

October 24, 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 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, by the Advisory Committee on Customs Matters and Trade Facilitation (ITAC12), reflecting consensus advisory opinions on the USMCA.

ITAC 12 is pleased that Canada has joined with the United States and Mexico to preserve the trilateral structure of NAFTA and we are encouraged by the many improvements and modernizations included in the new agreement. A priority objective in these negotiations was improved trade facilitation, especially as it relates to e-commerce. Much of Chapter 7 on Customs and Trade Facilitation in the USMCA represents a solid achievement and is superior to the results obtained in other U.S. trade agreements. However, we do have serious concerns with respect to the outcomes on de minimis and we seek clarification and/or modification of these commitments.

As much of the trade between the three countries will be duty free, the real benefit of a higher de minimis relates to the taxes applied to goods imported into Mexico and Canada. While the increase in Canadian de minimis on taxes is far below our expectation, it does at least represent movement in the right direction and should, if implemented appropriately, bring incremental benefits to American exporters to Canada.

However, the agreement does not require Mexico to increase its current de minimis on taxes of USD \$50 and will only raise its duty de minimis to USD \$117 dollars. U.S. exporters will likely receive little, if any, facilitation benefits, as Mexico already offers several simplified duty and tax treatments above those levels. Therefore, we will need to ensure that the implementation of this agreement does not result in any reductions of these existing simplifications.

We also have serious concerns with footnote 3 to Article 7.8(f), which reserves the right of a Party to reduce its de minimis level to match, on a reciprocal basis, a lower de minimis rate of another party to the agreement. The footnote does not meaningfully clarify any right or obligation of any party and we recommend that it be deleted as part of the legal review process.

More importantly, the U.S. economy, particularly small and medium businesses and individual consumers, benefits significantly from the statutory level of USD \$800, which is a spur to greater engagement in the global e-commerce marketplace. Reducing the U.S. de minimis rate would equate to a major new tax on the U.S. consumer and would stifle the growing e-commerce industry, of which the United States is a leader. Any change in the U.S. de minimis levels would need the support of the U.S. Congress. ITAC 12 does not support the reduction of the USD \$800 de minimis level as leverage for future increases in either Mexican or Canadian de minimis values. Mexico and Canada actually would probably welcome a reduction of the U.S. level, as it would remove any pressure to raise their own low levels. So, the rationale for footnote 3 is highly questionable.

Because the key provisions of section 7.8, including the de minimis levels, only apply to “express shipments”, we strongly recommend the text be amended to include a definition of express shipments. This definition should include express shipments provided by both public and private operators in order to avoid undue preferential treatment of postal operators, who currently benefit from separate, and more generous de minimis levels in Mexico.

We believe these issues can be addressed through the legal review process.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. McGovern". The signature is written in a cursive style with a large, prominent initial "J".

John P. McGovern

Chair
Advisory Committee on Customs
Matters and Trade Facilitation
(ITAC12)