NRF
THE VOICE OF RETAIL

June 12, 2017

The Honorable Robert Lighthizer
United States Trade Representative
1724 F Street, NW
Washington, DC 20508

RE: Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico (USTR-2017-0006)

Dear Ambassador Lighthizer,

On behalf of the National Retail Federation (NRF), we welcome the opportunity to provide comments regarding the modernization of the North American Free Trade Agreement (NAFTA) with Canada and Mexico. We fully agree that after 23 years the NAFTA needs to be examined and updated. Since the agreement was negotiated over two decades ago, it does not reflect today's global value chain or many new ways of doing business in the global economy. A number of its provisions affecting "old" ways of doing business need to be updated and modernized to reflect today's business environment as well as what may come in the future.

By way of background, NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing $2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

We applaud the Administration for the reevaluation of NAFTA. From the outset, NRF and its members are very supportive of NAFTA, as well as other free trade agreements that not only open up sourcing opportunities for retailers to provide high quality products to U.S. consumers, but those that also open foreign markets for U.S. retailers to sell U.S. made goods to foreign consumers. As the Administration begins to work on NAFTA modernization, we would encourage you to support the following guidelines for the negotiations:

1) **Do no harm to the current agreement**. If the goal is to improve and update the agreement, the current regional value chains and relationships should not be negatively affected.

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2) **Keep the Agreement Trilateral**. It is critical that a modernized NAFTA remains a trilateral agreement among the U.S., Canada and Mexico. The interconnectivity of the relationships among businesses and consumers in all three countries must be maintained.
3) **Conclude negotiations quickly**. It is important that the negotiations focus on key elements to truly modernize and improve the agreement among the three nations. Negotiations should move quickly in order to maintain predictability for those businesses who rely on NAFTA.
4) **Provide a seamless transition**. Once a modernized NAFTA is agreed to, the parties must provide a seamless transition for any changes that are agreed to. Retailers and others will need time to implement any changes to their systems or supply chains to make sure they are compliant with the new agreement.

Background

U.S. retailers are the primary direct link between American families and farmers, workers and producers in the United States, Mexico and Canada. Retailers buy apparel, footwear, consumer electronics, food products and many other consumer goods from suppliers in Canada and Mexico. Some U.S. retailers operate stores in Canada and Mexico which they supply with goods purchased locally but also from U.S. manufacturers and farmers. In addition to brick and mortar stores, U.S. retailers continue to sell U.S. goods into the Mexican and Canadian markets through electronic commerce. This economic activity supports about 14 million U.S. jobs, in farming and manufacturing as well as a wide range of services sectors.[1]

NAFTA has supported these jobs by freeing much economic activity between the countries of unnecessary burdens, and by helping to grow the U.S. economy in general. Over the two decades of its existence, NAFTA has eliminated high tariffs in all three countries. It has helped to create new value chains that enable each country to contribute to the cost of production of key consumer goods, ensuring that the prices of those goods to American families are as competitive as possible. As such, it has supported U.S. economic growth by providing U.S. producers and consumers with extra income to spend in new, growth-generating ways.

For all its benefits, NRF agrees that NAFTA needs to be modernized. In the ensuing decades since it was negotiated, the Internet has changed the way everyone does business, and the ways that consumers interact with farmers and producers through retailers. As supply chains and value chains have deepened, cross-border data flows have grown. A modernized NAFTA needs to reflect these and other changes to the global economy and to the ways in which competitive U.S. business

[1] United States Chamber of Commerce, "Opening Markets, Creating Jobs: Estimated U.S. Employment Effects of Trade with FTA Partners," prepared by Trade Partnership Worldwide, LLC, May 2010, http://tradepartnership.com/wp-content/uploads/2014/06/opening_markets_creating_jobs_USChamber.pdf

participate in it today and in the future. In addition, we recognize that in many respects, a modernized NAFTA will become a model for this Administration's efforts to negotiate trade agreements with countries with which the United States does not yet have such agreements. Therefore, our suggestions below, while specific to Canada and Mexico, are also broad enough to apply to other U.S. trading partners.

