

September 27, 2018

The Honorable Robert E. Lighthizer  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Lighthizer:

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 Advisory Committee for Trade Policy and Negotiations (ACTPN) on the U.S.-Mexico Trade Agreement, reflecting consensus on the proposed Agreement.

Sincerely,

A handwritten signature in blue ink that reads "Harold W. Mc Graw III". The signature is written in a cursive style with a large initial 'H'.

Harold (Terry) McGraw III

Chairman, Advisory Committee for Trade Policy and Negotiations

TRADE AGREEMENT

REPORT OF THE  
ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS  
(ACTPN)

SEPTEMBER 27, 2018

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**The Advisory Committee for Trade Policy Negotiations (ACTPN) Committee Report to the President, the Congress and the United States Trade Representative on the Trade Agreement**

**I. Purpose of the Committee Report**

Section 105(b)(4) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, and section 135(e)(1) of the Trade Act of 1974, as amended, require that advisory committees provide the President, the Congress, and the United States Trade Representative with reports not later than 30 days after the President notifies Congress of his intent to enter into a trade agreement.

Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the ACTPN hereby submits the following report.

**II. Executive Summary of the Committee Report**

The undersigned members of ACTPN support the modernized and rebalanced trade agreement negotiated with Mexico and believe many of its elements are a significant improvement over the North American Free Trade Agreement (NAFTA), which entered into force nearly a quarter century ago. The Committee finds the U.S.-Mexico trade agreement to be groundbreaking in many chapters and believes it can serve as a new model for high standards trade agreements encompassing many disciplines. The ACTPN also notes that the agreement on which we are providing these comments has been negotiated with the U.S. and Mexico and does not include Canada at this time. We look forward to Canada being incorporated into a trilateral agreement and support the Administration's ongoing efforts to reach a deal with Canada that will preserve and enhance NAFTA's three-party framework. A trilateral agreement is in the best interests of all three countries for many reasons, including the significant challenges to integrated supply chains caused by having to transition to separate bilateral agreements between the U.S. and Canada/Mexico.

The ACTPN supports the direction of the discussions as the Administration negotiates the final chapters with Mexico and Canada and will provide a supplementary report on the final agreement.

Additional comments are attached to this report which reflect the views of certain signatories, who have specific opinions – since the renegotiated NAFTA is still a work in progress -- related to actions by Mexico with regards to its labor commitments, implementing legislation and other provisions. These signatories believe that a decision as to the merits of the renegotiated NAFTA is premature at this time.

### **III. Brief Description of the Mandate of ACTPN**

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the United States (U.S.) government's senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions for proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees in the areas of agriculture, non-Federal governments, labor, environment, the Agriculture Technical Advisory Committee and the Industry Technical Advisory Committees (ITACs).

### **IV. Description of the Committee**

In keeping with its broad charter, the membership of ACTPN is representative of key economic sectors affected by trade. Members are drawn from manufacturing and service industries including small business and retailers, labor, think tanks, agriculture and consumer interests. The ACTPN membership list is appended to these comments.

### **V. Negotiating Objectives and Priorities of ACTPN**

As stated in its Comments of June 28, 2017, the ACTPN supported the Administration's initiative to modernize and upgrade NAFTA and other trade agreements that remove barriers and promote opportunities for American farmers, businesses, workers and consumers. The ACTPN further advocated for a strong North American trading block because it is important to continued economic growth for American entities and workers, and the global competitiveness of the region. We can not overstate the importance of maintaining strong trading bonds with these vital allies to enhance our national and regional security.

We noted the U.S. economy and our businesses have changed significantly since NAFTA entered into force 24 years ago, and sector by sector we made recommendations for improving the trade agreement that binds Mexico, Canada and the U.S. We further called upon the Administration to strive for better enforcement and implementation of the trade agreements provisions, noting the many areas, particularly regarding labor, that had fallen far short of U.S. goals.

Finally, the Committee appreciated the consultations during the NAFTA negotiating process, and while we recognize the many demands on Ambassador Lighthizer's time and that of his senior negotiators, we encourage the Administration to further its engagement with the

Committee before and during negotiations of trade agreements to ensure that the views and advice of the private sector are adequately reflected, consistent with Section 135 of the Trade Act of 1974, as amended.

