

**AGRICULTURAL TECHNICAL ADVISORY
COMMITTEE FOR TRADE IN PROCESSED FOODS**

September 27, 2018

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Lighthizer:

Pursuant to section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and Section 135 (e) of the Trade Act of 1974, as amended, I hereby transmit the report of the Agricultural Technical Advisory Committee (ATAC) for Trade in Processed Foods on the proposed Trade Agreement with Mexico.

I would be grateful if you would share this report with the President and the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa A. San Miguel". The signature is fluid and cursive, written in a professional style.

Melissa A. San Miguel
Chair, ATAC Processed Foods

Enclosure

Trade Agreement with Mexico

**Report of the Agricultural Technical Advisory Committee for
Trade in Processed Foods**

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AGRICULTURAL TECHNICAL ADVISORY COMMITTEE FOR TRADE IN PROCESSED FOODS

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Report of the Agricultural Technical Advisory Committee for Trade in Processed Foods to the President, the Congress and the United States Trade Representative on the proposed Trade Agreement with Mexico

I. Purpose of the Report

On August 31, 2018, President Trump notified the Speaker of the House of Representatives and the President of the Senate that he intends to “sign a trade agreement with Mexico – and Canada, if it is willing.” Section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015 and Section 135 (e)(1) of the Trade Act of 1974, as amended, Section 2104 (e) of the Trade Act of 2002 require that advisory committees provide the President, the U.S. Trade Representative and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, 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 principle negotiating objectives set forth in the Bipartisan Trade Priorities and Accountability Act of 2015. The report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or functional area.

Pursuant to the statutory requirements referenced above, the Agricultural Technical Advisory Committee for Trade in Processed Foods hereby submits the following report.

II. Executive Summary of Committee Report

For the reasons detailed below, a majority of the Committee supports the content of the proposed Trade Agreement with Mexico (“the Agreement”), only if the Agreement is finalized as a trilateral including Canada or if similar provisions enter into force with Canada without disruption to current NAFTA provisions.

The Committee strongly endorses the fundamental U.S. goal of opening markets; promoting trade, investment, and tourism; expanding economic opportunity; and strengthening political stability and security throughout the world. Since its establishment in 2003, this Committee has firmly supported comprehensive U.S. free trade agreements and trade promotion agreements.

The Committee previously submitted to the Administration its priorities for modernizing NAFTA in such a way as to maintain and expand its benefits to U.S. processed product

manufacturers, who are key drivers of the U.S. economy and support millions of jobs in thousands of communities across the United States.

The Committee emphasizes that the current report addresses the proposed Agreement with Mexico as the text of the Agreement stood on September 27, 2018. Any subsequent amendments, side letters or other modifications cannot be anticipated, nor addressed, in this report.

While the Committee has appreciated the consultations afforded during the process of negotiations to modernize NAFTA, we note with concern that the Committee was not advised of nor consulted on the Administration's intent to pursue a bilateral agreement with Mexico, nor did the administration undertake formal consultations or Committee briefings during the intense spate of bilateral negotiations with Mexico that preceded the August 31 announcement of intent to sign the Agreement.

The Committee urges the Administration to further strengthen its engagement with this and other advisory committees throughout negotiations of trade agreements to ensure that the views and advice of advisors are adequately reflected, consistent with Section 135 of the Trade Act of 1974, as amended and the legislative history thereof.

Finally, the Committee notes our grave concern that we are unable to offer fully informed advice, as we have been asked to review bilaterally agreed text before release of a final text and without conclusion as to whether any or all of the eventual agreement will include Canada and maintain the fundamental trilateral nature of the NAFTA, which was the announced intended negotiation.

III. Economic Impact of the U.S. Processed Food and Beverage Industry

The U.S. processed food and beverage industry is the largest employer in U.S. manufacturing, representing small, medium, and large businesses, directly employing 2.1 million Americans in 30,000 communities across the country (accounting for 16 percent of all U.S. manufacturing employment) and indirectly supporting an additional 11 million jobs from farm to fork.

