

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

September 27, 2018

Dear Ambassador Lighthizer,

In accordance with 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 am pleased to transmit the Report of the Agriculture Policy Advisory Committee for Trade (APAC) on the US – Mexico Trade Agreement, reflecting the majority opinion on the proposed Agreement.

Sincerely,

A handwritten signature in dark ink that reads "Shannon S.S. Herzfeld". The signature is written in a cursive style with a large, looped 'S' at the beginning and a long, sweeping tail for the 'd'.

Shannon S.S. Herzfeld

Chairman
Agriculture Policy Advisory Committee

US – Mexico Trade Agreement

Report of the Agricultural Policy Advisory Committee

September 27, 2018

The Hon. Sonny Perdue
Secretary of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Hon. Robert Lighthizer
US Trade Representative
600 17th St., NW
Washington, DC 20508

September 27, 2018

Dear Secretary Perdue and Ambassador Lighthizer,

In accordance with section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015 (the TPA), and section 135(e) of the Trade Act of 1974, as amended, I am pleased to transmit this report of the Agriculture Policy Advisory Committee (APAC) on the proposed US – Mexico Trade Agreement.

It is the opinion of the APAC that the US – Mexico Trade Agreement will benefit American farmers, ranchers, agriculture processors and other participants which constitute the American agriculture value chain. This position reflects recognition of the high standards which have been embraced by the US – Mexico Trade Agreement which generally exceed WTO standards as well as those in the existing North American Free Trade Agreement (NAFTA). However, as with any complex trade negotiation which spans virtually all sectors of the economy, not all of our objectives have been met and in some cases, market access has been reduced from that which we currently utilize. These concerns, along with our positive observations, are described below.

Overview

American agriculture has been a major beneficiary of the existing NAFTA. Over NAFTA's 24-year lifetime, American agriculture's exports have quadrupled, from approximately \$11 billion in 1993 to more than \$40 billion in 2017. USDA estimates that for every dollar of product which crosses our borders, \$1.27 of economic value is created at home. So in 2017, American agriculture's NAFTA exports contributed about \$51 billion to our rural communities.

Beyond the financial contribution of this cross-border trade, the existing NAFTA supports the creation of resilient and reliable supply chains which works well to match North American agriculture supply and demand. These key elements have been maintained and in many

cases enhanced under the US – Mexico Trade Agreement, setting a precedent for the future modernization and strengthening of North American trade in agriculture.

While the focus of this letter remains almost exclusively on Mexico, it is noteworthy that negotiations with Canada remain ongoing. The APAC encourages the Administration to continue with this effort as a priority, ushering in a new era of expanded duty-free trade with Canada as well as achieving progress on the other US priorities associated with the effort to modernize NAFTA .

Specific Items of Importance to American Agriculture

Tariffs

Under the existing NAFTA the vast majority of agricultural products flow across both borders duty-free. Today there is zero duty on beef, poultry and egg products, pork, grains, oilseeds, cotton, many animal feed products, most fruits and vegetables, live sheep, goats, hogs, cattle and more. Under the US-Mexico Trade Agreement, those products which previously bore a zero duty continue to do so. This comports with the APAC's requirement that any modernization effort "first do no harm."

It is disappointing that this list was not expanded to include additional agricultural products as opportunities to eliminate tariffs on agriculture products arise infrequently. When agriculture trade is burdened with tariffs, producers can no longer fairly compete with supply sources which carry a reduced tariff. Moreover, agricultural tariffs burden consumers by increasing their cost of food and other essential products. We recommend that bilateral discussions continue in order to drive down all agricultural tariffs to duty-free status.

In addition, enhanced bilateral trade will only be achieved if we remain vigilant in reducing the market distorting interference of tariff rate quotas and similar mechanisms. These practices rob consumers and producers of the nominal benefit of a zero rate tariff.

Protection of Intellectual Property in Agriculture

Enhanced IP protection for agriculture R&D is a cornerstone of 21st century agriculture. In this section, we discuss multiple aspects of IP protection.

The APAC applauds the ground-breaking achievements in the US – Mexico Trade Agreement which can serve as a template for future trade agreements.

For the first time, a trade agreement specifically addresses agricultural biotechnology critical to the foundation of the future of American agriculture. The Agreement covers all biotechnologies, including new technologies such as gene editing delivering a TPP+ standard since the Trans-Pacific Partnership covered only traditional rDNA technology.

