetener trade in both directions, most notably between the U.S. and Mexico. Food and beverage manufacturers depend on a variety of sugar and sweeteners to meet their production needs. The U.S., a net importer of sugar, has access to the Mexican sugar market, while Mexico continues to be a leading market for U.S. high fructose corn syrup for beverage manufacturers and bakery use. In 2016, the U.S. shipped over \$644 million of corn-based sweeteners to Mexico and Canada.

Sugar trade between the U.S. and Mexico is currently subject to Suspension Agreements, which are now being revised. We support the suspension agreements as a means to eliminate the injurious effects found in the 2015 by the International Trade Commission and U.S. Department of Commerce anti-dumping and countervailing duty investigations. Elimination of the suspension agreements would threaten the \$500 million in U.S. corn sweetener exports to Mexico and invite trade retaliation beyond our industry, to the detriment of U.S. consumers and workers.

What Happens to Tariffs on Trade between U.S. and its NAFTA Partners without NAFTA?

If NAFTA were to be dissolved, Mexico would have the right to re-impose tariffs on U.S. goods up to the WTO most favored nation level – levels which would destroy the markets we have worked so hard to establish.³ The levels would make many of our refined corn products uncompetitive, most notably corn sweeteners to Mexico which would face a 15 to 75 percent tariff hike.

Refined Corn Products	6-Digit HS Code	U.S. 2016 Exports Millions USD ⁴	NAFTA Tariff Rate	Mexico Applied Rate ⁵	Canada MFN Rate ⁶
Corn Starch, Unmodified	1108.12	\$34.4	FREE	10%	FREE
Corn Starch, Modified	3505.10	\$107.3	FREE	5%	0% - 8%
Corn Oil, Crude	1515.21	\$4.6	FREE	10%	4.50%
Corn Oil, Refined	1515.29	\$16.3	FREE	20%	9.50%
Glucose (Dextrose)	1702.30	\$208.7	FREE	15%	0% - 3.5%
High Fructose Corn Syrup-42	1702.40	\$16.5	FREE	15% - 20%	6%
Crystalline Fructose	1702.50	\$22.9	FREE	75%	FREE
High Fructose Corn Syrup-55	1702.60	\$406.2	FREE	75%	3.5%
Corn Gluten Feed/Meal	2303.10	\$69.6	FREE	15%	FREE

Additional Input

We oppose any imposition of mandatory country of origin labeling provisions. Mandatory country of origin labeling for beef and pork products from Canada and Mexico was fully adjudicated at the World Trade Organization through the Dispute Settlement process and addressed by the U.S. Congress. Any reconsideration of mandatory Country of Origin Labeling would be harmful, self-defeating and only detract from the overall negotiating process.

Rules of Origin

The Rules of Origin chapter creates rules of origin defining what it means for a product to be originating from NAFTA partner countries, and thereby eligible for NAFTA benefits. We support trade facilitative rules of origin requirements for individual sectors, while maintaining sector specific rules of origin where appropriate.

Standards-Related Measures

CRA recognizes that non-tariff and technical barriers to trade are increasingly used to manage trade flows, limit market access for U.S. exporters and serve as protectionist barriers. The Corn Refiners Association seeks technical standards that are fair, transparent, and promote recognition and convergence of technical standards between NAFTA countries, as well as a new Technical Barriers to Trade (TBT) Chapter.

³ Both NAFTA and the underlying Canada-U.S. Trade Agreement would need to be dissolved in order for Canada to legally impose tariffs on U.S. goods up to the WTO most favored nation level.

⁴ U.S. Census Bureau

⁵ Tariff of the Law of General Taxes and Export accessed at: <http://www.siicex-caaarem.org.mx/>

⁶ Canada Border Services Agency, Customs Tariff 2017 accessed at: <http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2017/menu-eng.html>

A modern TBT chapter in NAFTA which strengthens commitments in the current NAFTA and builds on other previously negotiated outside and texts would create an opportunity to address systemic challenges that can create unnecessary TBTs that reinforce or substitute for tariffs and prevent U.S. exports from reaching markets. Such a chapter should serve as the basis for future U.S. trade agreements, as well. (*See: Technical Barriers to Trade section on page 7*)

Customs Procedures

The Customs Procedures Chapter ensures goods trade among the NAFTA countries will move quickly across borders, governed by facilitative and transparent procedures that require customs authorities to treat goods fairly and reduce opportunities for conflicts of interest in customs administration. We support the following provisions that will enhance customs rules and procedures.

Proposed Improvement

- Simplify record keeping and auditing procedures.
- For reconstructed and new Customs facilities at land borders, consolidate facilities with Mexico and Canada that will reduce costs of construction and staffing, and achieve greater flow capacity.
- Develop a single NAFTA customs document for all three nations.
- Strive for mutual recognition of quality inspections.

