

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 Industry Trade Advisory Committee on Consumer Goods (ITAC-4) on the Trade Agreement between the United States and Mexico and potentially Canada, reflecting a majority advisory opinion on the proposed Agreement.

Sincerely,

A handwritten signature in black ink that reads "Christine LoCascio". The signature is written in a cursive, flowing style.

Christine LoCascio
Chair, ITAC-4

Trade Agreement
between the United States and Mexico and potentially Canada

Report of the
Industry Trade Advisory Committee on Consumer Goods

September 27, 2018

INDUSTRY TRADE ADVISORY COMMITTEE ON CONSUMER GOODS

Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the Trade Agreement between the United States and Mexico and potentially Canada

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 Consumer Goods (“ITAC-4” or the “Committee”) hereby submits the following report.

II. Executive Summary of Committee Report

The Committee’s report addresses the bilateral agreement between the United States and Mexico as it stands on September 27, 2018. Any subsequent amendments, side letters or other modifications cannot be anticipated, and are therefore not addressed, in this report.

For the reasons detailed below, the Committee **supports** the aforementioned agreement, **ONLY** if it is expanded to include Canada.

The Committee has strongly supported the United States goal of opening markets for U.S. exports through promoting trade and investment via comprehensive and state-of-the-art U.S. free trade agreements. In that regard, the Committee reiterates that the North American Free Trade Agreement (NAFTA) has been critical to gaining access to the Canadian and Mexican markets for U.S. exporters, has resulted in integrated and more efficient supply chains, and has established a regional market that is competitive worldwide.

As a result of NAFTA's market-opening provisions, in 2016 the U.S. manufacturing industries represented on ITAC-4 exported nearly \$28 billion in U.S. exports to Canada and Mexico, up from \$23 billion in 2009. Specifically, exports to Canada were valued at \$17.2 billion and exports to Mexico were valued at \$10.8 billion. Consumer goods imports from Canada and Mexico in 2016 were roughly equivalent, totaling \$30.6 billion.

A central component of the Committee's goals for modernizing NAFTA was to ensure that the associated gains achieved were preserved, and that negotiations would in no way disrupt complex and efficient supply chains or put U.S. consumer goods at risk of retaliation by our North American trading partners.

Therefore, while there are some positive improvements in the agreement with Mexico for some sectors, on balance these benefits are undermined by the fact that the agreement is no longer trilateral, and that retaliatory tariffs are being imposed on several U.S. exports. The Committee urges that the U.S. continue to negotiate with Canada so that it can be reincorporated into a new agreement as soon as possible.

In particular, the Committee is concerned that, in connection with trade disputes unrelated to NAFTA, some U.S. consumer goods represented on this Committee (*i.e.*, boats, distilled spirits, cookware and bakeware) valued at \$824 million are now subject to retaliatory tariffs in Canada and Mexico. We urge that all parties engage in further dialogue to end these disputes so that the retaliatory tariffs on these U.S. exports are removed without any further delay.

Finally, the Committee appreciated the consultations during the negotiating process, but is concerned that the Committee was not consulted regarding the Administration's strategy to agree to a bilateral agreement with Mexico. We encourage the Administration to increase its engagement with the Committee before and during negotiations of future trade agreements to ensure that the views and advice of the private sector are adequately reflected, consistent with Section 135 of the Trade Act of 1974, as amended.

III. Brief Description of the Mandate of ITAC-4

The Committee advises the Secretary of Commerce and the USTR concerning the trade matters referred to in Sections 101, 102 and 124 of the Trade Act of 1974, as amended; with respect to negotiating objectives and bargaining positions before entering into a trade agreement under Section 135 of the Trade Act of 1974, as amended, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the development, implementation and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions thereunder. In particular, the Committee provides detailed policy and technical advice, information and recommendations to the Secretary and the USTR regarding trade barriers and the implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, 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 ITAC-4

“Consumer Goods” covers a wide array of products, including sporting goods, appliances, dolls, toys, and games, bicycles, motorcycles, processed foods and beverages, including wine and distilled spirits, cookware, bakeware, glassware, boats, and recreational vehicles. All of these products – and others – are represented by members of ITAC-4.

The Committee previously expressed its support for the North American Free Trade Agreement (NAFTA) and efforts to modernize it. The Committee provided its views on how NAFTA could be improved to better reflect modern technology and supply chains, and to address new barriers to U.S. consumer goods exports that have arisen. Specifically, the Committee requested that the Administration pursue the following priority objectives for modernizing NAFTA in order to boost economic growth, employment, and exports in the U.S. consumer goods sector:

- “Do no harm.” A renegotiated NAFTA should be consistent with WTO commitments and offer a WTO plus trade relationship among the three countries;
- Preserve existing market access and remove remaining barriers;
- Ensure that there are no sectoral or product-specific carve outs, or any disguised barriers to trade;
- Update rules that enhance U.S. manufacturers’ competitiveness; and,
- Increase regulatory cooperation and alignment among the NAFTA countries.

