

September 27, 2018

The Honorable Robert E. Lighthizer  
United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

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 Industry Trade Advisory Committee on Small and Minority Business (ITAC 9) on A Trade Agreement with Mexico and potentially Canada reflecting consensus majority and additional advisory opinions on the negotiated Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Karyn Page". The signature is fluid and cursive, with the first name "Karyn" being more prominent than the last name "Page".

Karyn Page  
Chair  
Industry Trade Advisory Committee  
on Small and Minority Business (ITAC 9)

A Trade Agreement with Mexico and potentially Canada

Report of the Industry Trade Advisory Committee on Small and Minority Business

September 27, 2018

## **Report of the Industry Trade Advisory Committee on Small and Minority Business (ITAC 9)**

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### **Advisory Committee Report to the President, the Congress and the United States Trade Representative on A Trade Agreement with Mexico and potentially Canada (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 principle 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, in our case, for small, medium, and minority-owned enterprises (SMMEs).

Pursuant to these requirements, ITAC 9 hereby submits the following report.

#### **II. Executive Summary of Committee Report**

Small, medium and minority enterprises (SMME) are affected by all aspects of international trade; thus, this report includes a comprehensive review of the Agreement. At the time of review, Canada was not a Party to the Agreement. Our review is on the text as presented.

ITAC 9 generally agrees, with noted exceptions, that A Trade Agreement with Mexico and potentially Canada (Agreement) promotes the economic interests of the United States (US), generally achieves, with noted exceptions, the US government negotiating objectives and the Agreement generally provides, with noted exceptions, for equity and reciprocity for US SMMEs.

SMMEs are the backbone of the economy. Their contribution to innovation, job growth and security are paramount to US prosperity. Representing our top two export destinations, exports to our North American trading partners are critical to that growth and prosperity. More than 53,000 US businesses with less than 500 employees depend on export sales to Mexico totaling over \$75 billion. And 82,000 SMMEs achieved \$53 billion in export sales to Canada. These figures represent goods alone, not including services and agriculture, which when added would increase the figures significantly.

Because SMMEs are disproportionately impacted by complicated regulations, limited or no access, and a multiplicity of trade barriers, the themes of *transparency*, *consistency*, *predictability*, *timeliness*, *certainty*, and *affordability* are imperative in this Agreement. Explicit *inclusivity* of SMME

representation in the Agreement, in its governance and enforcement must be an integral component of this and any trade agreement under US consideration.

ITAC 9 applauds:

- No increases to or additions of customs duties on originating goods;
- Provisions to support the development of SMME trade in goods and services through measures that facilitate access to resources and foster cooperation, mechanisms that consider the effects of regulatory actions on SMMEs and enable participation in regulatory policy development, and procedures that do not impose disproportionate burdens on SMMEs; and
- Obligations that benefit SMMEs in the chapters on Small and Medium Enterprises, Government Procurement, Cross Border Trade in Services, Labor, Competitiveness, and Anticorruption.

ITAC 9 recommends:

- Eliminating drawback restrictions;
- Regular consultations with SMMEs to determine impact, ensure transparency and proactive engagement;
- Making findings and work plans available to ITAC 9;
- Identifying ways to build on and expand regional cumulation;
- Including a higher de minimis allowance;
- Increasing the transaction amount below which a NAFTA Certificate of Origin is not required;
- Harmonizing divergent rulings on tariff classifications;
- Addressing the impact on SMMEs of the Agreement's provisions, including technical regulations, standards regimes, safeguards and concessions;
- Pursuing mutual recognition agreements and harmonization of standards; and
- Utilizing the cooperation and network mechanisms established in the Agreement to help transition to the new Agreement.

In summary, *include* SMMEs, and consider and mitigate the impact of provisions through *transparency, consistency, predictability, timeliness, certainty, and affordability.*

### **III. Brief Description of the Mandate of ITAC 9**

ITAC 9 is mandated to provide detailed policy and technical advice, information, and recommendations regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting small and minority businesses.

### **IV. Negotiating Objectives and Priorities of ITAC 9**

Priorities of the committee are to represent the views of small and minority business with the objective to enhance job growth and exports of goods and services of the U.S. economy. As a further objective, the committee expresses an ongoing concern that cross-border trade be as fair as possible, transparent, and open to small, medium and minority businesses.

Upon commencement of NAFTA re-negotiation, ITAC 9 offered the following negotiating priorities:

1. Preserve the tri-lateral structure of NAFTA;

2. Preferential duty-free market access must remain in place for all U.S. goods;
3. Adopt a chapter exclusively for SMMEs;
4. Increase the transaction amount below which a NAFTA Certificate of Origin is not required from \$1,000 to \$2,500;
5. Enhance “Article 911: Technical Cooperation” and increase cooperation between the three countries as it relates to reciprocity with respect to standards;
6. Undertake a full review of Intellectual Property provisions in the NAFTA with an aim to strengthen such provisions in a modernized NAFTA to ensure full and comprehensive protection of U.S. SMMEs’ IP;
7. Eliminate drawback restrictions under Article 303 of the NAFTA for all parties. Alternatively, the U.S. should seek consultations with Mexico and Canada to eliminate duty reduction regimes such as the Sectoral Promotion program in Mexico and targeted duty reductions in Canada designed to overcome the Article 303 restrictions while placing U.S. SMMEs at operational cost disadvantages with companies located in the other NAFTA territories; and
8. Conduct outreach to SMMEs to educate and facilitate use of NAFTA

#### **V. Advisory Committee Opinion on A Trade Agreement with Mexico and potentially Canada (Agreement)**

SMMEs are affected by all aspects of international trade; thus, this report includes a review of each chapter and ancillary text, to the extent possible, within the allotted time frame.