In addition, the APAC notes positively of the explicit inclusion of enhanced protections for other IP elements such as trademarks, patents (including the recognition of patented plant varieties) and trade secrets. This will ensure the maintenance of America's strength as a leading innovator across the entire agriculture value chain. This significant improvement in

agriculture IP protection ensures that critical agriculture-focused R&D will remain a robust activity in businesses and universities in both the US and Mexico.

The APAC further supports the groundbreaking work done to expand IP protections to explicitly cover proprietary food formulas. With deep customer relations on both sides of the border, this gives American agriculture the same level of protection that Mexican proprietary food companies enjoy while minimizing the burden of data requirements in order to gain protection for proprietary formulas.

For many years, the importance and challenge of Geographical Indications (GI) has been understood when crafting a trade agreement. Indeed the TPA requires US 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; (2) seek transparency and procedural fairness in country geographic indication systems; and (3) protect generic terms. (19 USC § 4201(b)(3)(U)).

The US – Mexico Trade Agreement includes a number of elements that further transparency and due process in the GI arena. However, it stops short of fully preserving American agriculture's market access opportunities. For instance, exports of products with common food names which have been produced by the United States for decades, such as parmesan, will face restrictions moving forward. Therefore, important work remains to be undertaken (perhaps outside of the text of this Agreement in a side agreement) in order to preserve the maximum range of market access opportunities possible for American agriculture. Indeed, in order to grow, American producers need to be able to innovate with new products to respond to changing consumer preferences.

The APAC commends the establishment of a more resilient framework based on transparency and due process when GI's are considered. In doing so, a high standard is achieved, as it has drawn from the text negotiated under the Trans-Pacific Partnership (TPP) agreement which we support. This high standard is expected to mitigate against the inappropriate future registration of unwarranted GIs which can encumber the legitimate flow of goods across the border. 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 but not the spirit of the requirements outlined in this chapter. In particular, vigilance is needed to maintain discipline against the registration of GIs that restrict the use of commonly used terms. This is of particular concern in Mexico given their 2018 decision to register numerous EU GIs despite clear evidence of common usage of those terms in Mexico.

Indeed, it is with disappointment that the APAC notes the great commercial concern which has arisen because the US – Mexico Trade Agreement effectively carves out key GI terms

covered by the EU-Mexico 2018 Agreement and those WIPO Lisbon Agreement terms registered before implementation of this Agreement. This is a significant shortfall, creating a back door for additional GI-based trade restrictions, weakening the opportunity to preserve export opportunities for American agriculture which rely on those common terms in Mexico and reduces the commercial impact of the provisions for this market. And for certain American agricultural products which rely on common names, it further precludes the innovation of new products which is critical for future export competitiveness.

Lastly, it is the APAC's understanding that the US – Mexico Trade Agreement addresses – via one form of discipline or another – any GI not explicitly cited as protected under an existing trade agreement at the time of this Agreement's implementation. That interpretation is fundamental to the provision's forward-looking utility.

Achieving Enhanced Market Access

The APAC supports efforts to further discipline the use of trade distorting policies, even those currently allowed under the WTO special agricultural safeguards regime. Transparency and timely consultation are critical to ensuring that actions undertaken for domestic support purposes do not mask government actions which are, in fact, export subsidies. The US-Mexico Trade Agreement achieves this objective and merits rapid implementation.

The achievement of agreement on grading standards and services which are critical to the trade and marketing of food and agricultural products in both the US and Mexico is supported by the APAC. Bringing the domestic grading standards and services of each signatory into agreement will facilitate the ease with which food and agriculture products cross borders.

Enhanced market access is buttressed by a stronger rules of origin regime. This stronger regime ensures proper labeling of mixed and processed agricultural products such as bagged salad ingredients, so that the consumer is better informed.

Sanitary and Phytosanitary Measures

The existing NAFTA was groundbreaking as it was one of the first free trade agreements that establish the framework of rules and disciplines leading to the development, adoption, and enforcement of sanitary and phytosanitary measures (SPS measures). While this step, 24 years ago, is noteworthy, it did not eliminate SPS measures as trade barriers. Indeed, as tariffs fall worldwide, SPS measures become a powerful barrier, particularly when they arise in a nontransparent manner, lacking scientific basis and are not based on risk assessments which reflect broadly accepted measurements.

