

September 27, 2018

The Honorable Robert E. Lighthizer
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 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 Animal and Animal Products Agricultural Technical Advisory Committee on the Trade Agreement, reflecting consensus on the proposed Agreement.

Sincerely,



Jaime Castaneda
Acting Chairperson - Vice-Chair
Animal and Animal Products ATAC

Trade Agreement

Report of the
Animal and Animal Products Agricultural Technical Advisory Committee (ATAC)

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Animal and Animal Products Agricultural Technical Advisory Committee (ATAC)

**Animal and Animal Products Advisory 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 U.S. Trade Representative with reports not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal 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 Animal and Animal Products ATAC hereby submits the following report.

II. Executive Summary of Committee Report

The Animal and Animal Products (AAP) ATAC commends our negotiators for their diligent efforts undertaken to conclude this trade agreement. As in previous opinions, we believe that the strong trade linkages with Mexico and Canada are integral to the present and future success of the animal agriculture industry in the United States.

The opinion of the AAP ATAC is clearly in support of the agreement as it has been notified regarding Mexico, and hopeful for a final agreement that will also include Canada. Modernizing trade with Mexico and Canada will increase export opportunities and update an already successful and beneficial agreement for U.S. agriculture. Several industry sectors have identified below the ways in which the Trade Agreement in its current form will increase export opportunities for their sectors, while others require additional time to review the agreement once the results of the ongoing negotiations with Canada are known. We paused to emphasize the importance to this committee of the negotiations with Canada regarding dairy. It is essential that the U.S. obtains concessions that would prevent Canada from balancing their market at the expense of U.S. farmers and manufacturers.

Although the AAP ATAC recognizes the importance of comprehensive market access under the Trade Agreement, the AAP ATAC members expressed disappointment that the agreement with Mexico, as notified, does not remove the retaliatory tariffs currently in place as a result of the Section 232 steel and aluminum tariff dispute. The AAP ATAC members urge the negotiators to resolve that issue as soon as possible and seek removal of all retaliatory tariffs on U.S. animal agriculture products.

III. Brief Description of the Mandate of the Animal and Animal Products ATAC

The advisory committee is authorized by Section 135 (c)(1) and (2) of the Trade Act of 1974 (19 USC 2155) and is intended to assure that representative elements of the private sector have an opportunity to make known their views to the U.S. Government on trade and trade policy matters. The committee provides a formal mechanism through which the U.S. Government seek advice and information. The continuance of the committee is in the public interest in connection with the work of the U.S. Department of Agriculture (USDA) and the Office of the U.S. Trade Representative. This advisory committee provides valuable private sector input.

IV. Negotiating Objectives and Priorities of the Animal and Animal Products ATAC

The guiding principle for the AAP ATAC in bilateral, regional and multilateral trade negotiations is to improve export opportunities for U.S. dairy, livestock, meat and poultry products through the elimination of unfair tariff and nontariff trade barriers, including veterinary and sanitary restrictions on U.S. exports that are not based on science and policies intentionally design to unfairly distort trade. Related to this is the acceptance of the USDA Food Safety and Inspection Service (FSIS) as the certifying authority for meat and poultry exports.

V. Advisory Committee Opinion on Agreement

The AAP ATAC provides the following comments on the Trade Agreement, as it is currently notified.

U.S. food and agriculture trade under NAFTA is one of agriculture's biggest trade success stories. Since the agreement was enacted, U.S. food and agricultural exports to Canada and Mexico have more than quadrupled—growing from \$9 billion in 1993 to over \$39 billion in 2017.

NAFTA has played a central role in boosting incomes for millions of U.S. farmers, ranchers, processors, and allied industries – and continues to provide important and profitable markets for our nation's rural, agriculture-based communities.

We recognize that NAFTA is now over 24 years old and improvements to the agreement can be made. We welcome the opportunity to modernize NAFTA while preserving the core benefits of the agreement that have greatly expanded U.S. food and agricultural trade within North America during the past two decades, with ripple effects that have benefitted the U.S. economy and created jobs.

To the extent that the Trade Agreement in its current form retains the benefits to U.S. agriculture associated with NAFTA, including tariff and quota-free market access for most U.S. animal and animal products to Mexico, the committee believes the Agreement will promote the economic interests of the United States. The Trade Agreement will promote the exports of most U.S. animal and animal products to Mexico and will continue to facilitate a vibrant North American market in this sector.

The Importance of Canada to the Trade Agreement

Due to the successful, integrated nature of agriculture trade in North America as a result of NAFTA, the committee strongly believes the final Trade Agreement must be concluded on a trilateral basis and include Canada as a full party. It is however, extremely important to ensure that the preferred trilateral agreement that includes Canada ensures that the Canadian dairy industry doesn't balanced their over-supplied market on the backs of the U.S. dairy industry. Likewise, it is important to note that Canada also refuses to agree to a fair exchange of U.S. turkey products and uses the dairy precedent to limit trade in turkey products.

