

October 19, 2018

The Honorable Robert E. Lighthizer
United States Trade Representative
Executive Office of the President
Washington, D.C. 20508

Dear Ambassador Lighthizer:

I am pleased to transmit an addendum on the U.S.–Mexico–Canada Agreement (“USMCA”) to the report submitted by the Industry Trade Advisory Committee on Services (“ITAC 10”) on September 27, 2018, 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. This addendum reflects the Committee’s advisory consensus on the USMCA.

We appreciate the opportunity to provide additional comments on the final USMCA, since the text the Committee was provided for initial review reflected only provisions agreed to by the United States and Mexico.

Since their creation in the Trade Act of 1974, trade advisory committees have been tasked with providing U.S. negotiators with detailed policy and technical advice, information, and recommendations on trade policy matters. That advice and recommendations are only possible when full information is provided in a timely manner to the committees, both through full text and in-depth briefings to allow advisors to understand the full context of commitments.

We recommend that future requests for ITAC comments be made so only after negotiations are completed, so that additional comments like those provided below are not necessary.

In addition, we recommend that ITAC comments not be subject to editorial review by U.S. government agencies. We appreciate and welcome U.S. negotiators’ efforts to explain and clarify complicated trade agreement text, including clarifying areas of misunderstanding. However, we believe that in the future, the more appropriate approach to ensuring accuracy would be to significantly increase transparency in the briefing process by negotiators providing a detailed walk through of chapters relevant to the Committee’s jurisdiction, with hard copies of the text available for the Committee. The current process – whereby text is only available online and not provided during ITAC meetings – very much handicaps the quality of our review.

The Committee’s comments and advice on crosscutting and sectoral services issues in the final USMCA follow.

Investment Chapter

The Committee reiterates its alarm that no investor-state dispute settlement protections will be available for business concerns in Canada, and those available for business concerns in Mexico are significantly reduced. As noted in our original filing, the Committee has yet to hear a compelling reason for these changes. The United States has nothing to gain by making them, but

much to lose bilaterally, and ultimately in all future agreements the United States enters. We recommend that these changes to long-standing U.S. trade objectives not be used in any future trade agreements.

Audiovisual Services

ITAC 10 is extremely concerned with the inclusion of a cultural industries carveout in Chapter 32, Article 32.6 of the USMCA. The carveout, imported from the U.S.-Canada Free Trade Agreement, is antiquated, highly prejudicial, and inappropriate for a modern trade agreement. The U.S. motion picture and television industry contributed \$134 billion in sales to the overall U.S. economy in 2016, had \$16.5 billion in exports, and supports 2.1 million American jobs; it should benefit from the market opening disciplines of U.S. free trade agreements. ITAC 10 appreciates USTR's effort to improve the retaliation mechanism associated with this carveout and understands that this mechanism can be used against measures, either adopted or maintained, that, but for the carveout, would be inconsistent with the Agreement. ITAC 10 commends USTR's successful rejection of Mexico's subsequent effort to push for a like carveout. ITAC 10's expectation is that such a carveout would not be replicated in future U.S. trade agreements.

Customs De Minimis Levels

ITAC 10 is seriously concerned over the language on the customs de minimis levels language found in the USMCA. Specifically, ITAC 10 is concerned with Article 7.8(1)(f) of the Customs and Trade Facilitation chapter, and the corresponding footnote number 3 of this clause, which implies that the United States may lower its customs de minimis threshold amount for imports from Canada and/or Mexico, to a "reciprocal amount."

American small businesses benefit substantially from the higher U.S. customs de minimis that Congress specifically legislated, which helps improve the overall e-commerce ecosystem in the United States.

The current customs de minimis amount is \$800, inclusive of duties and taxes. When Congress acted in 2015 to raise the United States' de minimis level to \$800 in the Trade Facilitation and Trade Enforcement Act, it was expected to – and it did – provide tremendous benefits to U.S. companies, particularly small businesses, and their employees, in addition to consumers. Prior to USMCA Canada has a customs de minimis threshold amount of \$20CAD and Mexico had a customs de minimis amount of \$50USD. We are extremely disappointed that USTR was unable to secure more ambitious commitments from Canada and Mexico throughout the USMCA negotiations. However, lowering the U.S. customs de minimis amount would be exactly the wrong response. We strongly urge you to remove footnote 3 of Chapter 7 from the final text of the USMCA.