## **VI. ACTPN Opinion on Agreement**

The ACTPN commends the Administration for an agreement with Mexico that accomplishes many of the objectives identified by the Committee. The ACTPN is pleased that the agreement will remove unfair trade restrictions, contains high standards and introduces new chapters that reflect the new realities of 21<sup>st</sup> century trade. We believe the terms of the agreement move in the right direction with enhanced transparency and enforcement, particularly with respect to the labor and environmental standards. The majority of the Committee further appreciates the Administration's willingness to address our concerns about the proposed "sunset" provisions. The termination and renegotiations provisions (the 16-6) were designed to strike a balance between the need for certainty in order to make investment decisions and the need to keep the agreement refreshed and responsive to macroeconomic, market and technical changes. While the ACTPN was not united in its support for this specific outcome, there is a consensus view that the outcome is better than earlier proposals.

We are supportive of the Administration's continued work with Canada to bring them into the trilateral agreement. It is our view that this Agreement is far better in most regards for the U.S. and Mexico (and would be for Canada as well) than the existing NAFTA, but for full benefits to be achieved for all three nations, we believe it is important that Canada be part of this trading block. We also note that the Trade Agreement with Mexico is still being negotiated and believe to maintain the integrity and distinction of our independent voice, it is premature for the ACTPN to provide final approval to the evolving treaty. We look forward to providing further comment on the specifics of the final agreement between Mexico and the U.S., and Canada should it join the agreement.

Given the deadline for this report, however, we have confined our comments below to the U.S.-Mexico agreement provisions we have seen.

### **Chapter 2. National Treatment and Market Access for Goods**

The ACTPN is pleased that the agreement maintains duty-free treatment for originating goods, which is a high priority for us.

### **Chapter 3. Agriculture**

ACTPN members are pleased that the agreement will result in no new barriers to trade between the U.S. and Mexico in the sector and that agricultural tariffs between the two nations will remain at zero. This is critical for the continuation of trade growth between the U.S. and Mexico and for the certainty of long-established supply chains.

Moreover, we support the inclusion of provisions for an improved biotechnology approval process, including gene-editing technology and enhanced information exchange and cooperation. We also note that consultation processes for geographic indications are included, along with protections for current U.S. cheese labels, although we must express disappointment

that this will not prevent Mexico from granting rights to certain commonly used cheese names exclusive to European producers.

The chapter on Sanitary/Phytosanitary Standards (SPS) includes improved measures for science-based standards, based upon risk assessment. This chapter addresses critical non-tariff trade barriers that can impede agricultural trade.

The chapter on dispute settlement raises serious concerns for agriculture, however, since it fails to include in its scope the chapter on agriculture. Unless the agriculture chapter is included, none of the commitments achieved in that chapter would be enforceable through binding dispute resolution. This would represent a significant weakening of the value of commitments negotiated in that chapter. Many in the agribusiness community also will be disappointed that NAFTA's Chapter 19 dispute settlement provision has been eliminated.

We note that the agreement does not contain proposed "seasonality provisions" for produce in the chapter on remedies. While this was supported by some U.S. producers, a large majority of farm sectors expressed deep reservations about the potential for negative impacts on U.S. exports.

Finally, while farmers and ranchers are pleased that progress has been made toward a modernized NAFTA, unless Mexico's retaliation against U.S. agricultural exports resulting from U.S. Section 232 tariffs is lifted, any benefits of the agreement to U.S. farmers will be eclipsed by the damage done by these tariffs. The ACTPN therefore believes for the U.S. agriculture sector to fully realize the benefits of provisions in the U.S.-Mexico Trade Agreement, there also must be swift resolution of outstanding disputes affecting U.S. agricultural exports to these two countries.

#### **Chapter 4. Rules of Origin**

Some members of the ACTPN appreciate that the agreement strengthens the rules of origin, notably for steel-intensive goods, to ensure greater North American content. However, some other members believe the rules will raise costs and undercut the competitiveness of U.S. producers. Additionally, the Committee notes the auto rules of origin provisions are not completed and publicly available; we expect to comment on the final deal.

#### **Chapter 6. Textiles and Apparel**

The ACTPN notes that the rules of origin for textile and apparel products in the U.S.-Mexico Trade Agreement are slightly more restrictive than those in NAFTA. Because the variety and scope of U.S. textile production had dropped markedly since the original rules were negotiated a quarter century ago, there had been some hope that the new agreement would embrace a more flexible approach to generate greater trade flows. While we agree with the Administration's goal of finding ways to increase North American content, our members who are directly involved in the U.S. textile and apparel sector are concerned that the more restrictive rules in this industry actually will trigger the opposite result, namely a decline in the use of U.S. textiles as overall trade with NAFTA drops. Members also questioned the need for separate customs and enforcement procedures in the textile and apparel chapter, noting that

such provisions exist in other parts of the agreement and should be sufficient for this industry as well.

