

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 (ATAC) for Sweeteners and Sweetener Products on the Trade Agreement reached between the United States and Mexico on August 31, 2018, reflecting consensus advisory opinion on the proposed Agreement.

Sincerely,

A handwritten signature in black ink that reads "Don Phillips". The signature is written in a cursive, slightly slanted style.

Don Phillips
Chair
Sweeteners and Sweeteners Product ATAC

U.S.-Mexico Trade Agreement

Report of the
Agricultural Technical Advisory Committee (ATAC) for Sweeteners and Sweetener Products

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Agricultural Technical Advisory Committee for Sweeteners and Sweetener Products

Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the Trade Agreement on the U.S. -Mexico 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 Agricultural Technical Advisory Committee for Sweeteners and Sweetener Products hereby submits the following report.

II. Executive Summary of Committee Report

It is the view of the majority of Committee members that, particularly in light of the broad benefits to the U.S. business and agricultural community expected to result from the modernization and improvement of the provisions contained in the original NAFTA governing trade and investment between the U.S. and Mexico, the Agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

It is also the view of the majority of Committee Members that the results of the negotiations are consistent with goals of sectoral equity and reciprocity.

However, one member questions the above findings for reasons outlined in her statement at the end of the report.

III. Brief Description of the Mandate of ATAC Committee for Sweeteners and Sweetener Products

The advisory committee 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 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. They provide a formal mechanism through which the U.S. Government may 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. There are no other agencies or existing advisory committees that could supply this private sector input.

V. Advisory Committee Opinion on Agreement

As noted in the Executive Summary, it is the majority view of Committee members that, particularly in light of the broad benefits to the U.S. business and agricultural community, including members of this Committee, expected to result from the modernization and improvement of the provisions contained in the original NAFTA governing trade and investment between the U.S. and Mexico, the Agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

However, the Committee urges the Administration to continue its intensive negotiations with Canada with a view towards fully incorporating Canada into the agreement reached with Mexico. Such an outcome would put the Committee in a much better position to evaluate the overall effects of the NAFTA modernization effort.

It is also the majority view of the Committee that the results of the negotiations are consistent with goals of sectoral equity and reciprocity. Members' views on various specific provisions in the U.S.-Mexico Agreement, in particular those relevant to the sweetener and sweetener products sector, are spelled out below.

At the request of the Administration, the Committee submitted confidential advice on its members' interests and negotiating priorities in a letter of June 23, 2017 to Secretary Perdue and Ambassador Lighthizer. The Full committee is pleased to note that many of the provisions of the agreement are consistent with that advice, specifically:

- The fact that the existing trade arrangements on trade in sweeteners and sweeteners products remain largely unchanged goes far to meet the “no harm” objective in our June letter and is consistent with our objective of sustaining domestic production and refining capacity of sugar beets, sugarcane, and corn, thereby ensuring reliable and high-quality supplies to sweetener product producers.
- Similarly, rules of origin for sugar and sugar-containing products remain virtually unchanged as we had urged.
- In our June letter, we also urged that our negotiators seek to incorporate some of the rules governing trade negotiated in TPP into a modernized NAFTA –in particular, those concerning SPS, TBT, biotech, geographical indications, regulatory cooperation and others contributing to trade facilitation. Not only have our negotiators pursued these goals vigorously but in many if not most of these areas they have produced text that is TPP-plus.
- In this regard, we would draw particular attention to the SPS provisions which go well beyond those agreed in the WTO or TPP in promoting improved adherence to science-based decision-making, stronger dispute settlement, and providing a useful consultative mechanism.
- Similarly, the provisions on biotech go beyond those agreed in TPP in expanding their reach to new technologies, strengthening commitments, and both incorporating and improving the rules governing LLP (Low Level Presence) Occurrence. These provisions, for the first time in any of our trade agreements, will improve cooperation and transparency on regulations involving biotech products and help avoid unnecessary problems in the trade in such products
- The prohibition on adopting or maintaining export subsidies that would affect trade with another Party to the Agreement (which did not apply to Mexico in the original NAFTA) and the consultative mechanism made available if a Party believes an export subsidy or export financing support results or may result in a distorting effect should prove useful in achieving the objective of eliminating unfair trade practices.
- The Agreement also contains much stronger labor and environmental provisions – a goal supported by this Committee.