The Committee agrees that any agreement that is limited only to Mexico will render moot or greatly reduce many of the previous benefits of NAFTA to U.S. animal and animal product sectors. The committee therefore encourages the U.S. Government to make every effort possible to ensure Canada remains a party to a trilateral agreement. This effort should include allowing negotiations with Canada to continue.

The Committee also recognizes that a sector of the livestock industry does not benefit from having free trade with Canada, thus negotiations must continue to ensure that those sectors such as dairy and poultry (turkey) are included in a successful NAFTA renegotiation. It is essential that dairy and poultry negotiations address Canadian trade policies that encourage the dumping of dairy

products by Canada as well as preventing imports. Likewise, it is critical that substantial market access is given to the U.S. dairy and turkey industries, so those sectors can enjoy the benefits that other sectors in agriculture enjoy.

Removal of Existing Retaliatory Duties

Although the AAP ATAC recognizes the importance of comprehensive market access under the Trade Agreement and the limits of these specific negotiations, some of the AAP ATAC members expressed disappointment that the agreement with Mexico, as notified, does not effectively address or remove the retaliatory tariffs currently in place as a result of the Section 232 steel and aluminum tariff dispute. The AAP ATAC members urge the U.S. Government negotiators to resolve that issue as soon as possible and seek removal of all retaliatory tariffs on all U.S. agricultural products including animal and animal products.

Sanitary and Phytosanitary Chapter of the Trade Agreement

The AAP ATAC committee applauds the inclusion of improved Sanitary and Phytosanitary (SPS) provisions in the Trade Agreement, such as “WTO-Plus” enhancements, which will serve to increase transparency and facilitate trade in the North American market. The SPS chapter and related trade facilitation provisions of the Trade Agreement are a welcome upgrade to the current text of the NAFTA 1.0 agreement.

Intellectual Property and Geographical Indications

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (the “TPA”) requires U.S. international trade agreements to: (1) prevent the undermining of market access for U.S. agricultural products through improper use of a country’s system for protecting geographic indications (GIs); (2) seek transparency and procedural fairness in country GI systems; and (3) protect generic terms. (19 USC § 4201(b)(3)(U)).

The Trade Agreement includes a number of elements that help to further build upon transparency and due process disciplines in the GIs arena. However, it regrettably does not fully preserve U.S. market access opportunities. Therefore, important work remains to be achieved outside of the text of this agreement in order for the U.S. to preserve the maximize range of market access opportunities possible.

The GI section of the intellectual property chapter establishes a framework for beginning to introduce more transparency and due process procedures to the area of GI consideration. In doing so, it draws strongly upon the text negotiated under the Trans-Pacific Partnership agreement and is expected to be useful in mitigating against the inappropriate future registration of unwarranted GIs. It also provides a basic structure on the topic of GIs from which the U.S. can build further in FTA negotiations to come.

Some examples of the Agreement’s notable positive features include:

- A requirement for governments to review GI applications, not merely publish them without independent government analysis;
- Objection procedures to avoid situations seen in the EU-Canada agreement and in Mexico’s prior process for handling WIPO Lisbon Agreement GIs wherein GIs are registered without the opportunity for public comment;
- Various illustrative, non-exhaustive criteria that are relevant to the determination of the generic status of a term;
- Greater clarity requirements regarding protection sought for translations/transliterations to ensure the public is fully informed of the scope of the proposed GI’s restrictions.

In practice, as the Agreement's commitments are implemented, the U.S. will need to strongly guard against the prospect of GI considerations that may comply with the letter of the process requirements outlined in this chapter yet fail to reflect the intent of the terms to discipline against the registration of GIs that restrict the use of commonly used terms. This is of particular priority in Mexico given that country's 2018 decision to register numerous EU GIs despite clear evidence of common usage of those terms in Mexico.

It is this Advisory Committee's understanding that the agreement is intended to capture – via one form of disciplines or another – any GI not explicitly cited as protected under an existing trade agreement at the time of this Trade Agreement's implementation. That interpretation is fundamental to the provisions' forward-looking utility.

What the scope of the text does not include, however, are those registrations that have to date posed the greatest commercial concerns to the U.S. in light of the fact that the agreement effectively carves out terms covered by the EU-Mexico 2018 agreement and those WIPO Lisbon Agreement terms registered before implementation of this agreement. In doing so, it foregoes the opportunity to preserve export opportunity rights for the U.S. companies relying on those common terms in Mexico and reduces the commercial impact of the provisions for this market.

Agriculture Chapter:

Pricing System Text:

The agreement's provisions related to dairy pricing systems are robust, yet we note that the intent of those provisions is to discipline Canada's manipulation of dairy markets in ways that intentionally distort trade and that negotiations with Canada on this issue remain underway.