At the time of review, Canada was not a Party to the Agreement, and therefore our review is on the text as presented and is focused on implications for US-Mexico trade. However, given certain text presented has been trilaterally agreed, and some provisions are specific to Canada market access, ITAC 9 includes comments on implications to SMMEs for US trade with Mexico, and Canada where applicable. In addition, we strongly encourage the United States to complete an agreement with Canada so that US SMMEs can continue to benefit from duty-free access and enhanced provisions into our two most important markets.

#### **Ch 1 Initial Provisions and General Definitions, Ch 29 Publication and Administration with Section B-Energy Regulatory Measures, Ch 30 Administrative and Institutional Provisions, and Ch 32 Exceptions and General Provisions**

ITAC 9 agrees that the chapters on Initial Provisions and General Definitions, Publication and Administration, Administrative and Institutional Provisions, and Exceptions and General Provisions promote the economic interests of the United States and achieve the applicable overall and principle negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (“US government negotiating objectives”) and the Agreement provides for equity and reciprocity for US SMMEs.

Provisions to ensure transparency, including publishing information and establishing time lines for responses, protection of personal information guided by APEC and OECD guidelines, and periodic review, are important enhancements.

Regarding the sub-chapter on Non-Market Economy, we appreciate the intention to prevent leakage of Agreement benefits resulting from unfair competitive advantages created by non-market economies.

## Ch 2 National Treatment and Market Access

ITAC 9 generally agrees, with noted exceptions, that the chapter on National Treatment and Market Access promotes the economic interests of the United States, generally achieves, with noted exceptions, the US government negotiating objectives and the Agreement generally provides, with noted exceptions, for equity and reciprocity for US SMMEs.

ITAC 9 applauds the provision that no Party “shall increase any existing customs duty, or adopt any new customs duty, on an originating good”.

ITAC 9 is concerned with the following provisions:

**Article 5: Drawback and Duty Deferral Programs** has not been substantially updated and still restricts duty-drawback. The revised Agreement does not take into account our committee’s recommendations, and as such limits SMME’s ability to compete. Our recommendation is noted below:

“Include in a revised NAFTA agreement an **elimination of the drawback restrictions under Article 303 of the NAFTA for all parties**. Alternatively, the U.S. should **seek consultations with Mexico and Canada to eliminate duty reduction regimes** such as the Sectoral Promotion program in Mexico and targeted duty reductions in Canada designed to overcome the Article 303 restrictions while placing U.S. SMMEs at operational cost disadvantages with companies located in the other NAFTA territories.”

**Article 17: Committee on Trade in Goods** does not appear to include a commitment for a meeting “at least once a year”. Under NAFTA 1994, the following provision was in place:

3. The Parties shall convene at least once each year a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

A commitment for operational Committees – whether bilaterally or trilaterally organized – to meet “at least once a year” is critically important and should continue in the Agreement for all relevant chapters as a systematic review mechanism to annually evaluate and, as needed, enhance the Agreement.

## Ch 3 Agriculture

ITAC 9 generally agrees, with noted exceptions, that the chapter on Agriculture promotes the economic interests of the United States, generally achieves, with noted exceptions, the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

Regarding Article 3.4: Export Competition, item 2, we agree that no party should levy any export subsidy on any agriculture products destined for any of the Party territories.

Regarding Article 3.5: Export Restrictions – Food Security, in general, we understand that temporary export prohibition or restriction on foodstuffs may be required to prevent or relieve a critical shortage

of foodstuffs. However, we urge Parties to ensure that such restrictions are temporary - to the minimum time extent needed - to ensure US producers can grow their export markets when market conditions allow.

Regarding Article 3.7: Committee on Agricultural Trade, 3.8 Consultative Committee on Agriculture, and Article 3.10: Transparency and Consultations, we agree that the Committee and regular consultations are important to ensure transparency and proactive engagement to tackle barriers to trade in agricultural goods.

Regarding Item 2 of Article 3.10, we recommend that the language should be stronger than simply “discussing the use or proposed use of any Geographical Indicator (GI) that may restrict labeling and marketing” in any of the Parties. This point needs to be enforced per prior WTO directives.

ITAC 9 recommends that the Committee:

- Meet *at least* once a year;
- Include SMME views, and consult with US SMMEs on agricultural trade issues on a routine basis; and
- Make its findings and work plans available to ITAC 9, and all the Agricultural Trade Advisory Committees (ATACs) for the benefit of US agricultural SMMEs.

Regarding Article 3.11: Agricultural Grading, we agree with all three points to prevent restrictions on the exporting or importing of grains among all 3 countries.