The Committee also provided product-specific and horizontal priorities for the NAFTA modernization negotiations. A central component of the Committee’s priorities, of course, was that this remain a trilateral agreement, as there are many beneficial aspects of the trilateral agreement. The Committee believes that an agreement that does not include Canada would, therefore, decrease market access and weaken integration among the NAFTA partners.

V. Advisory Committee Opinion on Agreement

This Committee takes particular interest in the following elements/chapters of the agreement: market access, agriculture, dispute settlement, intellectual property, rules of origin, customs procedures, regulatory transparency, technical barriers to trade, conformity assessment, dispute settlement, related instruments, and exceptions. Although all of the provisions included in the agreement are important to ITAC-4 members, our comments will address only the above-mentioned priority aspects of the agreement.

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.

The Committee appreciates that the agreement maintains duty free treatment for originating goods on our exports to Mexico.

Chapter 3: Agriculture

Chapter 3b. Annex on Distilled Spirits, Wine, Beer and Other Alcohol Beverages

The Committee supports the content of the Alcohol Beverages 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 spirits products, and establishes new commitments reflecting best practices regarding labeling and certifications for alcohol beverage 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 alcohol beverage 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. alcohol beverage companies exporting to Mexico 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.

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

The Committee supports Article 17 on Transit and Transshipment, which ensures minor processing in non-NAFTA members to include unloading, labeling, marking, reloading, etc., will be permitted without losing the good’s originating status.

Toys, Bicycles, Glassware, and Distilled Spirits – The Committee supports the product specific rules of origin for toys, bicycles, electric bicycles, glassware and distilled spirits contained in the agreement.

Recreational Marine Sector - The Committee appreciates that recreational vessels were not included in the new calculation for rules of origin as applied to automobiles. Recreational vessels are an off-highway mode of transportation and appropriately should not be lumped in with on-highway users. While the recreational boating and engine industry (HTS headings 8407 through 8408) would have benefited from regional value content calculation (RVC), as initially requested, applicable status quo for this segment is supported.

Chapter 7: Customs and Trade Facilitation

Concerning Article X.8 on Express Shipments, the de minimis provision should be in parity with the \$800 provision within Section 321 of the U.S. Trade Act of 1974, as amended through July 27, 2017. This will provide direct, equal and fair market access for all express shipments from the U.S. to Mexico.

Chapter 11: Technical Barriers to Trade

The Committee welcomes the additional transparency commitments in this Chapter, which build upon the World Trade Organization’s Technical Barriers to Trade Agreement. For example, the specific commitments to take comments into account when developing a technical regulation, as well as to publish the final regulation along with an explanation of how the substantive issues raised in submitted comments were addressed are important steps to ensure good regulatory practices. Specifically, such commitments will help to ensure that the trade concerns of interested parties will be substantively reviewed and considered before a new regulation is finalized.

Chapter 20: Intellectual Property

The Committee supports the chapter, noting in particular the terms of Section E on geographical indications.

Chapter 31: Dispute Settlement

Consistent with the Committee’s previous views in support of comprehensive trade agreements and against any sector or product-specific carve outs, the Committee does not support limiting

the access to the Investor-State Dispute Settlement (ISDS) provisions to a limited number of sectors. Such limitations would undermine decades of U.S. trade policy and is not supported by the U.S. business community, which has viewed ISDS as a strong enforcement tool that helps ensure that American investors, businesses and their workers will be treated fairly overseas.

Chapter 34: Final Provisions - Review and Termination for Final Provisions

The Committee is concerned that certain elements of the agreement may damage the stability and predictability provided through mechanisms in the original NAFTA agreement, including the introduction of a periodic performance review and termination provision.

VII. Membership of Committee

Ms. Christine A. LoCascio, Distilled Spirits Council of the United States, Chair

Ms. Katherine C. Bedard, Wine Institute

Mr. Craig A. Kirby, Esq., RV Industry Association

Mr. Robert B. Margevicius, Specialized Bicycle Components, Inc.

Mr. Patrick J. McDonough, Esq., Law Offices of Stewart and Stewart, Representing Libbey, Inc.

Ms. Penny Rosema, Cookware Manufacturers Association

Mr. Thomas F. St. Maxens, St. Maxens & Company, Representing Mattel, Inc.

Ms. T. Nicole Vasilaros, Esq., National Marine Manufacturers Association