It remains critically important to eliminate Canada's trade-distorting Class 7 pricing policy and to ensure that Canada is not able to use global markets to dispose of excess production generated under its supply management system.

Cheese Standard Text:

We commend negotiators for the inclusion of provisions on cheese standards that rightfully seek to undue the restrictions Canada created when it amended its cheese standards in order to curtail trade. We urge the retention of this provisions as negotiations with Canada continue.

Dispute Settlement Chapter:

The scope of dispute settlement in Chapter 31 (paragraph c related to nullification and impairment), appears to cover a range of important topics, however agriculture is not among them despite the critical importance of agricultural trade throughout North America.

While the current NAFTA text in place appears to also only apply to selected topic areas (Goods, TBT, Services and IP), the proposed new Agriculture chapter text is more extensive and contains additional elements that merit inclusion under this provision as well. Moreover, USTR has proposed in this new text to significantly expand the scope of chapters subject to dispute settlement for nullification and impairment (adding Rules of Origin, Textiles & Apparel, Customs & Trade Facilitation, SPS, Government Procurement) of the agreement's provisions, yet surprisingly Agriculture is not included here.

Given the many ways in which agricultural commitments can be impaired and the commendable expansion of commitments within the Agricultural Chapter, we strongly encourage USTR to remedy this omission and ensure agriculture can fully avail itself of the full range of dispute settlement options.

Dairy Industry Comments

Commonly Marketed Cheese Text:

With respect to the list of commonly marketed cheeses, we welcome the inclusion for the first time

in a U.S. trade agreement of this form of clear recognition of market access rights for various commonly produced products. In doing so, this list represents a good first step in establishing a clearer understanding of some (not all) of the various products that the U.S. clearly has the right to market in Mexico.

We note that the U.S. has long had NAFTA market access rights for all the listed terms, as well as numerous others not captured by this list, to the Mexican market. Unwarranted restrictions on the sale of those products nullify and impair that market access, whether those terms are captured on this list or not.

As such, we recognize that this list is illustrative and certainly not exhaustive as there are numerous other commonly marketed products (such as those for which FDA standards of identity exist including parmesan, romano and others) as well and with this provision it is our understanding that the U.S. has not forfeited the rights to market those products but rather merely clarified the status of a subset of products. To ensure full clarity on this matter, we urge USTR to issue clear affirmation that this list is not exhaustive, and that the exclusion of a given product from it does not negate U.S. market access rights for that product.

On the whole, this Advisory Committee welcomes the establishment of new disciplines for an area of IP that has too often lacked the type of transparency and basic checks and balances already established for other forms of IP. These building block due process elements are expected to help to establish greater “transparency and procedural fairness”, as required by TPA language.

However, we regret that the provisions do not appear to fully meet the TPA charge regarding “eliminating...the undermining of market access for United States products” given the exclusion of GI decisions made during 2018 from the agreement’s scope.

Turkey Industry Comments

The U.S. has never obtained completely free access to the Canadian market for its turkey products. The U.S. turkey industry has been disappointed that, while virtually all other product sectors enjoy totally free trade under NAFTA, poultry remains the exception. While NAFTA overall has been valuable for the turkey industry, we are hopeful Canada would agree to the terms negotiated during TPP and allow fair access for U.S. turkey products.

Hides and Skins Industry Comments

The hides and skins industry applauds the efforts of U.S. negotiators to deliver a meaningful trade agreement that will serve to enhance the competitiveness of U.S. products in key leather, automobile, and footwear manufacturing markets. Specifically, retention of duty free access for all U.S. hides and skins exports into Mexico will continue to facilitate robust trade between the two countries, and further increase supply chain integration in the entire North American market.

Furthermore, the additional SPS and regulatory transparency mechanisms included in the Trade Agreement will serve to adequately address and rectify the few interruptions to trade that do occur between the U.S. and Mexico from time to time in this sector. The hides and skins industry fully supports these measures included in the Trade Agreement.

Conclusion

It is the majority opinion of the Animal and Animal Products ATAC that the Trade Agreement, in its current form, will benefit American farmers and ranchers, promote the economic interests of the United States, and increase export opportunities through the reduction of tariff and non-tariff

barriers to trade as it relates to Mexico. The AAP ATAC further believes that in order for the Trade Agreement to reap the most economic gain, Canada should be included as a full party in a trilateral version of the agreement, and negotiations shall continue and include dairy and poultry in a manner that prevents Canadian pricing schemes that allow Canada to exports dairy products at below cost of production as well as prevent the importation of US dairy products. In addition, it is essential that any agreement includes significant markets access for supply management products like dairy and turkey.

The AAP ATAC wishes to commend the leadership and staffs of both USDA and USTR and other agencies in the U.S. Government who have worked tirelessly to bring about the conclusion of these negotiations.