In 2016, industry's sales in the United States totaled \$1 trillion, and the U.S. processed food and beverage industry contributed nearly \$250 billion to the U.S. gross domestic product. The U.S. processed food and beverage industry provides safe, affordable, high quality products that Americans rely on every day, enabling Americans to spend less of their disposable income on food than consumers in any other industrialized economy.

The U.S. processed food and beverage industry leverages sophisticated supply chains and investments to source ingredients, innovate products, and compete in the global marketplace.

IV. Brief Description of the Mandate of the Agricultural Technical Advisory Committee for Trade in Processed Foods

The Agricultural Technical Advisory Committee for Trade in Processed Foods is authorized by Sections 135 (c) (1) and (2) of the Trade Act of 1974 (Pub. L. No. 93-618), as amended, and is intended to ensure that representatives of the private sector have an opportunity to provide input to U.S. Government negotiators regarding all tariff and trade matters. The Committee provides a formal mechanism through which the U.S. Government may seek advice and information. It is part of a network of statutorily established committees that provide advice on trade negotiations to the President, the Office of the U.S. Trade Representative, the U.S. Department of Agriculture and the U.S. Department of Commerce.

Established in 2003, the ATAC for Trade in Processed Foods provides advice and information regarding international trade in processed foods, one of the fastest growing segments of U.S. agricultural trade. The Committee furnishes advisory opinions and reports and performs other technical functions that are appropriate or are requested by the U.S. Trade Representative and/or the Secretary of Agriculture. In carrying out its functions, the Committee draws upon the technical competence and experience of its members who represent a broad cross-section of the U.S. processed foods industry.

V. Importance of NAFTA

U.S. processed food and beverage exports to the world exceeded \$43 billion in 2017, accounting for roughly one third of all U.S. agricultural exports. Nearly half of these exports are destined for Mexico and Canada. Canada is by far the largest market for U.S. food and beverage exports, with exports to Canada valued at \$12.8 billion in 2017. NAFTA has provided significant economic opportunities to the sector and allowed for the creation of a truly integrated North American market.

As the Committee clearly stated in its comments on priorities and negotiating objectives when the Administration announced its intent to modernize NAFTA, the many beneficial aspects of this trilateral agreement should be preserved and no outcome of the current renegotiation should decrease market access or weaken integration in North America.

The Committee's priorities for modernizing NAFTA, as noted in our letter of June 30, 2017, were as follows:

- Protect existing market access and substantive provisions that benefit our sector, that is "do no harm;"
- Remove remaining barriers including tariffs;
- Ensure there are no sectoral or product specific carve outs or safe harbor provisions;
- Set fair rules that level the playing field;
- Decrease unnecessary regulatory differences, promote regulatory cooperation, enshrine principles for good regulatory practice (GRP), and encourage acceptance of U.S. standards, where appropriate.

- Strengthen enforcement to ensure that U.S. trading partners are transparent and fully comply with their international obligations;
- Simplify all forms and procedures; and
- Negotiate as a trilateral agreement.

The first and last points are of particular concern to the Committee at this stage. While we seek here to evaluate the content of the proposed Agreement with Mexico, maintaining the benefits of NAFTA and modernizing it to further drive U.S. jobs, exports, and economic growth depends on a successful trilateral conclusion. The Committee believes a bilateral agreement would not meet these objectives.

The Committee is disturbed that the administration has presented elements of a bilateral agreement that may not include Canada. Any agreement that excludes Canada would not replace NAFTA and would endanger many of the gains achieved under NAFTA. We urge the administration in the strongest terms to urgently conclude a trilateral agreement that maintains and builds on the successes already achieved for U.S. producers and consumers.

