

AGRICULTURAL TECHNICAL ADVISORY COMMITTEE FOR TRADE IN PROCESSED FOODS

October 25, 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 an addendum to the report of the Agricultural Technical Advisory Committee (ATAC) for Trade in Processed Foods on the U.S.-Mexico Trade Agreement (report dated September 27), which was superseded by the proposed U.S.-Mexico-Canada Agreement (USMCA) announced September 30.

Having reviewed the USMCA in the limited time allotted, the Committee offers the comments attached as additions to our September 27 report, though these comments should not be considered exhaustive.

I would be grateful if you would share these comments 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

U.S.-Mexico-Canada Agreement

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

October 25, 2018

AGRICULTURAL TECHNICAL ADVISORY COMMITTEE FOR TRADE IN PROCESSED FOODS

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Addendum to the 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 U.S.-Mexico-Canada Agreement, previously notified as the U.S.-Mexico Trade Agreement

I. Summary and Committee Opinion

A majority of the Committee supports the USMCA, though there are serious areas of concern laid out in this addendum. The Committee remains gravely concerned that conclusion of USMCA negotiations has not been accompanied by resolution of tariffs and retaliation related to U.S. Section 232 enforcement against imported steel and aluminum.

The Committee reminds the Administration that U.S. processed product manufacturers are key drivers of the U.S. economy and support millions of jobs in thousands of communities across the United States. The Committee repeatedly stressed to the Administration that updating and modernizing NAFTA should “do no harm” to the tremendous benefits made possible through NAFTA’s strengthening of the North American market.

In our September 27 report, a majority of the Committee supported the content of the proposed Trade Agreement with Mexico, only if the Agreement were finalized as a trilateral agreement including Canada. We, therefore, support the USMCA.

However, the Committee repeats our grave concern that many U.S. food and beverage manufacturers are facing retaliatory tariffs imposed 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.

While the USMCA maintains existing 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. The Committee continues to insist that any agreement that does not end these disputes and remove U.S. and retaliatory tariffs is inadequate.

The Committee has on multiple occasions urged the Administration to lift the Section 232 steel and aluminum tariffs on Canadian and Mexican imports. The President and senior Administration officials had on numerous occasions indicated Section 232 steel and aluminum tariffs would be lifted once the United States, Mexico, and Canada reached agreement to modernize NAFTA. Nevertheless, the Administration now maintains there is no linkage between the Section 232 tariffs and the USMCA and that USTR has no jurisdiction over Section 232 enforcement actions. We find this response inadequate and, once again, urge that U.S. and

retaliatory tariffs be removed as soon as possible and not later than the proposed date to sign USMCA –November 30, 2018.

Finally, while the Committee appreciated the consultations afforded during the process of negotiations to modernize the North American Free Trade Agreement (NAFTA), we note with continued concern the very limited scope of consultation preceding the August 31 announcement of intent to sign a U.S.-Mexico Trade Agreement and the September 30 conclusion of negotiations for the trilateral USMCA.

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.

The Committee’s detailed input on selected USMCA chapters follows.

II. Input on Selected Chapters

The Committee offers the following input on selected USMCA provisions and outcomes. This input is not exhaustive but represents the Committee’s best effort to encompass highest priority issues that have changed following the Committee’s September 27 report.

Agriculture

The Committee appreciates that existing duty-free access on agricultural products traded between the United States, Mexico, and Canada will be maintained.

Milk Class Pricing Systems for Dairy

A majority of the Committee welcomes commitments in USMCA that 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. We note that Canada’s compliance with these commitments will require continued vigilance from the United States.

While the commitments in USMCA are an improvement, the Committee believes the market access obtained for dairy and cheese into Canada is disappointing and offers access to a minimal percentage of the Canadian market.

U.S.-Mexico Side Letter on Cheese Names

The Committee remains seriously concerned that the list of “terms used in connection with cheeses from U.S. producers currently being marketed in 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 Mexico. Any limitation on use of generic terms could prevent U.S. companies from gaining market access for newly innovated 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 Mexico is not restricted due to the mere use of these individual terms.”

Market Access for Fresh/Frozen Chicken

The Committee is very disappointed with USMCA outcomes on market access for fresh/frozen chicken into Canada, which stunningly results in less market access for U.S. fresh/frozen chicken than under the 1994 NAFTA.

For 2019, the Tariff Rate Quota would have been 94,900 MT (39,900 MT WTO Commitment plus 55,000 MT NAFTA) under NAFTA but due to the change in the methodology of the quota calculation under USMCA, the 2019 quota is only 86,900 MT (39,900 MT WTO Commitment plus 47,000 MT USMCA). The new USMCA quota calculation methodology will result in an 8,100 MT reduction in quota annually.

Agriculture-Related Annexes

The Committee welcomes the annexes included in USMCA 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 remains 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.

Rules of Origin

Article 4.12: De Minimis

The Committee welcomes the commitment 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.

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.

Annex 4-B: Product-Specific Rules of Origin

Product-specific rules of origin were not made available prior to the Committee’s September 27 report. During negotiation and in our September 27 report, the Committee made a number of

recommendations on product specific rules of origin, including modifications to facilitate regional supply chains and simplify certain rules.

In the text of the USMCA now available, the Committee finds that PSRs for some processed products have changed from the 1994 NAFTA but not in line with our recommendations. In consultation with the Administration, Committee members have been informed that some rules of origin modified under the USMCA will revert back to the 1994 NAFTA. We will review the impact of these rules when they are corrected and clarified.

Going forward, our Committee welcomes the opportunity to work more closely with U.S. negotiators to ensure preferential rules of origin benefit U.S. processed product manufacturers and facilitate the qualification of products while retaining a high standard for product eligibility.

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 reiterates our concern 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 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.

III. 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 |

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|---------------------|--|
| 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 |