### **Chapter 7. Customs and Trade Facilitation**

The customs provisions in the U.S.-Mexico Trade Agreement will reduce the cost and increase the efficiency of the flow of goods and provide greater transparency on customs procedures for both imports and exports. The provisions, if agreed to by Canada as well, will create seamless customs procedures for all North American trade and will provide a strong, modernized template that builds on top of the World Trade Organization (WTO) Trade Facilitation Agreement. This should provide a basis and momentum for the NAFTA partners to push for further binding commitments, setting an even higher standard for customs processing and clearance.

Modernized customs provisions in the U.S.-Mexico Trade Agreement include binding commitments on advanced rulings; simplified entry; automation and account-based processing; risk management; single window development and interoperability; elimination of redundant and outdated regulations; and improved cooperation for all partnering government agencies. We also welcome the updates to the record-keeping requirements and verification rules that reflect modern free trade agreements. These include revising the origin certification process to allow for either the importer or exporter to prove origin in written or electronic form upon demand by a Customs official rather than a shipment-by-shipment process.

While Mexico committed to increasing its *de minimis* value applicable to low value imports from \$50 to \$100, it remains well below the U.S. level of \$800. We urge the Administration to continue to pursue an increase in *de minimis* levels for both Canada (beyond its unreasonably low level of \$20 (Canadian)) and Mexico.

The ACTPN believes aligning and improving trusted trader programs will allow customs officials to quickly identify those shipments that pose the greatest risk. Transparency is crucial to this partnership, such as providing adequate notice and comment regarding changes to customs regulations. Another example is Canada's practice of publishing its annual audit priorities, which provides clarity and allows importers to assist the government on those priorities. There also should be increased regulatory cooperation and coherence, transparency, due process and non-discrimination.

### **Chapter 10. Trade Remedies**

Several ACTPN members support the innovative provisions of this chapter including those addressing cooperation and verification of evasion and circumvention of antidumping, countervailing, and safeguard duties and information sharing. Some members also support the removal of the dispute resolution mechanism for antidumping and countervailing decisions and strongly suggest that should an agreement with Canada be reached, such provisions should not be reintroduced. The original dispute settlement provisions under Chapter 19 have been overtaken by developments in international trade law including the WTO's implementation of a binding international dispute settlement mechanism. Other ACTPN members are concerned

about the importance of having a strong dispute settlement provision within the agreement because they view the WTO's process as inoperable at this time.

#### **Chapter 11. Technical Barriers to Trade**

ACTPN members strongly support the inclusion of provisions aimed at strengthening collaboration in the development of technical regulations, standards and conformity assessment procedures to reduce potential non-tariff trade barriers. We note that a significant accomplishment is agreement on a provision requiring the Parties to give national treatment to other Parties' conformity assessment bodies.

We applaud the Administration efforts to pursue commitments that remove regulatory barriers to entry for U.S. teleshopping companies. Such restrictions needlessly limit or preclude U.S. television shopping retailers from engaging in purely commercial activities and thereby limit their ability to participate in this portion of the retail industry. Persistence of such regulatory barriers – that prevent U.S. teleshopping companies from operating in other countries – is not consistent with an upgraded and modernized NAFTA.

#### **Chapter 12e. Sectoral Annexes (on Chemical Substances)**

The ACTPN supports science- and risk-based approaches to regulation and are pleased the agreement includes this annex and hopes it will lead to science- and risk-based regulatory coherence between the Parties for chemicals and chemical substances.

#### **Chapter 13. Government Procurement**

We note a number of significant improvements in the government procurement chapter, including for labor, environment, integrity and transparency into the value of procurement. We will hold further comments until completion of the agreement on the biggest issue which is market access.

#### **Chapter 15. Cross Border Trade in Services**

ACTPN members are pleased with the high standards services agreement, which takes into account the many new services created as a result of new technologies and the Internet. We are pleased to see the agreement provide for the non-discriminatory treatment of digital products and services, facilitated cross-border data flows and improved transparency in the process of developing laws and regulations affecting the Internet.

#### **Chapter 17. Financial Services**

ACTPN members are pleased that the Trade Agreement will expand opportunities for U.S. financial service suppliers by ensuring open and non-discriminatory market access and promoting regulatory transparency. We are pleased that the agreement breaks new ground by circumscribing local data storage requirements and updating provisions allowing for several types of cross-border financial services, including portfolio management, investment advice and electronic payment services. The ACTPN supports adding Financial Services to the protections of the Dispute Settlement chapter.