Furthermore, the Committee notes many U.S. food and beverage manufacturers are facing retaliatory tariffs by Mexico and Canada as a result of the administration's enforcement actions on imported steel and aluminum under Section 232, with no known timeline for removal of tariffs or retaliation and threats of further escalation. Thus, while the agreement reached maintains duty-free access for U.S. agricultural exports to Mexico, some U.S. manufacturers are unable to import necessary packaging materials without tariffs and some U.S. products continue to be subject to retaliatory tariffs. Any agreement that does not end these disputes and remove U.S. and retaliatory tariffs would not be adequate. Thus, we urge that all three parties engage in further dialogue to end these disputes so that these tariffs are removed without any further delay.

The Committee's detailed input on selected chapters agreed between the United States and Mexico follows.

VI. Input on Selected Chapters

The Committee offers the following input on selected chapters and articles. This input is not exhaustive but represents the Committee's best effort to encompass highest priority issues.

Chapter 2: National Treatment and Market Access for Goods

The Committee is disappointed that the restrictions on duty drawback and deferral remain in the draft agreement with Mexico in Article X.5. Duty drawback is an important program for U.S. exporters, especially in sectors where the competing imported product is highly subsidized.

Chapter 3 - Agriculture

The Committee appreciates that tariffs on agricultural products traded between the United States and Mexico will remain at zero.

3.3 International Cooperation

The Committee commends further cooperation in the World Trade Organization to promote increased transparency and to improve and further develop multilateral disciplines on the three pillars of agricultural trade (domestic support, export competition and market access) with the objective of substantial progressive reductions in agriculture support and protection resulting in fundamental reform.

3.7 Committee on Agricultural Trade, 3.8 Consultative Committees on Agriculture

The Committee welcomes the establishment of the Committee on Agricultural Trade and the Consultative Committees on Agriculture and encourages these bodies active and frequent use to resolve agricultural trade issues.

3.12 Milk Class Pricing Systems for Dairy

A majority of the Committee would welcome commitments in a trilateral, modernized NAFTA that would enhance transparency in regulated milk pricing and eliminate Canada's utilization of the trade-distorting Class 3(d), 5(a), 5(b), 5(c), 6, and 7. A minority opinion dissents from this view.

Regardless, the Committee notes these provisions do not apply to Mexico and that Canada's agreement to the language is outstanding as of the date of this report. We reiterate the majority view of the Committee supports addressing these trade-distorting regulations in any final agreement.

3.13 Compositional Requirements for Cheese

The Committee supports the provision that limits the use of compositional standards that are more restrictive than *Codex* standards as a mechanism to create a trade barrier.

3.14 Cheese Production and Trade

The Committee notes with serious concern that the list of "terms used in connection with cheeses from U.S. producers currently being marketed in Canada and Mexico" does not include critical generic terms (such as parmesan and romano) that have been commonly marketed by U.S. producers and also does not protect use of these terms for products made in Canada and Mexico. Any limitation on use of generic terms could prevent U.S. companies from gaining market access for newly innovated new products which is necessary to meet shifting market needs. The Committee insists it is critical for USTR to clarify that omission of a specific product name does not eliminate U.S. market access rights for that product.

The Committee further requests the administration clarify the definition of "U.S. products" in the phrase: "market access of U.S. products in Canada and Mexico is not restricted due to the mere use of these individual terms."

3.B Agricultural Biotechnology

The Committee welcomes new commitments that foster transparency on government measures related to trade in products produced with modern agricultural biotechnology, while reaffirming member governments' right to adopt science-based measures necessary to ensure food safety and animal and plant health.

3.B.4 Low Level Presence Occurrence

The Committee applauds provisions that enhance information sharing and institute procedures for addressing incidents of low-level presence of biotech material in agricultural commodities or food products.

Annex 3A Proprietary Formulas for Prepackaged Goods,

The Committee commends the inclusion of industry-specific annexes of importance to U.S. processed food and beverage manufacturers. Annex 3A ensures formula disclosure requirements are limited to what is necessary to achieve a legitimate objective and protects the confidentiality of information supplied.

