

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 Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables on the North American Free Trade Agreement (NAFTA) 2018, reflecting consensus advisory opinion on the proposed Agreement.

Sincerely,

A handwritten signature in cursive script that reads "Joel Nelsen".

Joel Nelsen, Chair
Agricultural Technical Advisory Committee
for Trade in Fruits and Vegetables

North American Free Trade Agreement (NAFTA) 2018
with Mexico and potentially Canada

Report of the
Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables

September 27, 2018

September 27, 2018

Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables

Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the North American Free Trade Agreement (NAFTA) 2018.

I. Purpose of the Committee Report

In accordance with 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, requires 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 Agricultural Technical Advisory Committee (ATAC) for Trade in Fruits and Vegetables hereby submits the following report.

II. Executive Summary of Committee Report

It is the opinion of ATAC for Trade in Fruits and Vegetables that the NAFTA 2018 to a great extent 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. We further believe that the agreement provides for equity and reciprocity within the fruit, vegetable and nut sector.

The negotiated outcome accomplishes the objective of modernizing the agreement and maintaining the tariff rate commitments from NAFTA 1.0.

III. Mandate of the Committee

The Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables is established by the Secretary of Agriculture and the U.S. Trade Representative as delegated by the Executive Order 11846 dated March 27, 1975. It is established pursuant to the Federal Advisory Committee Act (FACA) (5U.S.C. App.) and section 135(c)(2) of the Trade Act of 1974 as amended. Objectives and Scope of Activities The Committee's objectives and the scope of its activity are as follows: (A) the Committee will advise, consult with and make recommendations to the Secretary of Agriculture and the U.S. Trade Representative on matters that are of mutual concern to the United States and to its consumers, producers, processors, and traders of fruits and vegetables in connection with the trade policy activities undertaken by the United States. (B) The Committee will provide advice and information regarding trade issues that affect both domestic and foreign production and trade concerning fruits and vegetables. The Committee will furnish advisory opinions and reports regarding trade policy as requested by the Secretary of Agriculture and the U.S. Trade Representative, or their designees.

IV. Negotiating Objectives and Priorities of the Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables

The Committee fully supports the Administration's efforts to modernize the NAFTA. Our priorities and negotiating objectives in this modernization effort are to strengthen provisions in the Sanitary and Phytosanitary (SPS), Technical Barriers to Trade (TBT), and Rules of Origin (ROO) chapters, as well as establish new disciplines reflective of the challenges and opportunities of the 21st century trade environment, to include such areas as e-commerce.

We specifically recommended that the agreement include the ROO and SPS language developed for the Trans-Pacific Partnership trade agreement.

The committee initially urged U.S. negotiators to develop a functional trade remedy mechanism for the treatment of perishable and seasonal agricultural products in countervailing duty and dumping investigations while at the same time communicating that such a provision could harm other U.S. produce interests. The short timeframe for renegotiating NAFTA 2018 injected other complications into the process for closely consulting with the Committee on the development of such a functional mechanism. Following much controversy and difficult discussions in the committee and within industry, on January 10, 2018, the Fruit and Vegetable ATAC passed a resolution supporting withdrawal of the proposal from the U.S. negotiating objectives.

V. Advisory Committee Opinion on Agreement

It is the opinion of ATAC for Trade in Fruits and Vegetables that the NAFTA 2018 to a great extent 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. We further believe that the agreement provides for equity and reciprocity within the overall fruit, vegetable and nut sector.

Market Access: Tariff rate commitments of interest to the Committee (HTS Chapter 7, 8 and 20) remain unchanged from NAFTA 1.0. This outcome maintains duty free access to Mexico and Canada and preserves long established cross border trade relationships of importance to the U.S. produce industry.

Sanitary and Phytosanitary: One of the most important chapters in the trade agreement for U.S. fruit, vegetable and nut producers is Chapter 9, Sanitary and Phytosanitary Measures. The revised measures contained in the trade agreement are the most comprehensive and modern commitments yet negotiated in a U.S. trade agreement. These rules should assist producers trading across borders as a result of disciplines and commitments placed on regulators. For example, transparency, scientific principles and science-based decision making, and risk analysis are critical to the fresh produce trade. The SPS Chapter in the negotiated trade agreement is stronger than what was created for TPP and accomplishes the Committee's objective in this regard.