Agriculture and Sanitary and Phytosanitary (SPS) Measures

NAFTA was one of the first global free trade agreements that established a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary (SPS) measures. But over the years protectionist sanitary and phytosanitary measures lacking scientific basis and not based on a risk assessment continue to unjustifiably restrict access for U.S. food and agricultural exports across numerous foreign markets. The WTO Sanitary and Phytosanitary Agreement established important science-based principles to challenge such restrictions. However, enhanced provisions are needed to ensure that SPS issues are resolved in a timely manner and do not result in unnecessary delays to our sector's perishable exports.

Therefore, the Corn Refiners Association supports modernizing the SPS chapter, consistent with, but improving on the Trans-Pacific Partnership (TPP) text, to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner, while at the same time preserving the ability of NAFTA partner regulatory agencies to take necessary steps to ensure food safety, and protect plant and animal health.

Proposed Improvement

Adoption of expanded WTO SPS-Plus standards include:

- Creation of a rapid response mechanism, including tighter standards and deadlines for adverse import checks (*TPP SPS Chapter, Article 7.11*).
- Adoption of cooperative technical consultations (CTC) and increased reporting, transparency and record keeping among CTC members.
- Creation of a more robust single inquiry point standard for SPS contacts (including increased transparency of SPS requirements, data bases for SPS regulations, etc.).
- High standards for risk assessment and risk management, including language that elaborates on current WTO provisions (*TPP SPS Chapter, Article 7.9*).
- Adopt trade facilitative residue levels and adventitious presence mechanisms.
- Include low level tolerance principles.

- Enhanced enforcement mechanisms for unjustified SPS barriers, including a potential compensation, three strikes policy or retroactive damages to help enforce and hold trading partners accountable to persistent and unscientific SPS measures.

Additional Input

To maintain consistency with more recent trade agreements, we recommend moving the Agriculture section to “Chapter 3: National Treatment and Market Access for Goods” and revising the current chapter’s name to “Sanitary and Phytosanitary (SPS) Measures.”

Investment and Dispute Settlement

The core protections and enforcement tools that U.S. trade and investment agreements provide American companies doing business overseas are critical to ensure that U.S. food and agricultural manufacturers can access foreign markets and are not harmed by the unfair actions of foreign governments. Investment and dispute settlement measures provide additional certainty and insurance for U.S. companies investing and expanding in foreign markets.

Inclusion of such investment provisions in trade agreements create a level playing field for U.S. companies by providing their overseas investments the same basic protections that their foreign competitors already enjoy in the United States under domestic law including: non-discriminatory and fair and equitable treatment, and the right to receive compensation in the event of expropriation.

Further, we support preserving Chapters 19 and 20. Legally binding and rapid dispute resolution will ensure stable market access for U.S. food and agricultural exporters to Canada and Mexico, staving off opportunities for tariffs and non-tariff barriers being arbitrarily applied—as they have been in the past for U.S. corn syrup exports, as well as others-- without effective recourse to local courts.

Proposed Improvement

Create an insurance policy against anti-U.S. trade policy attacks on U.S. food and agriculture by including investor-state dispute settlement (ISDS) provisions that:

- Are modeled on the TPP’s Chapter 9 ISDS mechanism (*TPP Investment Chapter, Article 9.8*).
- Improve the speed of the current ISDS process.
- Reduce costs of the current ISDS mechanism.
- Provide a mechanism for resolving inconsistencies among panels.

Technical Barriers to Trade (New)

CRA supports provisions for a Technical Barriers to Trade Chapter that will build on the WTO TBT Agreement and ensure that it facilitates trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and sound regulatory practices. We support provisions that:

- Ensure that stakeholders and interested parties have the opportunity to participate in the development of technical regulations, standards and conformity assessment procedures by government bodies.
- Require government parties to publish new technical regulations, conformity assessment procedures and provide the opportunity for public comments and responses raised by comments.
- Encourage parties to recognize the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.

- Encourage parties to cooperate, where feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become the basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade.
- Require parties to provide “national treatment” to one another’s conformity assessment bodies. Testing and certification performed by another party’s qualified conformity assessment body will be accepted as confirmation that its products, services, or systems meet requirements of the other party. (i.e. U.S. exporters will have their goods tested or certified only once before accessing other parties’ markets, thus reducing cost and burdens for U.S. businesses).
- Recognize and reinforce science-based regulations to prevent non-tariff barriers that lack scientific merit.
- Require parties to comply with provisions governing “less trade restrictive measures” and adopt “alternative measures that are less trade restrictive” that have been demonstrated to achieve the intended policy objective when they exist.
- When disclosure is required, promote the confidentiality of food formulations.