## **Chapter 18. Telecommunications**

**ITA Expansion** – The WTO Information Technology Agreement (ITA) and the recent expansion commitments is one of the most successful WTO agreements in lowering barriers to information and communications technology products. The ITA provides duty free treatment on several thousands of products help businesses and consumers alike. The ACTPN recommend the U.S. urge all its trading partners, specifically Mexico, to join both agreements.

## **Chapter 19. Digital Trade, Chapter 20. Intellectual Property**

The ACTPN is pleased with these high standards chapters and recommend they serve as models for future trade agreements. In particular, the Committee applauds the new provisions that: prohibit cross-border data transfer restrictions and data localization requirements; protect new digital services against future discrimination; enable electronic authentications and signatures to be utilized in digital contracts; permanently bar customs duties on electronic transmissions; require intermediary liability protection for unlawful content originating with third parties; and safeguard source code and proprietary algorithms from government access demands.

## **Chapter 22. State-Owned Enterprises**

The ACTPN believes this new chapter goes a long way towards setting a new standard for future agreements for assuring State-owned enterprises (SOEs) are not provided discriminatory privileges and better assures a level playing field for foreign and domestic competitors. The Committee is pleased by the expansion of the definition of SOEs found in the agreement and looks forward to, upon implementation, strong rules on enforcement.

## **Chapter 23. Labor**

The ACTPN supports the inclusion of enforceable labor provisions in the core of the agreement. The labor representatives on the ACTPN welcome the improvements made so far in the labor chapter and the accompanying annex, as steps toward eradicating wage-suppressing protection contracts in Mexico. Our labor members urge that these textual provisions should be strengthened and coupled with specific legislative actions in Mexico to fulfill the Constitutional commitments made last year and the commitments in NAFTA. Additional implementing, monitoring and enforcement provisions must be adopted by Mexico and also be included in any implementing legislation considered by the U.S. Congress. Addressing labor rights in Mexico is still a work in progress and fundamental to ensuring that a new NAFTA can benefit workers in all three countries.

## **Chapter 24. Environment**

The ACTPN supports the inclusion of enforceable environmental obligations, including first-ever articles aimed at improving air quality, preventing and reducing marine litter, supporting sustainable forest management, and ensuring appropriate procedures for environmental impact assessments.

## **Chapter 26. Competitiveness**

ACTPN members support the establishment of a new Committee on Competitiveness to promote further economic integration among the Parties, including facilitating regional trade and investment, enhancing a predictable and transparent regulatory environment, and encouraging swift movement of goods throughout the region.

## **Chapter 28. Good Regulatory Practices**

We applaud USTR's efforts to address regulatory and technical barriers to trade in the agreement – specifically, implementing government-wide practices to promote regulatory quality through greater transparency, objective analysis, accountability and predictability. We are very pleased to see that among the chapter's provisions are obligations to publish an annual list of anticipated new regulations and to initiate retrospective reviews of existing regulations, as well as provisions encouraging the Parties to make comments on regulatory proposals publicly available and to use regulatory impact statements.

## **Chapter 31. Dispute Settlement**

There have been significant improvements made in the Dispute Settlement section; however, the ACTPN notes the chapter should be improved by including agriculture and financial services disputes in this important chapter.

## **Chapter 33. Macroeconomic and Exchange Rate Matters (Currency)**

The currency chapter, the first in any U.S. trade agreement, is a useful innovation. It reduces the risk that currency manipulation by our partner countries will hurt U.S. competitiveness and erode the benefits of the agreement. At the same time, it clearly protects the United States against any risk that our own monetary or other policies could be impeded by charges of manipulation.

The chapter is especially useful in achieving international endorsement of flexible exchange rates and the guidelines of the International Monetary Fund for managed floating. It would be preferable if these clauses could be converted into enforceable obligations, but their reiteration as presumptive norms in a trade agreement represents a forward step in the effort to deter the practice. The pledge to conduct consultations with partner countries when undertaking intervention, to be sure that the prohibitions governing manipulation are not violated, is also valuable and we would presume that such consultations in practice will be carried out prior to any such activity in the foreign exchange markets. The binding commitments regarding data transparency and publication are helpful as well.