Regarding Article 3.12: Milk Class Pricing Systems for Dairy, we believe this provision most specifically targets Canada’s milk class pricing regime, and appreciate insight into US and Mexico’s position, as well as efforts to minimize market access restrictions into Canada.

1. We generally agree with the provisions as stated in article on “Canada’s Harmonized Milk Classification System or provincial milk classification system.”
2. The provision that Canada make publicly available all measures, regulations, statements of policy, formulas, or other guidance information on how Canada calculates pricing, supports pricing, and methodologies and data used to set support processes is a major step forward.
3. We agree that Canada make information about milk pricing and supports promptly available.
4. Regarding “6. Canada shall eliminate milk classes... shall not implement new milk classes, or amend, alter, or change existing milk classes, to have the same functions, components, or purpose of milk classes 3(d), 5(a), 5(b), 5(c), 6, and 7.” We unequivocally agree to the elimination of milk classes, including Class 7, and that Canada not add new classes.

Canada’s duties on imports from the United States can reach as high as 300%. In addition to targeting Canada’s milk pricing regime, we strongly believe that an agreement that includes Canada must include additional specific market access (both lower preferential duties and increased volumes into Canada) for dairy inputs and processed products from the United States to enable SMME dairy farmers and processors to fairly export milk and dairy products to Canada.

Regarding Article 3.13: Compositional Requirements for Cheese and Article 3.14: Cheese Production and Trade in the NAFTA Region, we agree that that the stipulated cheese products be fairly traded in

significant quantities throughout the North American region. We further request that Canada remove the GIs currently encumbering American cheese and other food products as alluded to in this Article.

Regarding Section A: Tariff-Rate Quota (TRQ) Administration we support the scope and general provisions that any TRQs are in accordance with Article XIII of GATT 1994, to insure transparency, predictability, uniformity and the additional procedures used to administer TRQs.

We also agree with Article 3.A.4: Allocation Mechanisms of TRQs to follow the guidelines set forth in this Article especially following the Transparency provision allowing American dairy producers to more fairly export products to Canada and Mexico.

Regarding Section B - Agricultural Biotechnology, we agree that the Parties confirm the importance of transparency, cooperation, and exchanging information related to the trade of products in modern biotechnology as they relate to products of agricultural biotechnologies. (Agricultural goods and fish and fish products, developed using agricultural biotechnologies). Further,

#### *Regarding Annex 3A Proprietary Formulas for Prepackaged Goods*

ITAC 9 welcomes industry-specific annexes that help US processed food manufacturers of all sizes, including US SMME food processors, to export fairly within the region. We are pleased that formula disclosure requirements by government agencies are limited to what is only necessary to achieve a legitimate objective and protect the confidentiality of information supplied.

#### Ch 4 Rules of Origin

ITAC 9 generally agrees, with noted exceptions, that the chapter on Rules of Origin promotes the economic interests of the United States, generally achieves, with noted exceptions, the US government negotiating objectives and the Agreement generally provides, with noted exceptions, for equity and reciprocity for US SMMEs.

Regarding Article 11: Accumulation, the Agreement does not allow for cumulation between shared free trade agreement partners. ITAC 9 encourages the US Government to consider reviewing all our existing and future agreements to identify ways to build on and expand regional cumulation to the benefit of US SMMEs.

Regarding Article 12: De Minimis, ITAC 9 is disappointed that the Agreement does not increase the de minimis content allowance from 7% to 10% as had been achieved with Mexico and Canada under the Trans-Pacific Partnership. We expect the new Agreement to move forward not backwards in these areas, and given all three parties were willing and able to increase the de minimis in recent years, we recommend the new Agreement include the higher de minimis allowance.

While country of origin labeling requirements for meat do not appear to be part of the agreed text, some members of our committee recommend that the US, Mexico, and Canada continue to engage on finding a transparent and consistent way for meat products to be labeled for origin purposes including where born, where raised and where slaughtered. We believe this may help SMMEs working in this sector, as well as US consumers.

## Ch 5 Origin Procedures

ITAC 9 generally agrees, with strongly noted exceptions, that the chapter on Origin Procedures promotes the economic interests of the United States, generally achieves the US government negotiating objectives and the Agreement provides, with strongly noted exceptions, for equity and reciprocity for US SMMEs.

Regarding Article 5: Exceptions to the Certificate of Origin, ITAC 9 is exceedingly disappointed and frustrated that the Agreement does not increase the transaction amount in which a NAFTA certificate of origin is *not* required. The Agreement should be flexible enough to account for inflation and to acknowledge that low value shipments should not require this additional burden.

Our priority recommendation on this issue is noted below:

**Increase the transaction amount below which a NAFTA Certificate of Origin is not required from \$1,000 to \$2,500** to streamline a significantly increased percentage of SMME export transactions, including the e-commerce arena. We recommend the following provision under (NAFTA 1994) “Article 503: Exceptions” be updated as follows:

Each Party shall provide that a Certificate of Origin shall not be required for:

- a) a commercial importation of a good whose value does not exceed US\$2,500 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good; and
- b) a non-commercial importation of a good whose value does not exceed US\$2,500, or its equivalent amount in the Party's currency, or such higher amount as it may establish.