We also commend our negotiators for amending the rules governing the U.S. sugar re-export program to allow the use of this program to export sugar-containing products to other Parties to the Agreement. The restriction of the program to the export of refined sugar has caused trade disputes in the past. We note, however, that another provision in the Agreement allows Mexico to continue imposing tariffs on such imports. Thus, it is critical that the provision allowing the

use of the sugar re-export program to export sugar-containing products be included in any agreement with Canada and that no provision similar to that afforded Mexico be agreed with them if sugar-containing product manufacturers are to enjoy real benefits.

Consistent with the no-harm goal, the Committee also commends our negotiators for taking no actions that would interfere with the operation of the Antidumping and Countervailing Suspension Agreements, that are necessary to prevent harm to our producers from unfair trade practices and, so far, appear to be working well.

It is also the view of the majority of the Committee that the agreement reached between the U.S. and Mexico on the contentious “sunset” issue represents a reasonable compromise between the desire to create a stable long-term environment conducive to trade and investment and the need to regularly review and improve the operation of the Agreement. One member, however, dissents from this view for reasons outlined in her statement at the end of the report.

Finally, we would like to remind the Administration that, in a letter sent to Secretary Perdue and Ambassador Lighthizer in January of this year, the Committee expressed our strong support for the Annex on Pre-Packaged Foods and Non-Alcoholic Beverages proposed by the U.S. This Annex does not appear in U.S.-Mexico text but we urge our negotiators to continue to press for its adoption in on-going trilateral talks.

Views expressed by Cassandra Kuball, Corn Refiners Association:

The corn sweeteners industry thanks the Administration for conserving our zero-duty market access for corn sweeteners trade with Mexico. We recognize Mexico as our largest, most valuable market for corn sweeteners that cannot be replaced.

In addition to expanding market access, free trade agreements are a tool for ensuring stability and predictability in a trade and investment relationship. The corn refining industry is concerned that certain elements of the U.S.-Mexico proposal may damage the stability and predictability provided through mechanisms in the original NAFTA agreement, including the erosion of investor-state dispute settlement (ISDS), the elimination of AD/CVD reviews and the introduction of a periodic performance review and termination provision.

While NAFTA entered force in 1994, tariffs on U.S. high-fructose corn syrup (HFCS) remained in place as the U.S. and Mexico disputed over bilateral market access for sweeteners, before eventually opening their markets in 2008. During this period, Mexico erected several trade barriers, which severely limited U.S. HFCS imports and cost the U.S. corn refining industry billions in sales. The U.S. corn refining industry was able to successfully utilize the Chapter 19 (i.e. AD/CVD review) and ISDS to contest illegal and discriminatory actions against a U.S. export.

In 1998, Mexico placed anti-dumping duties against the U.S. corn refining industry, falsely claiming that the U.S. was dumping HFCS below market value. U.S. industry asked for a Chapter 19 panel to examine the issue. The panel unanimously overturned the duties and ordered Mexico to refund the illegally-applied duties.

In 2002 Mexico levied a 20% tax on beverages not sweetened with cane sugar, thus targeting HFCS. U.S. corn refiners challenged the action under NAFTA's ISDS statute and won all cases, recovering \$160 million in restitution. ISDS not only supported domestically produced HFCS, but also millions of dollars of U.S. corn and HFCS exports.

Without rapid and legally binding dispute resolution, market access for U.S. corn sweeteners to Mexico will be illusory because tariffs and non-tariff barriers can be raised arbitrarily.

Furthermore, we raise the concern of the potential long-term negative consequences that may result from the Review and Term-Extension for Final Provisions chapter. While we support the ability for parties of the agreement to meet and review the effectiveness of the agreement, we do not support termination of the agreement as a result of a non-affirmative for renewing the agreement for another 16-year term.

VI. Membership of Committee

Perry J. Cerminara, The Hershey Company

Jennifer Cervantes, Rio Grande Sugar Cane Growers

Thomas Earley, Agralytica, Inc.

Patrick Henneberry, Imperial Sugar Company

Roland E. Hoch, Global Organics Ltd.

Keith Krause, McKee Foods Corporation

Cassandra Kuball, Corn Refiners Association

Eddie Lewis, Eddie Lewis Cane Farms

Luther Markwart, American Sugar Beet Growers Association

Jack Pettus, American Sugarcane League of the USA, Inc.

Donald Phillips, American Sugar Alliance

Kevin Price, American Crystal Sugar Company

Judy Sanchez, U.S. Sugar Corporation

Paul Steed, Sweetener User Association

John Yonover, Indiana Sugars, Inc