The Honorable Thomas Vilsack
Secretary, U.S. Department of Agriculture
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

March 22, 2021

The Honorable Katherine Tai
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

TRANSMITTED ELECTRONICALLY

Dear Mr. Secretary and Ambassador Tai:

Congratulations on your recent confirmations and thank you for your service.

Our associations represent much of the food and agriculture sector that is responsible for roughly one-fifth of the country's economic activity, directly supporting more than 23 million jobs - constituting nearly 15 percent of total U.S. employment. As a net producing nation of food and agriculture products, foreign markets are critical to the economic vitality of the food and agriculture sector.

Mexico is one of America's most important food and agriculture trade partners. NAFTA has yielded strong benefits to both countries and the U.S.-Mexico-Canada Agreement (USMCA) promises to build upon those gains. Yet, the food and agriculture trade relationship with Mexico has declined markedly, a trend USMCA's implementation has not reversed. We respectfully urge your attention to this important but quickly deteriorating trade relationship.

For your consideration, we highlight below leading concerns in the U.S.-Mexico food and agriculture trade relationship.

Glyphosate/GM Corn Ban: On December 31, 2020, the Mexican government issued a Presidential Decree stating the intention to phase out the use of glyphosate and use of genetically modified (GM) corn for human consumption. While the standing of the Decree is unclear and the scope is vague, the Decree creates a significant risk and uncertainty to cross-border trade of corn and corn products. As the largest importer of corn and corn products from the U.S., the Decree represents a dramatic shift in U.S.-Mexico trade relations and has the potential to negatively impact a significant portion of U.S. agricultural exports.

Increasing Obstacles to Dairy Trade: The U.S. dairy industry's number one export market has become increasingly volatile with multiple regulatory and policy developments creating repeated changes to trading conditions and the prospect of additional trade barriers. One of the most problematic issues took a turn for the worse at the end of 2020 when Mexico published a mandatory Conformity Assessment Procedure (CAP) for Mexico's cheese standard of identity (NOM-223-SCFI/SAGARPA-2018). Standards of Identity (SOI) or "normatives", as Mexico refers to them, are created to ensure product quality and integrity of that product; they are not focused on food safety. SOIs are widely used by the U.S. and other countries for various products but not wielded as barriers to trade. Mexico, however, has approached this SOI and its compliance as if the regulation concerned human or animal health risks. Mexico's cheese SOI initially contained a voluntary CAP, yet this was changed – in contradiction to the recommendations of a technical working group (WG) – to a mandatory CAP, in addition to introducing other problematic modifications that deviated from the technical WG recommendations. It is essential that this cheese CAP be returned to a voluntary procedure. In addition to the cheese CAP issue, we've seen a continual churn in customs enforcement shifts for minor paperwork compliance or interpretation issues; repeated policy proposals, including ones championed by Mexico's Ministry of Agriculture, aimed at curtailing dairy imports; and growing restrictions on the use of common cheese names in this key market. Collectively, they are creating a deeply turbulent market for dairy exports.

Organic Export Certification Requirement: On December 16, 2020, the Organic Trade Association was informed by a U.S. accredited organic certifying agency that Mexico's Health, Food Safety, and Quality Agency (SENASICA) would begin requiring all U.S. organic exports to Mexico to become certified to Mexico's organic standards (Ley de Producto Organicos – LPO) no later than December 28, 2020. This requirement has not been notified to the WTO to allow for stakeholder comments and was never formally notified to the U.S. government. Previously, USDA certified organic products could be exported to Mexico and sold as organic without additional certification. Thanks to USDA/USTR efforts the U.S. was granted an extension until June 26, 2021. However, even this is an extraordinarily short timeline for implementation. If this policy is enforced, U.S organic producers will experience significant trade disruptions as certification can take a year or more for organic companies to become certified to a new organic standard. These un-notified technical barriers to trade will increase costs of exporting to Mexico that include significant staffing expenses, paperwork, and new certification and inspection costs while Mexican exporters continue to enjoy access to U.S. markets. Mexico is the second largest market in the world for U.S. organic exports, importing over $117 million dollars of U.S organic goods in 2020. The current timeline for certification is not feasible for U.S. companies, and if implemented, will cause significant trade disruptions and losses for U.S. organic exporters. SENASICA has not provided clarity on what products specifically will be required for certification, if the policy includes all organics or only a select grouping. We ask the Administration to address these concerns directly with the Mexican government to allow for additional time for certification as well as a confirmation on affected products.

Corn Product Disparagement: Over the past year, in violation of its trade obligations, Mexico has undertaken a state-sponsored campaign of disparagement of corn sweeteners from the U.S. There is reason to believe that these actions were coordinated with Mexican sugar industry advertising to disparage U.S. corn sweeteners. The public comments inaccurately allege that U.S. corn sweeteners are subsidized in violation of trade obligations, being dumped into Mexico, are uniquely (different from sugar) responsible for poor health outcomes, and that sugar is “natural” while corn sweeteners are a chemical imposter. These attacks have included depictions in a federal government-sponsored publication depicting high fructose corn syrup (HFCS) as a “poison,” using a skull and crossbones image. Additionally, Mexican officials have undertaken a “native corn” campaign with the stated objective to eliminate imported U.S. corn.

Biotechnology Approvals: Beyond the Decree, the Government of Mexico has created significant uncertainty for agricultural biotechnology, ceasing review and approval of any biotechnology applications since May 2018. As a result, Mexico has become a significant barrier to launching new biotechnology products within North America, potentially restricting U.S. farmer access to new technologies that will assist in addressing critical issues such as sustainability and climate change.