ITAC 9 welcomes that the Customs and Trade Facilitation Chapter has specific provisions for Express Shipments including those that allow for a threshold of less than \$2,500 for Parties to apply “fewer customs formalities than those applied under formal entry procedures...” This provision makes sense from the perspective of Customs, other government agencies (OGAs), and commercial interests. Raising the threshold for the certificate of origin should be aligned with the “customs formalities” provision and we encourage USTR to resolve the matter.

## Ch 7 Customs and Trade Facilitation

ITAC 9 generally agrees that the chapter on Customs and Trade Facilitation promotes the economic interests of the United States, generally achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

We welcome inclusion and expansion of this chapter in the Agreement and appreciate the modernized benefits it provides to US SMMEs. In particular, we believe the chapter will enhance SMME international trade opportunities while affording protections to businesses in the Parties, including:

- Online publication of pertinent information, laws, regulations, contact information, tariffs, taxes, and other fees, documentation required for customs clearance, and procedures to correct errors;
- Enhanced communication provisions with members of the trade community;

- expanded scope of advanced rulings by Customs authorities and online searchable database for the trade community;
- Expedited release of Express Shipments;
- Increased de minimis threshold to \$100 to apply formal entry procedures in Mexico; and
- Enhanced use of IT and single window for all Parties.

ITAC 9 recommends that the Trade Facilitation Committee work to harmonize divergent rulings on tariff classifications in cooperation with US industry, including explicit input from SMMEs, to minimize classification differences between Parties for the same product moving between Parties.

### 8a Energy Performance Standards

Regarding the sub-chapter on Energy Performance standards, ITAC 9 generally agrees that it promotes the economic interests of the United States, generally achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

Compliance of multiple standards regimes are an expensive hurdle for SMMEs, and therefore efforts to harmonize amongst parties is a step forward. ITAC 9 recommends that parties consider the impact on SMMEs of qualifying for and complying with multiple international standards, and consider mutual recognition agreements whenever possible.

### Ch. 9 Sanitary and Phytosanitary Measures

ITAC 9 generally agrees, with noted exceptions, that the chapter on Sanitary and Phytosanitary Measures promotes the economic interests of the United States, generally achieves, with noted exceptions, the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

ITAC 9 welcomes enhanced commitments in the Agreement that are “plus ups” of the WTO agreement on Sanitary and Phytosanitary Measures, including:

- Focus on development and implementation of science-based SPS measures in a transparent, predictable, and non-discriminatory manner;
- Involving SMME producers in Technical Working Groups when resolving specific trade concerns especially concerning risk assessments and risk management options;
- Certification of phytosanitary requirements be provided through means other than certificates to avoid burdensome costs and time, and recommend that any required certification be applied only to the extent necessary to meet the required protection; and
- Seeking the assistance of relevant international organizations, such as the North American Plant Protection Organization.

ITAC 9 makes the following recommendations:

- Regarding the work of the Committee and Technical Working Group(s), seek input from SMME growers;
- Regarding Article 9.13: Transparency, we urge that any issues relating to threats be immediately known to the exporter, as opposed to extended comment periods or proposed legislation and suggest that any transparency issues be published on an official website; and

- Regarding phytosanitary certification requirements that any required certification be applied only to the extent necessary to meet the required protection.

ITAC 9 offers the following additional comments:

- SMME agricultural exporters are very important to the success of international sales and it does not appear that the sales of these SMMEs are fully realized in the SPS Chapter;
- Regarding Article 9.1: Definitions do not reference the Foreign Agricultural Service of the US Department of Agriculture which has far-ranging programs in place to research and promote US agriculture exports, including SMMEs;
- Regarding Article 9:14: Emergency Measures, the time allotment of 6 months to make information available for review is much too long;
- Regarding Article 9.6: Science and Risk, our primary concern is the length of time it will take to identify and resolve scientific procedures. SMME growers may not have months or years to accommodate this process, which may ultimately result in being more trade restrictive instead of trade enabling; and
- Regarding Article 9.8: Adaptation to Regional Conditions in determining a regional “condition,” an assessment is required “without delay” - delays significantly impact SMME growers with less cushion to manage disruption.

## Ch 10 Trade Remedies

ITAC 9 generally agrees, with noted exceptions, that the chapter on Trade Remedies promotes the economic interests of the United States and achieves the US government’s negotiating objectives. We are unclear on whether provisions under Section A and the long timeline under Annex A will provide US SMMEs with equity and reciprocity.

Provisions under Section A: Safeguards, to refine the NAFTA 1.0 global safeguard exclusion *may* provide some level of certainty when the Party is not excluded in the form of obligations to “determine whether imports of the good from non-Parties,” are the source for injury, to proposed “trade liberalizing compensation in the form of concessions,” and barring recourse through dispute settlement. *However*, SMMEs may be adversely impacted should concessions not be agreed upon or should those concessions not provide relief to SMMEs. Any safeguard and its subsequent concessions should consider the disproportionate impact of supply chain or market access disruptions on SMMEs.