Tariffs on Goods

A modernized NAFTA must ensure that tariffs on all goods remain fixed at zero. Under no circumstances should the United States seek to impose new duties or taxes on imports from Canada or Mexico (e.g., to offset sales of value-added taxes assessed by either country on sales of domestic or imported merchandise). In addition, the US should not issue quotas or marketing orders to restrict the imports of winter produce from Mexico, which provide US consumers a variety of fruits and vegetables during the counter-cyclical growing seasons. Such a move would only hurt U.S. consumers and workers by increasing the costs of goods sold or made in the United States. We do believe, however, that there are opportunities to enhance market access for U.S. dairy and poultry producers into the Canadian market and would support such negotiations.

Mexico is neither a participant in the World Trade Organization (WTO) Information Technology Agreement (ITA), nor of its recent expansion effort. Mexico's participation in the agreement and the expansion agreement, with immediate staging and full implementation, would greatly improve the U.S. retailers operating in Mexico better access to US high technology products.

Rules of Origin

A modernized NAFTA should reflect today's global value chains. This means it should not impose new rules of origin that would disrupt these value chains. The rules of origin discussion should also not result in more restrictive or burdensome rules than what exists today. Indeed, the Administration should take this opportunity to include a provision in a modernized NAFTA that permits companies to "cumulate" value of goods produced within the NAFTA region with value of goods produced in other free trade agreement partners. In the case of NAFTA, this would permit a more integrated value chain to develop between Canada, the United States, Mexico, Colombia, Chile, Peru and the countries that are parties to the Dominican Republic- Central America Free Trade Agreement.

NRF was integrally involved in providing input and advice to U.S. negotiators during the original NAFTA negotiation. One important issue for us was the rules of origin that would apply to textile and apparel products, as we knew even then that they would determine how commercially useful the agreement would be over the longer term. The NAFTA included a very restrictive rule of origin that continues to be used in all of our free trade agreements.

Retailers have built very complex value chains based on the rules of origin under NAFTA. We encourage the administration to maintain the current Tariff Preference Levels (TPLs) and other flexibilities contained in NAFTA which benefit U.S. retailers as well as domestic manufacturers. In addition, we would urge the Administration to modernize the short supply process that is contained within the NAFTA. The process needs to recognize modern global value chains and the future development of yarns and fabrics. This needs to be an open, timely and transparent process.

We encourage the Administration to evaluate how trade has changed within the region over the past 23 years. For example, there is very little apparel production in the United States today and, despite NAFTA and other FTAs, Asia is now the dominant supplier of apparel—by far. Negotiators should consider new provisions in a modernized NAFTA that would further support apparel manufacturing and regional integration among the NAFTA partners.

In the apparel industry today, speed and flexibility are increasingly critical to business success. To achieve advancements in apparel manufacturing and incentivize capital investment in the United States to manufacture apparel, it is critical that there is flexibility in sourcing inputs for qualifying garments. The scale and scope of raw materials available from the United States/NAFTA are limited relative to the global raw materials market. This discrepancy cripples the competitiveness and scalability of the U.S./NAFTA apparel industry. A renegotiated NAFTA should incentivize apparel manufacturing in the United States by providing alternative rules for companies that make investments in advanced manufacturing technologies in the United States and the rules should allow interim inputs, including partially completed panels, to move freely back and forth between NAFTA countries, similar to the integration of the auto industry among the three countries.

Customs and Trade Facilitation Issues

Trade facilitation – A modernized NAFTA should address opaque or onerous customs procedures, red tape, and delays in processing goods through customs in the three countries. The ultimate goal of the negotiations should be to reduce burdensome compliance rules for qualifying goods. The negotiations should include updates to the NAFTA Customs and Trade Facilitation provisions that mirror what has been agreed to under the World Trade Organization's Trade Facilitation Agreement as well as key areas from what the U.S., Canada and Mexico had agreed to under the Transpacific Partnership Agreement. Key provisions include the publication of Customs laws, regulations and procedures; commitments to provide advance rulings; and enhanced Customs cooperation.