Annex 3B Alcohol Beverage Annex

The Committee supports the content of the Beverage Alcohol Annex, which preserves and expands upon the existing NAFTA commitments relating to the internal sale and distribution of wine and distilled spirits, preserves distinctive product recognition for certain U.S. and Mexican distilled spirits products, and establishes new commitments reflecting best practices regarding labeling and certifications for beverage alcohol products. The Committee believes the Annex will streamline the exporting process for beverage alcohol producers and could potentially serve as a template for future U.S. trade agreements.

As stated previously, the Committee strongly supports the inclusion of Canada within a modernized NAFTA and specifically within this Annex. An agreement between Canada, Mexico and the United States would ensure non-discriminatory treatment of beverage alcohol products in all three markets, such as in distribution, sale, listings, and shelf space allocation.

Examples of new provisions in the agreement that will assist U.S. beverage alcohol companies exporting to Mexico (and if applicable, Canada) include:

- Label content including declarations of alcohol and net contents will be streamlined and expiration dates shall not be required for most products;
- Descriptive (traditional) winemaking terms may not be prohibited on labels;
- Wineries will not be required to disclose winemaking practices on a label, unless for health or safety reasons;
- Most certificate requirements will be eliminated for vintage, varietal and regional claims for wine, and with regard to raw materials and production processes for distilled spirits, unless such certificates are required to verify age, origin or standards of identity claims;
- Wine and distilled spirits samples for customs clearance purposes must be of reasonable size;
- Parties are encouraged to base their standards for distilled spirits solely on the alcohol content and the raw materials, added ingredients, and the production processes used, consistent with the U.S. approach;
- Allergen labeling may only be required for wines and spirits if the food allergen is present in the final product; and

- Lot codes may be used, provided they are clear, specific, truthful and not misleading and gives suppliers the right to determine where such codes are placed, etc. It also provides that parties may impose penalties if such codes are defaced, erased, etc., which is an important tool to ensuring the authenticity of the products.

The Committee welcomes these annexes and encourages the Administration to negotiate additional annexes that improve regulatory practices and eliminate other potential barriers to trade, such as food labeling.

The Committee is disappointed that the Annex on Prepackaged Food and Beverages previously endorsed by the Committee has not been included in the agreement, nor have key provisions been incorporated in other disciplines, such as to protect use of legally registered trademarks and branding elements and ensure nutrition labeling requirements are based on science and adhere to international standards. The Committee encourages the administration to continue negotiating these protections and incorporate the Annex in the final trilateral agreement we hope will be presented to the Congress.

U.S.-Mexico Side Letter on Distilled Spirits

The Committee supports the agreement between the U.S. and Mexico to initiate their respective processes to consider designating other distilled spirits as distinctive products. Specifically, the Committee is pleased that Mexico will consider extending distinctive product recognition to “American Rye Whiskey,” which is a rapidly growing category in the United States and in various export markets.

Chapter 4: Rules of Origin

Article 11: Accumulation

The Committee regrets that the agreement does not allow for accumulation/cumulation between common free trade agreement partners which would lessen unnecessary constraints on choice of inputs and allow producers to optimize competitive input sourcing.

Article 12: De Minimis

The Committee regrets that the agreement does not take into account our previous request to increase the de minimis content allowance from seven to ten percent, as had been achieved in previous U.S. negotiations with Mexico and Canada.

Article 17: Transit and Transshipment

The Committee welcomes provisions that permit minor processing in non-NAFTA members (to include unloading, labeling, marking, reloading) without losing the good’s originating status.

Annex 4-A: Exceptions to De Minimis

The Committee regrets the agreement does not allow the broadest possible application of de minimis content provisions. The Committee previously requested the parties eliminate exclusions, including for products in tariff headings 1806, 1901, 2106, 2009, 2202, 2309, 3301, and 3302.

Under point (g) in the 1994 NAFTA provisions on exceptions to de minimis, the agreement reads:

“(g) a non-originating material provided for in Chapter 17 of the Harmonized System or heading 18.05 that is used in the production of a good provided for in subheading 1806.10;”

However, the current bilateral agreement under review removes “or heading 18.05.” The Committee requests clarification as to whether this change is intentional. If this is not an error, the Committee requests to be notified.