For example, we are concerned that if safeguards are applied on goods from Mexico and the US opts for concessions, safeguards imposed may allow for retaliatory tariffs that adversely impact US SMME exports. We are concerned that actions and counter actions like Section 232 tariffs against steel and aluminum and Mexico retaliation may become the norm rather than the exception as it relates to safeguards and compensation.

Regarding provisions under Section B: Antidumping and Countervailing Duties, we acknowledge that WTO provisions on AD/CVD remain in place.

Regarding provisions under Section C: Cooperation on Preventing Duty Evasion, we acknowledge the benefits of these enhanced provisions including notifications, coordinated analysis and investigations,

granting verification in the requested Party's territory, information exchange, and maintaining procedures to preserve confidential information.

Under Annex A, the provisions to establish a "web-based access point and the system for submitting documents electronically" is a noted improvement. However, we note the flexibility granted Mexico to overcome technical constraints in making documents web-based seems an unreasonable effort in modern times. Though the provision obligates the option of a physical examination should the document not be available via the web, the five-year allowance undermines the efficiency and transparency earned.

## Ch 11 Technical Barriers to Trade

ITAC 9 is uncertain that the chapter on Technical Barriers to Trade promotes the economic interests of the United States and acknowledges that it generally achieves the US government negotiating objectives. We have strong concerns that this chapter provides for equity and reciprocity for US SMMEs.

Due to the potential conflict of US standards with standards of other Parties, including recognized international standards noted in the chapter, as well as the circular reference to governance, we are concerned that language meant to curb technical barriers to trade actually increases technical barriers to trade.

For example, adoption of WTO TBT Committee Decision on International Standards and national treatment of conformity assessment bodies is a logical measure. However, depending on the standards referenced and *applicable* to the SMME, there may be conflict with US standards resulting in the need to comply with dual or multiple standards regimes to access export markets – a clear impediment.

Also, the complexity of understanding and managing standards is staggering. We offer the governing document referenced continually in the chapter as an example of the complexity, uncertainty and fluidity SMMEs (and all US businesses) face when attempting to penetrate export markets. The "Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995" (referenced in this chapter as "TBT Committee Decision on International Standards") dated 21 January 2015 is the *12th revision* from the Committee on Technical Barriers to Trade and spans 74 pages.

The establishment of a Committee on Technical Barriers to Trade which appropriately engages with the public during regularly scheduled meetings is imperative. However, the article does not explicitly include the participation nor input of SMMEs. Typically, only government entities and institutions are appointed to serve on the committee, which have proved to know little or nothing about SMME TBTs. ITAC 9 recommends explicit representation of SMMEs to engage with the Committee, in the formation of technical regulations and conformity assessment, and in impact analysis.

Regarding Article X.4: International Standards, Guides and Recommendations, "To determine whether there is an international standard, guide, or recommendation ... each Party shall apply the TBT Committee Decision on International Standards," the TBT Committee Decision on International Standards scarcely mentions small businesses. In fact, small businesses are mentioned just twice; once regarding Conformity Assessment and once on the impact of standards on SMMEs when addressing

Special and Differential Treatment of Developing Country Members. Notably, the US is not a developing country.

ITAC 9 would like to see Mexico's standards bodies, which issue "Normas Oficiales Mexicanas" (NOMs), move towards more commonly accepted practices with respect to the frequency with which products need to be approved. We recognize that NOMs are required not only for foreign products but also for domestic products in Mexico. Nevertheless, Mexico's current requirement to approve each model of a product line on an annual basis significantly disadvantages SMME manufacturers in general and discourages U.S. SMME exporters of such products to Mexico. To highlight the lack of reciprocity in this case, the U.S. does not require that every model of every U.S. product line or Mexican product line imported into the U.S. be approved every single year.

Lack of harmonization of standards is a barrier for SMME participation in international trade as the expense is exorbitant to comply with multiple standards regimes. We recommend the pursuit of mutual recognition agreements while aggressively pursuing harmonization of standards.

#### Ch 12 Sectoral Annex - Cosmetics Products

ITAC 9 agrees that the annex on Cosmetics Products promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

At present, U.S. SMMEs in the cosmetics and beauty industry cannot sell to Canada unless their U.S. made products are first registered in Canada at a cost of US\$1,000-\$1,200 per item ('sku'), with the process taking between 4-6 weeks on average. For Mexico, the cost to register each item ('sku'), is between US\$800-\$1,000, with the process taking 6-12 weeks. In practice, if the U.S. SMME wants to export say, a line of lipsticks to Canada/Mexico and it comes in a dozen colors, the initial cost to the U.S. SMME before any sales can be made is anywhere between US\$12,000-\$14,000. Whereas, a Mexican or Canadian cosmetics company can ship their entire catalogue of color cosmetics and creams (lipsticks, powders, foundations, lotions, etc.) to the USA at zero cost, because the U.S. does not impose similar/reciprocal registration requirements.

ITAC 9 applauds that this annex addresses the long-standing barriers that have stood in the way of US SMMEs in the Cosmetics Industry to effectively compete in NAFTA markets. For example, the Parties' agreement to enhance regulatory compatibility via the equal treatment of products whether they are of national origin or imported from the territory of another Party, and to adopt a risk-based approach to regulating the safety of cosmetic products through recognizing that cosmetic products generally present a lower potential risk to human health or safety than medical devices or pharmaceutical products.