Trade Secrets & Confidential Business Information (New)

Chapter 17 in NAFTA does not address the availability of criminal penalties for trade secrets theft, nor does it reflect updated legal needs and practices that secure strong trade secret protection. Therefore, we recommend including language that requires strong civil protections for trade secrets and modern practices for trade secret litigation and protections. Having stronger procedures and penalties in place for trade secret protection, both on civil and criminal channels, help manufacturers address the growing problem of trade secret theft. In addition, including criminal options for manufacturers is consistent with the recently enacted U.S. Defend Trade Secrets Act.

In addition, NAFTA does not currently include language that broadly protects trade secrets and confidential business information collected by governments except for a few narrow product areas such as regulatory approvals for marketing of pharmaceutical products. Therefore, we support including provisions that will protect any trade secrets and confidential business information collected as part of regulatory practices with penalties for illegal disclosure.

Regulatory Cooperation (New)

An objective of several past and proposed trade agreements has been the establishment of provisions that foster an open, fair, and predictable regulatory environment for U.S. businesses by promoting the use of widely-accepted good regulatory practices including core principles such as transparency, impartiality, and due process as well as coordination across governments to ensure a coherent regulatory approach. A modernized NAFTA should seek to achieve these standards by considering regulatory cooperation principles that:

- Draw from regulatory coherence provisions in TPP, Asia-Pacific Economic Cooperation (APEC), U.S.-Korea Free Trade Agreement (KORUS) and initial Transatlantic and Trade Investment Partnership (TTIP) text to build a model good regulatory practices chapter.
- Promote regulatory cooperation outcomes, with sector specific regulatory outcomes modeled on the Technical Barriers to Trade KORUS and TPP Annexes.
- Seek mutual recognition agreements for safety determinations for production-enhancing technologies, such as veterinary medicines and vaccines and crop protection products.
- Find a way to facilitate trade in specific sectors and on specific issues.
- Make the U.S.-Canada Regulatory Cooperation Council, U.S.-Mexico High Level Regulatory Cooperation Council and trilateral regulatory cooperation bodies permanent and instruct ambitious sectoral regulatory agendas.

In addition, the Regulatory Cooperation Chapter should promote standards that embrace:

- Science-Based Approach: A science-based approach should always serve as the basis for regulations that address hazard/risk analysis. International standards and scientific data should be considered when developing new regulations.
- Post Market Surveillance: Authorities shall use Post Market Surveillance rather than registration systems. Manufacturers should have primary responsibility to ensure the safety of products. Simple notification to authorities can be useful, but in-market supervision and enforcement is the most effective system of regulation.
- Transparency: Approval processes should be transparent and equitable, with mutual recognition of other authoritative bodies' risk assessments and/or demonstrated safety based on history of use.
- Mutual Recognition of Standards: Harmonization and/or mutual recognition/reliance of standards and regulations that provide the same level of protection. In food and agriculture, harmonization of food safety systems, organics standards and pesticide residue tolerances would provide greater assurances among buyers and consumers, while reducing supply chain costs.
- Avoidance of Duplication: Regulations should avoid duplicative testing or approval requirements for products or ingredients that have already been evaluated based on sound science. Acceptance of a manufacturer's or supplier's Declaration of Conformity will increase efficiency and reduce costs and strains on industry and government resources.
- Clear and Concise Labeling: Labeling regulations should be clear, concise and allow consumers to receive meaningful information about the safe use of products, while avoiding unnecessary requirements that provide little value to consumers.
- Inclusion of Bilateral Regulatory Achievements: Adopt regulatory achievements made in the Regulatory Cooperation Council of Canada (RCC) and the High Level Working Group for Mexico.
- GMPs: Mutual recognition of Good Manufacturing Practices (GMPs) where required.

Biotechnology (New)

NAFTA came into force two years prior to the commercialization of the first biotech crops in 1996. Since that time, biotech acreage across multiple crops has grown rapidly as farmers have seen the benefits of increased yields and improved environmental performance and are choosing year after year to plant biotech crops.

While products derived from agricultural biotechnology are grown in 28 countries are traded widely, there remains a lack of synchronicity between countries, particularly countries that approve these products and those that import them. This unpredictable regulatory and trade environment has resulted in trade disruptions that have caused economic impacts across the value-chain.

We support the U.S. government in seeking provisions under a modernized NAFTA that address biotechnology through:

- Entering a mutual recognition agreement on the safety determination of biotech crops intended for food and feed; and,
- Developing 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.

Conclusion

The U.S. corn refining industry has benefited significantly from the U.S. entering into trade agreements over the past three decades with NAFTA being the greatest success story. While our industry has benefited greatly from NAFTA over the past 25 years, we also recognize that the agreement could be modernized to bring it into the 21st century and on par with more recent U.S. trade agreements.

The Corn Refiners Association commends the Administration's efforts to modernize NAFTA. We respectfully urge preservation and enhancement of the gains our industry has achieved in the North American market, while working to strengthen our competitiveness around the globe.

Sincerely,



President and CEO
Corn Refiners Association



Director, Trade & Industry Affairs
Corn Refiners Association