Annex 4-B: Product-Specific Rules of Origin

This annex is not available at the time of the Committee’s review. We refer to the Committee’s previous requests for improvements to product-specific rules of origin, as laid out in our communication on NAFTA negotiating objectives, dated June 30, 2017.

The Committee noted:

“Current NAFTA rules of origin disqualify many nutrition items from NAFTA eligibility based on extremely stringent requirements. A modification should facilitate the qualification of products while still retaining a high standard for product eligibility.

The distilled spirits sector supports retention of the product specific preferential rule of origin for distilled spirits.

The NAFTA ROO for HTS sub-heading 2106.90 should be modified to:

- A change to any other good of subheading 2106.90 from any other subheading, or
- No change in tariff classification required for any other good of subheading 2106.90, provided there is a regional value content of not less than 30 percent under the build-up method; or 40 percent under the build-down method.

Revisit and update NAFTA ROO for Chapter 18, in line with other recent FTAs and to reflect how chocolate and cocoa products are manufactured.

A NAFTA ROO for HTS sub-heading 2008.97 should be created as follows:

- A change to any other good of subheading 2008.97 from any other chapter; or
- No change in tariff classification required for any other good of subheading 2008.97, provided there is a regional value content of not less than 40 per cent under the build-down method.

The NAFTA ROO for sub-heading 2009.90 should be simplified to:

- A change to a good of subheading 2009.90 from any other chapter; or
- No change in tariff classification required for a good of subheading 2009.90, provided there is a regional value content of not less than 45 per cent under the build-down method.

The NAFTA ROO for juice (not milk) beverages of HTS sub-heading 2202.99 should be simplified to:

- A change to a single fruit or single vegetable juice of subheading 2202.90 from any other chapter, provided there is a regional value content of not less than 45 per cent under the build-down method.
- A change to any other good of subheading 2202.90 from any other chapter, or
- No change in tariff classification required for any other good of subheading 2202.90, provided there is a regional value content of not less than 45 per cent under the build-down method.

Chapter 9: Sanitary and Phytosanitary (SPS) Measures

The Committee welcomes enhanced commitments in the agreement that build on existing commitments under the WTO SPS agreement. The Committee applauds the Agreement's new rules that commit parties to develop and implement science-based SPS measures in a transparent, predictable, and non-discriminatory manner. In particular, the Agreement enhances parties' obligations to:

- Show that each risk assessment conducted is appropriate to the circumstances of the risk and that the risk management measure is no more trade restrictive than required to achieve the country's appropriate level of protection; and
- Encourage parties to use transparent risk communication techniques to share information and explain measures to consumers and other stakeholders.

In addition, the Committee applauds the establishment in Article 9.11(9)(b) of a mechanism to allow for rapid response to and timely resolution of SPS issues at the border, which is particularly important for perishable products.

The Committee particularly applauds the parties for making Chapter 9 subject to dispute resolution, providing traders important protections against violations.

Chapter 10: Trade Remedies

The Committee is pleased the administration has withdrawn its proposal on trade remedies for seasonal and perishable produce. The proposal would have significantly increased prices and decreased options available to processed food and beverage companies in their purchases of key fruits and vegetables and exposed the industry to further retaliation risks.

The Committee is pleased that the bilateral agreement under review does not in any way affect the U.S.-Mexico sugar suspension agreements, which are not permanent.

Chapter 11: Technical Barriers to Trade (TBT)

The Committee welcomes Chapter 11, which includes significant new features that will benefit U.S. processed food and beverage exporters. The chapter incorporates and builds on commitments in the World Trade Organization's TBT Agreement and strengthens commitments negotiated in earlier U.S. free trade agreements. The Committee particularly applauds the Agreement's transparency requirements, including obligations for public consultation early in

the development of new measures. Regulatory transparency enables trade-related concerns to be vetted and addressed before new measures are finalized.

Chapter 20: Intellectual Property

Section E: Geographical Indications

The Committee welcomes the provisions strengthening protections against the overly-broad application of geographical indications (GIs) by providing administrative procedures for notification, opposition, and cancellation and by setting guidelines to protect the use of generic terms.