Accordingly, removing the requirement for mandatory marketing authorizations and shade or fragrance variant based re-evaluations effectively unshackles US SMMEs from the associate burdensome, duplicative, time-consuming and cost-prohibitive practices of obtaining such marketing authorizations and will open export markets that were previously inaccessible to export-ready US SMMEs. This should be deemed a significant win for US SMMEs in the Cosmetics Industry and its US-based supply chain.

## Ch 12 Sectoral Annex - Chemical Substances

ITAC 9 agrees that the annex on Chemical Substances promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

## Ch 13 Government Procurement

ITAC 9 agrees that the chapter on Government Procurement promotes the economic interests of the United States, achieves with some exceptions, the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

Provisions covering national treatment, non-discrimination and open tendering procedures establish fair rules and increase opportunities for US SMMEs to compete. Use of electronic means for procurement opportunities, documentation, and receipt afford transparent and efficient processes.

Establishment of conditions for participation and “evaluation (based) solely on the conditions that the procuring entity has specified in advance in notices or tender documentation” also stipulate a fair, transparent and non-discriminatory process.

Technical specifications based on “performance and function” and international standards while barring requirements including conformity assessment that cause trade obstacles is a step forward.

ITAC 9 applauds the inclusion of Article X.20: Facilitations of Participation by SMMEs. In particular, provisions to ensure transparency, comprehensive information in a single electronic portal (free of charge) as well as conduction of procurement through electronic means will afford SMMEs efficient access to government procurement contracts of the Parties to the Agreement. Acknowledgement of SMMEs in the supply chain or as a subcontractor in consideration of the procurement may afford even greater opportunities. Finally, facilitation of SMME participation in the Committee on Government Procurement solidifies the commitment of the Parties to SMME participation.

To strengthen SMME participation, ITAC 9 offers two implementation recommendations:

1. If a measure has a disproportionately negative impact on SMMEs, efforts will be made to address such impacts; and
2. Promote the inclusion of the other Parties’ SMMEs as subcontractors in each Parties’ procurement opportunities.

## Ch 14 Investment; Annex D and Annex E

ITAC 9 agrees that the chapter on Investment, and Annexes D & E, promote the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

ITAC 9 offers the following comment regarding the article on Corporate Social Responsibility. Depending on the requirements to comply with referenced international guidelines, like the OECD Guidelines for Multinational Enterprises, the impact on SMMEs to comply should be considered.

## Ch 15 Cross Border Trade in Services

ITAC 9 agrees that the chapter on Cross Border Trade in Services promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

ITAC 9 applauds provisions which encourage undue burdens on businesses, including:

- The Article on Local Presence- disallowing the requirement of a local presence of a service supplier as a condition to deliver cross-border services; and
- The Article on Development and Administration of Measures- restricting measures for licensing and qualification requirements or procedures to measures that are based on criteria that are open and transparent; and to the extent possible avoiding application to multiple authorities; as well as when adopting technical standards, to adopt standards through an open and transparent process.

ITAC 9 applauds the inclusion of the Article on Small and Medium-Sized Enterprises to “support the development of SMME trade in services and SMME-enabling business models, ... through measures that facilitate SMME access to resources...,” the provision related to the Chapter on Good Regulatory Practices “to adopt or maintain appropriate mechanisms that consider the effects of regulatory actions on SMME service suppliers and that enable small businesses to participate in regulatory policy development” as well as the measure on Article X.8 (Development and Administration of Measures) “to ensure that authorization procedures for a service sector do not impose disproportionate burdens on SMMEs.”

## Ch 16 Temporary Entry

ITAC 9 generally agrees that the chapter on Temporary Entry promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

ITAC 9 supports maintaining the same definitions of professions per NAFTA 1994, as well as continuing to allow for entry for conducting training and seminars; it also notes that the current TN visa process works extremely well and should be kept intact.

ITAC 9 recommends the Working Group address the impediment imposed by a requirement to appear in person at consulates or embassies to obtain a visa – a disproportionate burden to SMMEs.

## Ch 17 Financial Services

ITAC 9 agrees that the chapter on Financial Services promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

Provisions to ensure transparency in regulatory procedures, disallowance of restriction of cross-border data flows and barring requirements to localize computing facilities, as well as more open market conditions will afford US SMMEs fairer competitive environments and expanded opportunities.

ITAC 9 offers the following observation. It appears that nothing in the text presented precludes availability of each party's SMME-oriented export loan programs for use by another country's financial institution. For example, can Mexican and Canadian financial institutions access US Ex-Im Bank Programs? While this does not pose a problem today, over the next 5-10 years, there may be growing demand for "cross-national" demand for the use of such national programs.

#### Ch 18 Telecommunications

ITAC 9 agrees that the chapter on Telecommunications promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

#### Ch 19 Digital Trade

ITAC 9 agrees that the chapter on Digital Trade promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

Provisions that bar imposition of customs duties on digital products transmitted electronically across borders, disallow requirements for Location of Computing Facilities and bar a requirement to transfer source code are important for successful and efficient SMME market access.

