

27 September 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 Customs Matters and Trade Facilitation Committee on the Trade Agreement, reflecting consensus opinion on the proposed Agreement.

The members of the Committee support implementation of this free trade agreement as another opportunity for U.S. business and industry to grow their NAFTA market. The provisions of this agreement are fair and reciprocal.

The Committee wishes to take this opportunity to thank Christina Kopitopoulos, Jason Bernstein, and Stewart Young and the many others in your office who have made the extra effort to work with our Committee members to keep them advised of developments during these negotiations. It is a pleasure to work with them because the results in the agreement demonstrate that our views and opinions were heard and taken into consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "John P. McGovern".

John P. McGovern
Chair, ITAC12

Trade Agreement

Report of the
Industry Trade Advisory Committee on Customs Matters and Trade Facilitation

September 27, 2018

27 September 2018

Advisory Committee on Customs Matters and Trade Facilitation

Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the Trade 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 Advisory Committee on Customs Matters and Trade Facilitation hereby submits the following report.

II. Executive Summary of Committee Report

The Committee reviewed that part of the agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as investment, procurement, intellectual property or the agriculture and non-agriculture market access provisions. As with previous such agreements, the Committee found this agreement to be fair and balanced. It provides many benefits to U.S. traders and is consistent with other similar agreements negotiated over the past few years but with much broader coverage. As a result of these positive provisions, the Committee believes the agreement does provide equity and reciprocity in the customs functional area.

III. Brief Description of the Mandate of Customs Matters and Trade Facilitation Advisory Committee.

The Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (the Committee) is established by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) pursuant to the authority of section 135(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. §2155) (the Trade Act), as delegated by Executive Order 11846, as amended. In establishing the

Committee, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in section 135(c)(2)(B) of the Trade Act. This Committee is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

The Committee functions solely as an advisory committee in accordance with the provisions of the FACA, as amended, 5 U.S.C. App., with the exceptions set forth in the Trade Act.

In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting its subject area; and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees

IV. Negotiating Objectives and Priorities of Customs Matters and Trade Facilitation Advisory Committee

The principal purpose of free trade agreements is to move goods across the parties' borders with as little intrusion on the transaction as possible. Customs agencies are charged with the protection of those borders and the collection of duties, taxes and data.

While a number of areas were negotiated as part of the Trade Agreement that could have customs implications, there were several principal objectives of this Committee. The functions of the import process and how it is administered can make the agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade.

Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises.

We also wished to ensure that the agreement included a mechanism to keep those practices for import and export current with global business "accepted best practices."

V. Advisory Committee Opinion on Agreement

Chapter 7. Customs Administration and Trade Facilitation

The Customs Administration and Trade Facilitation (CATF) chapter could be considered the heart of any trade agreement, as it provides the rules for actually moving goods across borders, which are critical to realizing the benefits of the market opening measures in the rest of the agreement. The CATF chapter in the Trade Agreement builds on previous trade agreements and in general goes beyond them in terms of its comprehensiveness, level of ambition, implementation of best practices, and alignment with modern business procedures. Therefore ITAC 12 strongly supports this chapter and urges Congress to approve the agreement.

Comments on specific provisions:

- Article 7.X.3: Communication with Traders. This article's provision to provide interested parties an opportunity to comment on potential new regulations before they are

implemented is an important step toward ensuring regulations are conducive to trade facilitation and do not negatively impact supply chains. Establishing a mechanism for providing an opportunity for ongoing interactions between the trade and the customs administration on matters of concern will ensure implementation of regulations is consistent with best practices, help the trade understand the intentions behind new procedures, and support cooperative work to achieve common goals.