Chapter 28: Good Regulatory Practices

The Committee welcomes the inclusion of the chapter on Good Regulatory Practices, which builds on previously negotiated outcomes and makes important improvements to the transparency and predictability of regulatory regimes. However, the Committee is disappointed the chapter does not include more advanced commitments to better align regulations among the NAFTA partners, for example by reinforcing the importance of science-based rules, a long-standing goal of the U.S.-Canada Regulatory Cooperation Council.

Chapter 31: Dispute Settlement

A majority of the Committee finds Investor-State Dispute Settlement (ISDS) offers investors critical protections against unfair or discriminatory treatment. Consistent with the Committee's previous opposition to product exclusions in U.S. free trade agreements, our Committee continues to oppose proposals to limit protections and recourse for U.S. investors. Limiting protections to particular industries would undermine decades of international and U.S. trade policy, create uncertainty, and introduce avenues for potential discrimination against U.S. food and agricultural exports.

NAFTA Product-Specific Rules of Origin - Chemicals

The Committee supports the inclusion of the so-called "Track IV" amendments, specifically the rule related to miscellaneous chemical blends, which is helpful to the beverage sector.

Cross Border Trade in Services

Of importance to the promotion of U.S. nutritional supplements in the 'Cross Border Trade in Services' text which provides clarity for enterprises that are engaged in direct selling services, such as those in the distribution of nutritional supplements.

Provisions governing stability and predictability; Review and term extension

In addition to expanding market access, free trade agreements are a tool for ensuring stability and predictability in a trade and investment relationship. The Committee is concerned that certain elements of this Agreement may damage the stability and predictability provided through

mechanisms in the original NAFTA agreement, including the erosion of investor-state dispute settlement, the elimination of anti-dumping/countervailing duty reviews, and the introduction of a periodic performance review and termination provision.

The Committee is particularly concerned that the periodic performance review and termination will lead to uncertainty and undermine the benefits of the integrated North American market for U.S. processed product manufacturers.

VII. Membership of the Committee

A list of members of the Agricultural Technical Advisory Committee for Trade in Processed Foods, along with their respective affiliations, has been provided below.

NAME	ORGANIZATION
Andrew Anderson	Western U.S. Agricultural Trade Association
Robert B. Anderson	Organic Trade Association
Robert Bauer	Association of Food Industries
Abigail Blunt	Kraft Heinz Company
Muhammad M. Chaudry	Islamic Food and Nutrition Council of America
George R. Davis	Porter Creek Vineyards
Thomas S. Gellert	Cheese Importers Association of America
Barbara Gilbert	United Food & Commercial Workers International Union
Carlos Gonzalez	Hill's Pet Nutrition, Inc.
Ann Grappin	American Potato Trade Alliance
Jason Grove	Abbott
Sanjay Gummalla	American Frozen Food Institute
Tim Hamilton	Food Export Association of the Midwest USA / Food Export USA - Northeast
Lisa Hill	Ocean Spray International Services, Inc.
Karen S. Horan	National Confectioners Association
Kimberly Houlding	American Olive Oil Producers Association
Kelly Johnston	Campbell Soup Company

Tonya Kemp	Amway
Christine LoCascio	Distilled Spirits Council of the United States, Inc.
David McCaleb	Brewers Association
John McDermid	PepsiCo
Bill J. McFarland	Musco Family Olive Co.
Autumn V. Price	Land O'Lakes
Melissa San Miguel	Grocery Manufacturers Association
Paul Schiefer	Amy's Kitchen
Kelly Shea	The WhiteWave Foods Company
Ron Tanner	Specialty Food Association
Sue Taylor	Leprino Foods
Peter Thornton	North Carolina Department of Agriculture and Consumer Services
Seth Wilen	American Trading International Inc.
Leonard Williams	North Carolina Agricultural and Technical State University
Bernadette M. Wiltz	Southern United States Trade Association