#### Ch 20 Intellectual Property

ITAC 9 agrees that the chapter on Intellectual Property (IP) promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

It is imperative that the Parties consider the impact on SMMEs, in particular, affordability and cost effectiveness, of provisions enhancing IP protection length of terms, transparency and efficiency in procedures, and enforcement (including special measures to detain goods suspected to violate IP at the Border); and that all such provisions are applicable to the digital environment.

ITAC 9 applauds the inclusion of the article on International Agreements to ratify or accede to international treaties in intellectual property protection and enforcement but is concerned about the flexibility allowed regarding the Patent Law Treaty. Protection and enforcement of IP is a significant expense for SMMEs; commitment to international treaties which reflect international best practices is imperative.

ITAC 9 applauds the creation of a Committee on Intellectual Property Rights (per 18.B3) to facilitate information sharing of matters pertaining to intellectual property rights, with emphasis on "issues particularly relevant to small and medium sized enterprises." Since IPR is complicated and many SMMEs do not have the background, nor resources to understand what constitutes legitimate IPR and infringement thereof, a focus on education is imperative. ITAC 9 recommends that Parties to the Agreement recognize the importance of Intellectual Property Rights education and commit to the development and execution of a plan for outreach to their respective SMME business community, in

addition to raising awareness of the benefits and means to access the protection and enforcement measures in this chapter.

Finally, per our aforementioned negotiating priorities, ITAC 9 urges the Parties to undertake a full review of Intellectual Property provisions with an aim to strengthen such provisions in a modernized NAFTA to ensure full and comprehensive protection of U.S. SMMEs' IP. Specifically, under NAFTA 1994 "Criminal Procedures and Penalties," ensure that penalties levied thus far for trademark counterfeiting and copyright piracy have indeed proven to effectively deter such crimes involving intellectual property.

### Ch 21 Competition Policy

ITAC 9 agrees that the chapter on Competition Policy promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

Regarding the article on Procedural Fairness in Competition Law Enforcement, ITAC 9 recommends, when and where compliance with the Competition Chapter imposes a disproportionate burden on SMMEs, consideration should be given before imposition of a sanction or remedy.

### Ch 22 State-Owned Enterprises

ITAC 9 generally agrees that the chapter on State-Owned Enterprises (SOE) promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

ITAC 9 recommends that in addition to the provisions in the article on Non-Discriminatory Treatment and Commercial Considerations that the SOE acts in good faith at all times, honoring all terms of the contracts and agreements established and set forth. In the event that the SOE does not honor the terms, undue harm befalls the private companies and especially the SMMEs bound to the contract.

### Ch 23 Labor

ITAC 9 agrees that the chapter on Labor promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

Taking a strong position to enhance labor standards in the territories of the Parties is a positive aspect for SMMEs which should result in fairer competitive positioning. ITAC 9 appreciates the provision to promote "productivity, innovation, competitiveness, training and human capital development in workplaces, particularly in respect to SMMEs" and applauds inclusion of the Annex 23-A on Worker Representation in Collective Bargaining in Mexico.

## Ch 24 Environment

ITAC 9 agrees that the chapter on Environment promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

Enhanced environmental standard in all territories of the Parties promotes a fairer competitive environment. ITAC 9 recommends the Environment Committee consider the impact on US SMMEs of environmental regulations, including the need to “retro fit” compliance to new laws, in implementation of the Agreement.

## Ch 25 Small and Medium-Sized Enterprises

ITAC 9 agrees that the chapter on Small and Medium-Sized Enterprises promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

We applaud enhancements to foster close cooperation between SMMEs. “Dedicated SMME centers, incubators and accelerators and export assistance centers to create an international network for sharing best practices, exchanging market research, and promoting SMME participation in international trade, as well as business growth in local markets”; inclusion of the underrepresented (“minority, women, indigenous, rural SMMEs, youth, start-ups”); and information exchange on access to capital, government procurement and adapting to market conditions will provide an export support ecosystem to address the major challenges of SMMEs in conducting international trade.

Further, cooperation, information exchange, and mechanisms to consider improvements relevant to increasing SMME participation in the Agreement is reinforced by the provisions of the Committee on SMME Issues. Establishment of an SMME Committee *coupled* with a trilateral SMME dialogue that meets annually and “may include the private sector, non-governmental organizations (NGO) and other SMME stakeholders” is an important improvement to ensure that needs of SMMEs are considered and to provide SMME views to the SMME Committee. We encourage explicit inclusion of private sector and non-government stakeholders in the annual SMME dialogue.

We applaud obligations in the Agreement that benefit SMMEs in other chapters including Government Procurement, Cross Border Trade in Services, Labor, Competitiveness, and Anticorruption.

We offer one recommendation to this seminal chapter- provide transitional assistance to help SMMEs benefit from this new Agreement. Specifically, utilize the cooperation and network mechanisms established in the Agreement to provide transition assistance through counselling, educational events, etc. Also offer additional time or temporary exemption from certain provisions to the extent possible.

Our special thanks to Deputy Assistant USTR for Small Business, Christina Sevilla. She is a dedicated and tireless advocate for SMME participation in international trade and investment.