- Article 7.X.5: Advance Rulings. This article provides comprehensive detail on the modern process for providing advance rulings and a reasonable deadline of 120 days by which a Party must reply to a request for an advance ruling. The provision for the Party to make its rulings publicly available online is a particularly strong measure that will improve transparency and provide the trade with an effective approach to responding to ruling determinations that seem inconsistent or inaccurate.
- Article 7.X.7: Release of Goods
 - This article outlines the measures a modern border clearance process should embody, and its complete implementation is a pre-requisite to realizing the full benefits of the tariff reduction and trade facilitation policies provided by the agreement. The U.S Government should focus on ensuring the robust implementation of the entire article, but the following paragraphs are particularly high priority:
 - 2 (b) – Providing the capability for the trade to submit and the government to process advance electronic customs information is critical to meeting the goal of releasing the goods as rapidly as possible upon arrival or prior to arrival. Advance information also will allow a more timely risk assessment process to address security, product safety and smuggling concerns.
 - 2 (c) – Avoiding the requirement to transfer goods to temporary warehouses is an important step in the simplification of the border clearance process. Establishing this principle in the Trade Agreement will be an important precedent for other agreements.
 - 2(d) – Identifying the reasons why a Party does not release goods and the agency responsible for the hold, when it is not the customs administration, are important measures that will increase transparency, improve the efficiency of the border clearance process, and allow importers to correct deficiencies in their procedures.
 - 3 – Separating release of the goods from the final settlement of the financial aspects of the transaction is an important procedure in preventing bottlenecks at the border for large numbers of shipments. Particularly for trusted partners from the trade industry, release of shipments covered by security bonds presents little or no risk that the final duties, taxes and fees will not be paid. This is a new provision not included in earlier trade agreements and it provides a capability that will greatly facilitate trade.
 - 4 – Specifying the procedures for managing surety bonds also is a new provision not found in other agreements. Ensuring this provision, which describes best practices for managing bonds, is implemented fully will be a key factor in the success of the Trade Agreement.

- Article 7.X.8: Express Shipments. This article directs that Parties will have expedited customs procedures for express shipments and also provides several measures that detail what those procedures should include. Full implementation of this article is necessary to ensure the express shipment business model is able to operate successfully in an economy and meet the stringent requirements for timeliness that model demands.
 - Paragraph 8.1(f) provides that “no customs duties or taxes will be assessed, or formal entry procedures required, on express shipments valued at or below US \$100.” While this value represents an increase in the Parties’ current de minimis values, it is still far below the U.S. level and does not meet the standard of being commercially meaningful for advanced economies like the Agreement’s Parties. One Party has a \$300 de minimis level for its postal service, so the agreement would formalize a clear competitive advantage for one delivery service over others. We recommend the parties agree to a phased approach to reaching the \$300 level for all service providers. Discussions about alternative processes for collecting VAT by moving the collection off the border could be part of additional talks on this issue. It will be very important that the U.S. Government closely follows the progress the Parties make on implementing this clause to ensure it is being applied efficiently and consistently across all ports of entry. Periodic reviews of the Trade Agreement, and the discussions of the Trade Facilitation Committee, should be used as opportunities to encourage the Parties to raise their level further.
 - An additional concern is that, while the clause above states formal entry procedures will not be required, footnote 2 at the bottom of this page provides notice that Parties may still require informal entry procedures for de minimis shipments. In addition to avoiding paying the insignificant amount of duties and taxes on low value shipments, a primary benefit of de minimis is allowing the trade to use a simplified entry process, such as clearing the goods off the manifest declaration. The U.S. Government should follow the implementation of this footnote carefully to ensure it is not being abused, resulting in a large percentage of de minimis shipments requiring informal entry.
 - Section 2 of this article provides for informal entry procedures, with fewer customs formalities than those required for formal entries, for shipments with a value below \$2500. This represents the first time an informal entry level has been established in a trade agreement and is a very welcome precedent. The use of informal entry should not be subject to restrictions, such as whether the shipment is commercial or non-commercial, and also should not be limited to a certain number of shipments per importer per month. As the Agreement does not specify what the informal entry procedures should be in detail, it will be very important to monitor the implementation of this measure to ensure the informal entry process is simple and efficient and does not require the services of a broker.
 - The text of Article 7.X.8 is particularly encumbered by “best endeavor” language, such as “to the extent possible” and “under normal circumstances”. The U.S. Government should ensure the Parties genuinely are engaged in best efforts to implement these procedures and should consult regularly with the express industry to gather information on locations where that may not be the case.