In recognition of the importance of SPS measures, the APAC applauds those elements in the US – Mexico Trade Agreement that strengthen the disciplines imposed on SPS measures, reinforcing the importance of science-based decision-making and use of broadly accepted measures of risk. This is achieved while recognizing each signatory's right and duty to protect human, animal and plant health and safety.

The specific improvements of note are those provisions which increase transparency on the development and implementation of SPS measures; advance science-based decision

making; improve processes for certification, regionalization and equivalency determinations; conduct systems-based audits; improve transparency for import checks and additional measures to ensure more expeditious border crossing; and enhance compatibility of measures.

The APAC applauds the establishment of a new technical consultation mechanism to resolve SPS issues expeditiously between Mexico and the US.

Agriculture Chapter

In this section, the APAC conveys commodity or product specific observations.

- **Alcoholic Beverages:**

The United States and Mexico agreed to labeling and certification provisions that will help both countries avoid barriers to trade in wine and distilled spirits. Mexico agreed to continue recognition of Bourbon Whiskey and Tennessee Whiskey as distinctive products of the United States. The United States agreed to continue recognition of Tequila and Mezcal as distinctive products of Mexico. This balanced approach is reflective of the spirit of reciprocity found in this and many chapters of the US – Mexico Trade Agreement.

- **NAFTA Region Cheese Production / Trade:**

The first-ever inclusion of a list of commonly marketed cheeses facilitates clear recognition of market access rights for various commonly produced products and strengthens bilateral trade overall. The APAC applauds this. This list represents a good first step towards facilitating the identification of many, although not all, of the various cheese products that the US 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 (see further description, below). Unwarranted restrictions on the sale of those products nullify and impair that market access, whether those terms are captured on this list or not.

To this end the APAC urges the Administration to make clear that the US has not forfeited the rights to market those products but rather merely intends to illustrate the status of a subset of products. To ensure full clarity on this matter, we urge the Administration to clearly affirm that this list is not exhaustive, and that the absence of a given product from it does not negate U.S. market access rights for that product.

Moving forward, the APAC observes that it is critical that all commonly used cheese names be captured in subsequent lists of commonly marketed cheeses to unambiguously clarify that American producers' market access rights have been preserved. In addition to those terms captured by the list in the US – Mexico Trade Agreement, subsequent lists of commonly used terms should, at a minimum, include: asiago, feta, fontina, gorgonzola, neufchatel, parmesan, and romano.

- **Perishable and Cyclical Agriculture:**

There are unique challenges associated with the trade of perishable and cyclical agricultural products meriting additional attention overall. The importance of this trade between the US and Mexico calls out for focused effort. To this end, the APAC recommended that, consistent with the TPA, any renegotiated NAFTA should ensure that import relief mechanisms for perishable and cyclical agriculture are accessible and timely. Regrettably, negotiations failed to find common ground and it was not included in the Agreement. The APAC reiterates that an effective solution is still needed to ensure that all segments of American agriculture can benefit from the disciplines and requirements which flow forth from reliance on the antidumping and countervailing duty laws.

Additionally, APAC is disappointed to observe that a number of ongoing US-Mexico disputes appear to remain unresolved. Included in this category are long standing disputes concerning American exports of stone fruits and potatoes.

- **Poultry and Egg Products:**

The Mexican commitment to accord duty-free status to specific exports of American agriculture reflects the outcome of targeted negotiation, which we applaud. This reinforces a more level playing field and enhanced market access for American products and should be preserved. This is diluted to the extent that Mexico undertakes periodic duty reduction on competing products from countries that do not have free trade agreements with Mexico. As an example, Mexico periodically grants duty-free treatment to poultry products from Brazil. In doing so, this undermines the market access benefits which are accorded to American poultry products as a result of this Agreement and such actions should be constrained.

Labor

The APAC applauds the Administration's efforts to encompass objectives regarding labor in the US - Mexico Trade Agreement. To that end, there is considerable substance which is agreed upon, which focuses on worker representation in collective bargaining, recognition of the laws and practices required by the International Labor Organization, and new rules concerning the labor content for value-added calculations. While these outcomes are laudable, particularly as they appear to move Mexico forward towards enforcing widely embraced labor standards, they appear to have minimal applicability to America's agriculture sector where labor shortfalls remain a common and widespread concern.