## Ch 26 Competitiveness

ITAC 9 agrees that the chapter on Competitiveness promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement generally provides for equity and reciprocity for US SMMEs.

ITAC 9 applauds the inclusion of “recommendations aimed at enhancing the participation of SMMEs, and enterprises owned by under-represented groups including women, indigenous peoples, youth and minorities” in activities of the North American Competitiveness Committee and recommends the explicit inclusion of non-government and private sector SMMEs to provide input.

## Ch 27 Anticorruption

ITAC 9 agrees that the chapter on Anticorruption promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

Regarding the Article on Participation of Private Sector and Society, “Each Party shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting...” ITAC 9 makes the following recommendation. To build a culture of anti-corruption, it is imperative that all parties continually promote business transparency and anti-corruption. It is appropriate. As part of that transparency, the parties should advertise and make available to the public and business sectors methods for reporting corruption concerns to the relevant bodies as well as the details for contacting those relevant bodies.

## Ch 28 Good Regulatory Practices

ITAC 9 agrees that the chapter on Good Regulatory Practices promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

Provisions that enhance Enforcement, Information Quality through fact-based determinations, Transparency through early planning and a single website provide valuable to SMMEs. Measures to include input from the private sector in the Development of Regulations is a step forward.

ITAC 9 applauds the articles on Expert Advisory Groups and Regulatory Impact Assessment which should explicitly facilitate inclusion of SMMEs and consider the impact of proposed regulations on SMMEs, respectively.

## Ch 31 Dispute Settlement

ITAC 9 agrees that the chapter on Dispute Settlement promotes the economic interests of the United States, achieves the US government negotiating objectives and the Agreement provides for equity and reciprocity for US SMMEs.

ITAC 9 recommends that, where appropriate, input from and the impact on SMMEs is considered.

## Ch 33 Macroeconomic and Exchange Rate Matters (Currency)

ITAC 9 agrees that the chapter on Macroeconomic and Exchange Rate Matters (Currency) promotes the economic interests of the United States, achieves the US government negotiating objectives and the agreement provides for equity and reciprocity for US SMMEs.

## Chapter 34 Final Provisions: Review and Term-Extension for Final Provisions

ITAC 9 is not in consensus on the subchapter on Review and Term-Extension and question whether US government negotiating objectives and provisions in the Agreement will benefit or negatively impact US SMMEs.

ITAC 9 members generally in agreement find that the provision:

- Offers structure without limiting termination or extension options through timely, scheduled review and decision-making;
- Acknowledges the long history of NAFTA and the need to review and adapt to change without adding unnecessary uncertainty; and
- Affords the option of near-perpetuity of the Agreement.

ITAC 9 members in disagreement with the inclusion of the Review and Term-Extension for Final Provisions call for the US Government to remove it from the Agreement altogether. They find that any termination provision:

- Ignores the review mechanisms and commitments already in place throughout the Agreement, making the review mechanisms outlined in this provision extraneous;
- Is unnecessary given the withdrawal provisions already in place which allow any Party to withdraw with 6 months' notice;
- Creates an environment in which the Agreement may be renegotiated every 6 years, creating uncertainty for SMMEs seeking to build their exports to Canada and Mexico;
- Disregards US industry's recommendations and priorities to create an agreement that is stable and predictable; and
- Puts too much emphasis on one Party's ability to terminate the entire provision.

To ensure mutuality of all parties to the Agreement and reducing one party's ability to terminate the entire Agreement, they recommend a change to the text. Specifically:

Instead of:

“If one or more Parties does not send a confirmation, then there shall be a joint review every year for the duration of the term (i.e., until the end of Year 16)...”

The text should be modified as follows:

“If all three Parties do not send a confirmation, then there shall be a joint review every year for the duration of the term (i.e., until the end of Year 16)...”

Non-Conforming Measures (NCMs): Annex III Consolidated Formatting Notes, Annex III Canada, and Annex III Mexico

Regarding Annex III – Consolidated Formatting Notes, Annex III Canada and Annex III Mexico, ITAC 9 generally agrees.

Non-Conforming Measures (NCMs): Annexes I-II Mexico

Regarding Investment and Cross-Border Trade in Services (page 5), ITAC 9 agrees that “when deciding on an application, the CNIE may only impose requirements that do not distort international trade and that are not prohibited by Article XX (Performance Requirements).”

Regarding Investment (page 8), ITAC 9 requests reconsideration of the requirement that “Mexican micro-industry enterprises (those with 15 workers or less) may not have foreign persons or partners.” On the contrary, ITAC 9 believes that such partnerships among and between SMMEs in each market should be encouraged rather than forbidden.

Regarding CMAP 951002 Legal Services (page 27-28), ITAC 9 generally agrees with the concepts of reciprocity set forth, and with the statement that “lawyers licensed to practice in another Party will be permitted to form a partnership with lawyers licensed in Mexico.”

Regarding Cross-Border Trade in Services (pages 62-92), ITAC 9 generally agrees on the sector/subsector chart indicating “Limitations on Market Access.”

**VI. Membership of Committee**

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President and Chief Executive Officer  
Kansas Global Trade Services, Inc.

**Primary Vice Chairman**

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President  
Zenaida Global

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