In addition, the new levels negotiated within USMCA add unnecessary layers of confusion and complexity. Though the text now provides for modest increases – for Mexico the customs de minimis is \$117USD for customs duties and \$50USD for taxes, and for Canada, \$150CAD for customs duties and \$40CAD for taxes – bifurcating the duties and taxes and creating four different thresholds adds confusion and complexity to cross-border transactions. The administrative burden on the services sector, including retail and delivery services, will outweigh any benefits gained by the modest increases. We urge the three governments to negotiate a

commercially meaningful customs de minimis threshold that keeps duties and taxes bundled into a single amount.

Delivery Services

The USMCA text on Delivery Services, including the Delivery Services Annex is contained in Chapter 15 Cross Border Trade in Services.

As drafted, the Annex targets barriers that prevent a level playing field for private sector delivery service providers that compete against universal service providers, and state-owned postal monopolies. The text contained in the Annex represents a meaningful and important expansion of the scope of delivery services, with accordant assurances that each Party maintains a universal service obligation that is administered in a transparent and non-discriminatory manner. Further, the Annex includes important disciplines prohibiting cross-subsidization, which will prevent Parties from using revenues derived from the postal monopoly to cross-subsidize their own or any other delivery services not covered by a postal monopoly.

Similarly, other language in the Delivery Services Annex prohibits abuse of a postal operator's monopoly position and insists on independent regulation that is impartial, non-discriminatory, and transparent. The Annex also ensures that delivery service providers' ability to contract in the territory of another Party is not impeded. Specifically, the Annex provides that Parties may not require a supplier of a delivery service not covered by a postal monopoly to contract, or prevent such a delivery service provider from contracting, with another service supplier to supply a segment of the delivery service. This important and valuable clause preserves the right of a delivery service provider to contract locally.

The Delivery Service Annex and provisions elsewhere in the Agreement will support the ability of the U.S. delivery services providers to grow their business trilaterally across North America, as well as provide seamless end-to-end service to their U.S. and global customers.

Financial Services

ITAC 10 understands that the Parties will be developing a financial services forum as part of the USMCA package. We encourage U.S. representatives to consider reviewing in future forum discussions Canadian provincial level insurance premium taxes applied to non-admitted products, where such products are provided by U.S. intermediaries (e.g., Alberta, which can impose a premium tax as high as 50%).

Review of Trade Agreements with Non-Market Economies

Among the surprises included in final text of the USMCA was the provision requiring review of free trade agreements ("FTAs") between the Parties and non-market economies ("NMEs").

The general language referring to NMEs clearly has one target: China. However, no information was provided to the Committee about the problems the provision is intended to address, why only FTAs create those problems rather than other types of agreements, and why the only remedy to address those concerns would be withdrawal from an FTA with the United States' two largest trading partners. As a consequence, it is difficult for the Committee to evaluate whether this provision will be useful to addressing U.S. concerns.

The Committee also notes the significant implications if this proposal is being contemplated for existing and prospective U.S. FTAs. China currently has FTAs with six U.S. FTA partners, is in the process of negotiating new or expanded agreements with four others, is in the early stages of evaluating a potential FTA with Canada, and is negotiating with Japan, another potential U.S. FTA partner.¹

As a general matter, the Committee does not support this withdrawal provision or, as discussed in the Executive Summary of its September 27, 2018 report, the Agreement's termination provision, as such provisions create significant uncertainty for business, and are blunt instruments to effectuate policy changes. The Committee would welcome the opportunity to understand the concerns underlying the NME withdrawal provision, as well as discuss other means to effectively address those concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Benson". The signature is fluid and cursive, with a large loop at the end.

Elizabeth Benson, Chairman
Industry Trade Advisory Committee
on Services

¹ China has free trade agreements in force with the following U.S. FTA partners: Australia, Chile, Costa Rica, Peru, Singapore and South Korea. China has negotiations underway with Israel and Panama, also U.S. FTA partners, and with Japan and South Korea on a trilateral agreement (Japan being a prospective U.S. FTA partner). China is also part of the negotiations of the Regional Comprehensive Economic Partnership ("RCEP"), which includes Australia, South Korea and Singapore, as well as Japan and the Philippines, with whom the United States is reportedly considering launching FTA negotiations.

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