- Article 7.X.9: Information Technology. By requiring Parties to adopt an automated approach to the receipt and processing of customs data submissions by the trade, this article will provide significant benefits to traders and serve to eliminate much of the paper documentation currently required by some Parties. The focus on making electronic systems available to a broad range of trade community users, including importers, exporters, person transiting goods through the territory and other customs users, is an important provision which will ensure the benefits of modernization will be widely shared.
- Article 7.X.10: Single Window. The detailed measures in this article for operating a system that will allow the trade community to make a single submission of data to satisfy all government data requirements for a shipment establish a very comprehensive precedent for future agreements. Particularly welcome is the emphasis on the harmonization of import and export data requirements across the Parties to the agreement. A single North American document for the import and export of goods, with identical data elements used by all Parties, is a long-standing desire of the trade community and its implementation is overdue. Periodic reviews of the Agreement should ensure measurable progress toward achieving this goal is being made.
- Article 7.X.12: Risk Management
 - This provision that the Parties will maintain a risk management system that can separate high from low risk shipments and simplify the clearance of the lower risk goods will, if implemented fully, be a major advance in facilitating the flow of goods across borders where such systems do not exist today.
 - ITAC 12 assumes the use of the word “system” in this paragraph implies an automated system. The U.S. Government should ensure in following up on implementation that the Parties indeed are adopting automated systems. Inexpensive technology, such as the World Customs Organization Cargo Targeting System, is available to meet this requirement today.
- Article 7.X.14: Authorized Economic Operator (AEO)
 - The measures outlined in this Article are a good first step, however a higher goal would be the harmonization of the Parties’ AEO programs with a view toward mutually recognizing these programs in a way that truly has meaningful benefits for the participants. The Parties should go beyond the current practice of recognizing the results of other Parties’ validation processes and adopt a common application process for their AEO programs.
 - The guidance to collaborate on identifying trade facilitation benefits for operators is welcome, as the current benefits provided for these programs often is a limiting factor in encouraging participants to join, particularly small and medium enterprises.
- Article 7.X.18: Penalties
 - This article provides for a harmonized approach to the management and collection of customs-related penalties and is a considerable improvement over the treatment of this subject in previous trade agreements. The provision, designed to reduce corruption, that no portion of the remuneration of a government official will be based on the percentage of penalties collected, is particularly welcome.
 - The paragraph 4 provision that penalties will be reserved for serious breaches of customs laws and regulations, and not for minor or clerical errors on customs

submissions, is an important distinction. Customs agencies should use penalties in cases of fraud and willful disregard of the regulations, and should not issue the equivalent of parking tickets for minor infractions. Reviews of the Trade Agreement should include discussion of this issue based on inputs received from the trade community.

- The new provision that custom administrations will allow a person to correct an error that would have resulted in a penalty prior to its detection by a Party will encourage greater disclosure by the trade community, particularly in cases where honest mistakes were made. The U.S. Government should be prepared to accept information from the trade on cases where such mitigation is not provided when a breach has been voluntarily disclosed, and engage with the Parties to improve their policies in this area.
- Article 7.X.21: Customs Brokers
 - The provision that any importer or other person can self-file required customs documentation without the services of a broker represents a major improvement in the border clearance process among the Parties to the Trade Agreement. The trade community assumes this will obviate the need for the *previo* process and the former requirement for brokers to assume liability for shipments into Mexico, prior to Mexican Customs clearing the shipment. We also assume the former requirement for one broker to be responsible for a single truck will no longer apply. Providing importers or their agents with direct access to electronic systems for filing required documentation will improve the efficiency of the border clearance process and remove unnecessary sub-steps that make the current process cumbersome.
 - Removing limitations on where entry documentation may be filed, essentially allowing brokers to operate nationally, will enable mixed-load conveyances (multiple consignees and customs brokers) to be cleared through any customs house across all ports. The trade community also interprets this provision to allow an in-house broker to act on behalf of a client. This is a major advance and a significant cost savings for both the Government and the private sector.

VI. Membership of Committee (<https://www.trade.gov/itac/committees/itac12.asp>, 18 Sep 2018)

Chairman

Mr. John P. McGovern
Global Trade Compliance Manager
MKS Instruments, Inc.

Vice-Chairman

Ms. AnnMarie M. Treglia
Global Manager, Government Affairs
Dart Container Corporation

Mr. Michael A. Bermudez
Director, Trade Compliance/Empowered
Official
Parsons Corporation

Members

Ms. Carolyn A. Muhlstein
Senior Manager, Americas Customs Theater
Cisco Systems, Inc.

Cary G. Justice, Esq.
Corporate Counsel, International/Core Legal
Alticor Inc.

Ms. Lorraine Riffle Hawley
Director, International Government Relations
Archer Daniels Midland Company

Mr. Michael C. Mullen
Executive Director
Express Association of America

Mr. Nelson H. Balido
Chairman
Border Commerce and Security Council

Robert J. Leo, Esq.
Meeks, Sheppard, Leo & Pillsbury
Representing Johnson & Johnson

Robert A. Perkins, Ph.D.
President, Global Trade Associates
Representing Livingston International

Ms. Sharlene Ramos Chesnes
President and Chief Executive Officer
InterChez Global Services, Inc.