It remains to be seen whether the chapter will have much practical impact since Mexico lets its exchange rates float freely in response to market forces and already discloses the requisite data. However, particularly if strengthened as we suggest, it could become a useful template for future agreements with countries that have been more inclined to intervene, and indeed manipulate their currencies, in the past. We therefore believe that the chapter makes a positive contribution to U.S. trade and international monetary policy and adds to the case for completion and Congressional approval of the agreement.

## **Chapter 34. Final Provisions**

The ACTPN notes that the term of the agreement will be sixteen years with a review of its operation after six years, in lieu of a hard “sunset.” This compromise attempts to respond to business community concerns about certainty and predictability in trade agreements, while providing timely review by the Parties at regular intervals to be sure the provisions are up-to-date, implemented as expected and enforced. Several of our members remain deeply concerned, however, that if any Party objects to the agreement in the six-year review, the hard sunset would be an automatic ten years later. Several other of our members believe that the sunset provisions are not strong enough and support earlier proposals.

### **VII. Membership of ACTPN Supporting these Comments**

Ms. Jill Appell, Co-owner, Appell’s Pork Farms, Vice-Chair ACTPN  
Dr. C. Fred Bergsten, Senior Fellow and Director Emeritus, Peterson Institute for International Economics  
Mr. Emanuel Chirico, CEO, PVH Corp.  
Mr. Les Daniels, Operating Partner, AE Industrial Partners, LLC  
Dan DiMicco, Chairman Emeritus, Nucor Corporation  
Mr. Zippy Duval, President, American Farm Bureau  
Ms. Victoria Espinel, President and CEO, BSA | The Software Alliance  
Mr. Dean Garfield, President and CEO, Information Technology Industry Council  
Dr. H. Fisk Johnson, Chairman and CEO, S.C. Johnson and Son, Inc.  
Ms. Sandra Kennedy, President, Retail Industry Leaders Association  
Ms. Tamara Lundgren, President and CEO, Schnitzer Steel Industries, Inc.  
Mr. Harold McGraw, III, Chairman Emeritus, S&P Global, Chairman, ACTPN  
Mr. Matthew Rubel, Member of the Board of Directors, The Hudson Bay Company  
Mr. David Segura, Chief Executive Officer, VisionIT

#### **Alternative Views of United Steelworkers President Leo Gerard and International Brotherhood of Teamsters General President James Hoffa:**

While much work has been done on reforming the North American Free Trade Agreement, it would be premature to offer a conclusion as to its overall merits. As this report was being prepared, negotiations on text were continuing, not only with Mexico, but with Canada on its potential inclusion in a trilateral deal. In several areas important basic text is still in the drafting stage. That limits our ability to understand the overall impact of the agreement, as well its impact on specific sectors and interests.

In addition, when and how Mexico will complete its labor law reform process and whether it will promptly and effectively implement the law is critical to the evaluation of the impact of the agreement. Mexico’s labor law reform must comply not only with the Constitutional changes that country adopted last year, but also with the commitments included in the labor chapter and annex. The law must be enacted before the President signs the new NAFTA. The treatment of labor rights in Mexico will have a fundamental and lasting impact on the economies of all three of the original NAFTA parties. As well, while the inclusion of state-to-state dispute

settlement in Chapter 20 of the original NAFTA has largely been retained, the application of that system has historically allowed for undue delays and inadequate attention to labor rights. The provisions in the agreement must be buttressed by additional implementation, monitoring and enforcement measures that are appropriate for further agreement as well as inclusion in implementing legislation.

In other areas, for example the critical issue of Rules of Origin for autos and auto parts, additional analysis of the supply chains is needed. Varying estimates of the impact of the proposed changes have been discussed but, due to the classified nature of the discussions, it has been impossible to have a broader public assessment. In that area, and others, additional analysis is required.

The renegotiation of NAFTA is long overdue. Nevertheless, not all the details are available. We are ready to determine whether the agreement is in the U.S. interest, once all the facts and implementing provisions are available and the substance is truly final. We must not rush to complete the package of provisions and jeopardize the positive results that could be achieved. In short, more work is needed on the agreement, its implementation, monitoring and enforcement, and on the analysis of its effects.

**Members of the ACTPN Supporting the Alternative Comments**

Mr. Leo Gerard, International President, United Steelworkers

Mr. James Hoffa, General President, International Brotherhood of Teamsters

**Additional Comments**

Dr. C. Fred Bergsten believes that it is premature to offer any conclusions on the overall agreement since the negotiations with both Mexico and Canada are still in progress. He therefore wishes to associate himself with the first and fourth paragraphs of the "Alternatives Views" submitted by Messrs. Gerard and Hoffa.