The Fruit and Vegetable ATAC anticipates the U.S. government using the rules in this chapter to address long standing U.S. quarantine market access issues facing the fresh fruit, vegetable and nut sector, such as the U.S. potato industry's twenty-year quest to gain market access to the entirety of Mexico. Article 9.6 6(e) of the SPS chapter calls for parties to avoid using SPS issues as a disguised restriction for trade. The Committee encourages the US government to use the new SPS chapter to address such intractable market access issues with Mexico.

The Committee also welcomes Art. 9.12 of the SPS Chapter regarding Certification. Onerous certification requirements are a growing challenge in the export of horticultural products. Requiring that certification be based on appropriate international standards and only be applied to the extent necessary with limited attestations will assist in curtailing this growing issue. Having such language appear in the NAFTA 2018 will also set the precedence for its inclusion in future agreements.

Rules of Origin: With respect to the NAFTA rules of origin for the horticultural sector, the Chapter has been modernized (consistent with the Rules of Origin commitments of the U.S.-Korea Free Trade Agreement) to exempt the import sensitive HTS Chapter 20 canned peach, pear and apricot products from Article 12 De Minimis requirements. The Committee notes that the California canned fruit industry had requested that the original rules be clarified to indicate that the wholly-originating requirement for processed peaches also extends to canned peaches (2008.70.20) and mixtures (2008.97.90) packed in syrup, and the chapter-change rules for fruit packed in gelatin containing more than 20% fruit (2106.90) also excludes Chapter 20 products. The sector greatly appreciates USDA's indication that these clarifications will be reflected in any new agreement and apply to all U.S. canned fruit products.

Trade Remedies: In June 2017, the Fruit and Vegetable ATAC adopted a resolution regarding NAFTA negotiating objectives related to trade remedy provisions for perishable and seasonal produce. A U.S. proposal was generated in response to this resolution. This proposal met with

significant opposition from Mexican and Canadian negotiators, in addition to raising concern by many in the U.S. agricultural community, including many in the fruit and vegetable industry. The concerns expressed included the potential precedent setting nature of the proposal in other free trade agreements, the potential for use against U.S. exports, and the risk the proposal posed to NAFTA more broadly. There was and continues to be strong agreement within the agricultural sector that NAFTA must be maintained and the Fruit and Vegetable ATAC sent a strong message to the Administration to "do no harm" in the NAFTA renegotiations. Because of the changing dynamics in the negotiations and industry, on January 10, 2018, the Fruit and Vegetable ATAC passed a resolution supporting withdrawal of the proposal from the U.S. negotiating objectives. A seasonal and perishable trade remedy proposal is not included in the negotiated trade agreement.

The F&V ATAC strongly encourages the federal government and Congress to continue to find ways outside of current NAFTA negotiations to help specialty crop sectors impacted by trade inequities that can help balance and maintain a strong domestic specialty crop sector.

Final Provision-Review and Term Extension: The negotiated outcome establishing the conditions for reviewing and extending the term of the agreement is sound and will provide opportunity to modernize trade commitments and address concerns as needed without introducing uncertainty or concerns about the commitment to the overall principals of the agreement.

VI. Membership of Committee

Julie Adams, Almond Board of California
Bill Braswell, Florida Blueberry Growers Assoc
Joel Nelsen, California Citrus Mutual, F&V ATAC Chairman
Reggie Brown, Florida Tomato Exchange
Jim Cranney, California Citrus Quality Council
Bret Erickson, Texas International Produce Assoc
John Foster, Earthbound Farm
Kurt Gallagher, U.S. Apple Export Council
Robert Guenther, United Fresh Produce Assoc
Matt Harris, Washington State Potato Comm
Richard Hudgins, California Canning Peach Assoc
Randy Hudson, National Pecan Growers Council
Matt Lantz, Cranberry Marketing Comm
Jake Lewin, CCOF Certification Services, LLC
Marcy Martin, California Fresh Fruit Assoc
Matt McInerney, Western Growers
Ken Melban, California Avocado Comm
Mike Montna, California Tomato Growers Assoc
Dale Murden, Texas Citrus Mutual
Shannen Nettleton, Seneca Foods
Melissa Poole, The Wonderful Company
Mark Powers, Northwest Horticultural Council, F&V ATAC Vice Chairman

Daniel Richey, Riverfront Packing Company
Alicia Rockwell, Blue Diamond Growers
James Zion, Meridian Growers, LLC