New NAFTA: Locking in U.S. food safety management fragmentation and failings
By Dr. Steve Suppan

Trade policy's impact on food safety is not only the result of the language of the policy, but of the governments' implementation and enforcement capacity. As the Trump administration attacks the personnel, budgets and infrastructure of the agencies tasked with providing that capacity, the promise of the New NAFTA (also known as the U.S.-Mexico Canada Agreement, USMCA) to provide an "appropriate level of protection" to consumers and the natural resource base of agriculture is unlikely to be achieved. For example, the proposed Fiscal Year 2020 U.S. Department of Agriculture budget would eliminate food safety work at the Economic Research Service (ERS), which provides "the costs of illness for selected foodborne pathogens." Understanding the costs of foodborne illness from consumption of imported foods is critical to determining whether an "appropriate level of protection" has been provided. Furthermore, the New NAFTA does not require that governments report on the foodborne illness and environmental impacts of agricultural production for trade.

The U.S. International Trade Commission (USITC) report asserts "Sanitary and Phytosanitary (SPS) provisions of USMCA will likely lead to increased trade between North American countries," (p. 132) albeit a miniscule USITC forecast increase relative to NAFTA's current export value. As Congress evaluates the USMCA, it should focus on impacts of SPS standards to public health and the environment based on "scientific principles," but implemented by agencies whose independent scientific capacity has been undermined by the Trump administration.

Although the USITC does not assess the trade related costs for public health, these costs could be considerable. For example, in 2015, ERS conservatively estimated the cost of the 9.4 million U.S. foodborne illness cases (of a total 48 million reported cases) for which a causative pathogen could be identified at $15.5 billion annually. The ERS study analyzed voluntarily reported data from local and state public health departments to the Centers for Disease Control and Prevention (CDC). A 2017 CDC study analyzed data on foodborne illness originating from imported foods from 1996 to 2014, the latest year for which data were available. The CDC reported 42 foodborne illness outbreaks from consuming food imported from Mexico and 11 from consuming food imported from Canada. Seafood and horticulture products were the foods most implicated in the outbreaks.

Both classes of food are regulated by the Food and Drug Administration, which announced a new program in February 2019 to sample, test and, if necessary, reject the 32 percent of vegetables, 55 percent of fresh fruit and 94 percent of seafood products consumed in the U.S. that are imported. However, the USMCA text states that "the importing party may use import checks to assess compliance" with its SPS measures (Article 9.11.1)—not "shall" but "may," an option but not a requirement. (The World Trade Organization SPS agreement uses "shall" to describe government import control obligations (Article 8 and Annex C)). The USMCA provides for no increase in inspection and testing intensity for high risk foods to prevent foodborne illness. The FDA cannot inspect high risk foods at the ports of entry, since it has yet to issue a rule identifying "high risk" foods required by the Food Safety Modernization Act of 2010.

Governments are required to be transparent about their SPS measures, (Article 9.13), however audits of export facilities and communications between industry and governments are shielded from public review, (Article 9.10). USMCA relies on SPS systems equivalence agreements with foreign regulators, (Article 9.9), to reduce port of entry sampling and testing of food products. FDA relies on industry to voluntarily correct domestic food inspection violations, according to a September 2017 Office of the Inspector General report. Given the light staffing and many non-food duties of FDA inspectors at ports of entry, FDA will likewise be reliant on industry to correct violations. But the USMCA SPS pressure is always to import, even if information required by importing authorities is lacking, (Footnote 1 to Article 9.5.15).

The language of the SPS chapter places the burden on governments to show that any measure to protect human, animal or plant health related to trade in food and agriculture products is "not more trade restrictive than required" to achieve an unspecified level of protection. The report further points to language on greater SPS "regulatory coherence" to expedite import and export flows. What is made "coherent"?

The General Accountability Office has long identified U.S. federal food safety management as a fragmented and "high risk" system and identified increasing food imports as one of three factors straining that system. Inserting the new USMCA obstacles into this "high risk" system exacerbates the difficulties of providing the "appropriate level of protection" regarding imported foods and food ingredients. U.S. procedures to authorize new food and agriculture products for commercialization largely rely on voluntary consultations with industry applicants, usually concluding with letters authorizing sales without requiring a pre-market safety assessment.

For example, the formulation of this March 11, 2016, letter from the U.S. Food and Drug Administration to Monsanto concerns a variety of corn engineered to resist the highly volatile herbicide Dicamba™. Here is a sample of the industry self-determination of safety that would be advanced under the new USMCA regulatory coherence procedure:

> Based on the safety and nutritional assessment Monsanto has conducted, it is our understanding that Monsanto has concluded that food and feed from MON 87419 corn are not materially different in composition, safety, and other relevant parameters from corn-derived food and feed currently on the market, and that genetically engineered MON 87419 corn does not raise issues that would require premarket review or approval by FDA. It is Monsanto's responsibility to obtain all appropriate clearances, including those from the Environmental Protection Agency and the United States Department of Agriculture, before marketing food or feed derived from MON 87419 corn.

FDA formally accepted Monsanto's assessment without raising any additional questions. Monsanto then applied to EPA to receive another "no questions" letter to sell Dicamba™. Despite criticism by academic weed scientists that evidence of Dicamba™ safety was "shockingly insufficient" and that the herbicide would drift and kill plants not engineered to resist it, the EPA "approved" the product in 2018. Dicamba™ has killed more than one million acres of U.S. crops not engineered to resist it. What will the cost of Dicamba™ grown exports, including the collateral damage to non-resistant crops, be once herbicide resistance traits are added to the more consumer or processor attractive traits of genome edited crops?

The USDA proposal to not regulate gene and genome editing technologies from which agriculture products are derived would be locked in by the new USMCA agricultural biotechnology rules, which require import of quantitatively unspecified amounts of products unapproved in the importing country, (Article 3A.3.3c).

Roger Johnson, National Farmers Union President, remarked of the Trump administration proposal to reduce the ERS staff by 50 percent and eliminate research programs, "This is an administration that doesn't like science that doesn't agree with their viewpoint. What we're setting up for is an era where you aren't going to get the quality of research or the volume of research that we had before." The science the Trump administration agrees with is corporate science presented to weaken or eliminate environmental rules and allow industry to self-determine what is Generally Recognized As Safe (GRAS) in food and food inputs, including in traded products. The Union of Concerned Scientists report "The State of Science in the Trump Era (2019)" summarizes the suppression of scientific evidence, the dismissal of academic scientists from advisory boards and their replacement with industry scientists, and the budgetary and staff cuts to science-based agencies to conclude, "The Trump administration's undermining of science is damaging our health and safety." Congress must not fortify this assault on science by entrenching it via USMCA's SPS and agricultural chapters.