Meat Industry Market Access and Geographical Indications: The USMCA preserves, and extends, the vital duty-free market access afforded to U.S. meat and poultry exports to Mexico established under NAFTA. Because of this access, and the resulting integration of the North American market for the meat and poultry industry, Mexico has cemented its position as a significant importer of U.S. meat and poultry, finishing 2020 as the third largest value market for U.S. beef and pork products and the top destination for U.S. poultry exports. We are particularly concerned about policies that would result in retaliation against U.S. meat and poultry exports to Mexico, or other onerous barriers that would unduly restrict trade, cost hard-earned market share, and jeopardize jobs and livelihoods for American meat and poultry industry workers. One such impediment concerns attempts by the European Union (EU) to seize exclusive use of common meat terms under its 2018 free trade agreement with Mexico. Although USMCA provides important procedural safeguards for the recognition of new geographical indications (GIs), including strong mechanisms designed to prevent issuances of GIs that would block U.S. producers from using common names, meat and poultry producers, packers, and processors are susceptible to EU circumvention and overreach. The burdensome labeling, rebranding, and production costs associated with GI compliance – stemming from the successful confiscation of a common meat term by the EU, or other region or country with which Mexico has a free trade agreement – could cripple U.S. producers of common name meat products and cause some to shutter completely. Others would be forced to undertake cost-prohibitive consumer education campaigns to address confusion resulting from these arduous rebranding efforts. Sustained U.S. engagement on this issue is essential to defend against GI abuses, to achieve a transparent system that supports enforceable due process procedures, and to safeguard future access for common name meat and poultry products to this critical market.

Potato Import Ban: In 2002, the U.S. and Mexican governments announced that both sides would resolve two long-standing market access issues -- the U.S. agreed to expand market access for Mexican avocados and Mexico agreed to open their market for U.S. fresh potatoes. Today, the U.S. imports $2 billion worth of Mexican avocados while Mexico remains almost entirely closed to U.S. fresh potatoes. In 2014, after losing several phytosanitary rulings before international bodies, the Mexican government agreed to allow U.S. fresh potatoes full market access. Immediately the Mexican potato cartel (“CONPAPA”) filed a series of legal injunctions against their own government to block that access. Many of those cases have been dispensed with, but the two that remain have progressed to the Mexican Supreme Court. The primary question the cases ask the Court to resolve is not limited to potatoes, but instead alleges that the Mexican government has no authority to provide market access to any agricultural commodity. A negative outcome in these cases could have far-reaching impacts for U.S.-Mexico agricultural trade. If the Supreme Court rules in favor of the cartel, any imported agricultural commodity's access would be called into question and potentially blocked. On February 17, 2021, the Court published a draft ruling that would have resolved this issue in favor of the U.S. and other countries exporting to Mexico. However, during a formal session on February 24, 2021 where that draft ruling was set to be confirmed, the justice who authored it asked for a delay in further proceedings to an indeterminate date.

Front-of-Pack Labeling (NOM-051): Mexico's new front-of-pack (FOP) labeling regulation, NOM-051, went into effect on November 30, 2020, with additional requirements on product endorsements and claims authorized on April 1, 2021. Mexico's NOM-051 mirrors the Chilean FOP labeling scheme in which black stop signs are used to alert consumers of high amounts of calories, sugar, sodium, and saturated fat in packaged foods and non-alcoholic beverages. On January 27, 2021, Mexico's Consumer Protection Office (PROFECO) published requirements regarding seals and recommendation legends, requiring that seals or nutritional recommendations by organizations and associations must be approved by PROFECO to be used on processed foods and non-alcoholic beverages. We are deeply concerned by the new food labeling measures in Mexico. The impact of these measures, which, in certain areas, appear to lack a sound, scientific basis, are exacerbated by a government campaign in Mexico to curtail U.S. food and agriculture imports by attacking the reputation of imported products, branding them as detrimental to the health of Mexican consumers.

Of course, renewal of a healthy bilateral trade relationship requires prudent actions by both parties. Until the U.S. International Trade Commission (USITC) voted on February 11 to find there is not serious injury to U.S. blueberry producers from imports, 44% of Mexico's fresh produce exports to the U.S. were under investigation. Monitoring investigations continue regarding imports of strawberries, bell peppers, squash and cucumbers, respectively, and blueberry producers are seeking protection through political intervention. As you address the struggles of U.S. seasonal produce farmers, we respectfully urge you to explore a variety of other means of enhancing their competitiveness.

We are eager to work with you to address challenges in the Mexico trade relationship, which is critical to U.S. farmers, ranchers, producers, and workers. Naturally, we would be pleased to address any questions or concerns you may have.

Sincerely,

American Farm Bureau Federation

American Feed Industry Association

American Seed Trade Association

American Soybean Association

Association of Equipment Manufacturers

Biotechnology Innovation Organization

Corn Refiners Association

CropLife America

International Dairy Foods Association

Leather and Hide Council of America

Meat Import Council of America

National Association of State Departments of Agriculture

National Confectioners Association

National Corn Growers Association

National Council of Farmer Cooperatives

National Grain and Feed Association

National Milk Producers Federation

National Oilseed Processors Association

National Potato Council

National Turkey Federation

North American Meat Institute

North American Millers' Association

Northwest Horticultural Council

Organic Trade Association

Sweetener Users Association

U.S. Dairy Export Council

U.S. Grains Council