American agriculture is disappointed that this negotiating opportunity did not achieve consensus on facilitating the cross-border flow of seasonal and select year-long workers. The current H2A to a program is both difficult and expensive to navigate. It is not user-friendly and does not work for year-round occupations like dairying. The result for America's farmers, ranchers and processors is a shortfall of labor available to participate in both seasonal and year-round agricultural jobs. This is not just an operational encumbrance; rather, this translates into fruits and vegetables which are not picked, crops which are not harvested, and a reduction in the volume of agricultural product available for further processing in the US. This, in turn, reduces the actual amounts of American agriculture available for export. This shortfall in the Labor Chapter is regrettable.

If this cannot be further addressed in the context of this Agreement, we request that the Administration prioritize its efforts to simplify American agriculture's pathway to connect with seasonal workers and select categories of year-long workers. To this end, the APAC

acknowledges Secretary Perdue's leadership within the Administration to make improvements in the current H2A program and also notes there have been some recent, albeit temporary, changes to the Ag Guest Worker Program which could serve as illustrative of possible solutions for part of agriculture's labor concerns.

Dispute Settlement

Regrettably, a robust Chapter 19 settlement mechanism particularly for the resolution of Antidumping and Countervailing Duty disagreements has not been included in the US-Mexico Trade Agreement. The APAC has long embraced this as a way for NAFTA signatories to have their own regime which is reliable, transparent, predictable and timely.

Chapter 19 has been an effective tool for overturning egregious Mexican and Canadian AD/CVD findings and keeping markets open for US products. Without such dispute-resolution mechanisms in the US – Mexico Trade Agreement, US exporters will be forced to contest AD and CVD determinations in lengthy and potentially unreliable Mexican courts.

Chapter 19 has been particularly important in countering abusive AD/CVD actions in Mexico. American exporters of pork, beef, apples and corn products have all used Chapter 19 to counter Mexican attempts to unlawfully deny market access. In fact, US food and agriculture interests have not lost a Chapter 19 case against Mexico. Retention of this judicial route is an important step toward ensuring that the hard-fought market access provisions actually translate into increased exports of American agriculture. The APAC requests that this deletion be revisited and if possible, added back to a final agreement.

Conclusion:

The APAC endorses this effort to undertake the modernization of the existing North American Free Trade Agreement (NAFTA) by consummating a bilateral trade agreement with Mexico. While this endorsement is solely focused on the US - Mexico Trade Agreement, it is our hope that this high-standards agreement can soon be joined by Canada and in doing so, Canada demonstrates its willingness to embrace open and fair trade in agriculture including in politically sensitive sectors such as wine and distilled spirits and dairy products. Indeed, it is our understanding that tri-lateral agreement has been achieved on many chapters of significance.

A truly modernized NAFTA benefits all three countries whose economies are interlinked and this interdependence is reinforced by both geography and history. The members of the APAC stand ready to assist the Administration to achieve this goal.

While the observations and recommendations contained in this letter reflect the position of the APAC, we reserve the right to amend and supplement them should Canada become a party to this agreement.

With respect to the US-Mexico Trade Agreement, the APAC determines that it provides equity and reciprocity for American agriculture.

Sincerely,

Shannon S.S. Herzfeld

Shannon S.S. Herzfeld
Chairman
Agriculture Policy Advisory Committee

Addendum to the Report Of the Agriculture Policy Advisory Committee (APAC)

Concerning The US – Mexico Trade Agreement

September 28, 2018

In the APAC Report on the US – Mexico Trade Agreement submitted on September 27, 2018 (to which this addendum is appended), the APAC made the following statements: (see below). After submission of this Report, it has come to our attention that the highlighted statements may be factually incorrect and may be reflective of tariffs outside the scope of this Agreement. As such, the APAC wishes to remove the highlighted sentences to avoid any misunderstanding.

(Report excerpt)

Tariffs

Under the existing NAFTA the vast majority of agricultural products flow across both borders duty-free. Today there is zero duty on beef, poultry and egg products, pork, grains, oilseeds, cotton, many animal feed products, most fruits and vegetables, live sheep, goats, hogs, cattle and more. Under the US-Mexico Trade Agreement, those products which previously bore a zero duty continue to do so. This comports with the APAC's requirement that any modernization effort "first do no harm."

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US – Mexico Trade Agreement

Report of a Dissenting Member of the Agricultural Policy Advisory Committee

September 27, 2018

One APAC Member dissents from this Report. This Member emphasizes the importance of regional (tri-lateral) trade to the success of the interlinked North American agriculture and food sector. The impact of this US-Mexico text on US agriculture cannot be judged as if US agriculture operates bi-laterally instead of tri-laterally in North America.