This also should include the development of a trusted trader program among all three countries, with a focus on risk based targeting. Including a mutually recognized trusted trader program among the

NAFTA parties would significantly improve both trade enforcement and facilitation among the partner countries. Such a trusted trader program would allow the Customs authorities to focus their enforcement efforts on those companies who require enforcement actions. Such programs also provide cross border benefits for those companies who participate in such a program. Focusing on risk based targeting is critical for success, especially with limited resources.

In addition, negotiations should address the proliferation of the use of reference prices and reference priced databases for exports of textile and footwear products into Mexico. The continued use of reference prices are a violation of the WTO Customs Valuation Agreement.

Duty Drawback – Duty drawback allows for the refund of Customs duties, taxes, and fees paid on imported goods that are used as inputs in the production of manufactured products that are later exported, or where the imported good is substituted for the same or similar good that is later exported.[2] This allows U.S. manufacturers and exporters to reduce the cost of inputs, and thus reduce manufacturing costs to remain competitive in pricing their exported goods. [3] Unfortunately, NAFTA includes restrictions to duty drawback and deferral under Article 303. These provisions place U.S. manufacturers at a substantial disadvantage as compared to foreign competitors when exporting products to Canada or Mexico. The duty drawback and deferral restrictions in NAFTA should be repealed to place U.S. manufacturers on a level playing field with their foreign competitors and to help increase growth in U.S. manufacturing and jobs, and thus increase U.S. exports to Mexico and Canada. Both Canada and Mexico have provided circumvention measures for their domestic manufacturers exporting to the other NAFTA-member countries.

De Minimis – Simplifying customs requirements is especially beneficial for small and medium-sized U.S. companies looking to export to customers around the globe. The de minimis rule is key to this. These rules allow low-value goods to enter into a country duty free under a simplified entry process. The U.S. recently increased the de minimis value to $800. Canada and Mexico currently have extremely low de minimis value thresholds ($20 in Canada and $50 in Mexico). The NAFTA modernization negotiations should include an increase in Canada's and Mexico's de minimis value.

Express Delivery Services – The express delivery sector has become an integral part of any company's global value chain, especially with the significant increase in electronic commerce. Since NAFTA was negotiated and implemented before this significant business improvement, the

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[2] 19 U.S.C. § 1313.

[3] The following industries/market sectors benefit from duty deferral programs: Agricultural products and equipment/machinery, Airlines, Apparel, Automobiles, Automotive parts, Beverages, Chemicals, Civilian and military aircraft, Cosmetics, Ecommerce, Electronics, Food products, Footwear, Jewelry, Juice products (e.g., OJ), Petroleum, Pharmaceuticals, Machinery, Metals, Retail distributors, Sporting goods, Tobacco. Vessel supplies and Wine.

agreement did not include a chapter on express shipments. The modernization negotiations provide a perfect opportunity to include similar rules that address pre-arrival clearance, single electronic submission, minimum documentation requirements and expedited release requirements.

Digital Commerce

Online retailers (and increasingly many so-called "traditional" brick and mortar retailers) sell goods over the Internet, including electronic goods such as software, music, video, e-books, and games, but also physical goods like apparel, footwear, food products, and home furnishings. This selling format knows – or should know – no national boundaries. A modernized NAFTA should have a chapter devoted to e-commerce that stipulates that parties will not assess customs duties on electronic transmissions, including content transmitted electronically, and that parties agree to protect personal information of those using e-commerce.

Cross-Border Data Flows and Data Localization Restrictions – Retailers need to be able to transfer data from stores in one country to operations in another, most frequently facilities in the United States. Such data includes employee records as well as inventory and other sales-related data. The rapid growth of online retail sales internationally also necessitates the transfer of data across borders to facilitate purchase and payment. A modernized NAFTA should contain provisions that will ensure that retail and other related sectors can transfer data from one party to another, subject to legitimate security or privacy concerns. It should guarantee that companies will not have to build expensive and unnecessarily redundant data centers in every market they seek to serve, the costs of which would of necessity get passed along to consumers in the form of higher prices for the goods they buy.

Intellectual property rights protections – Some retailers develop their own branded products for sale in their stores. When they open stores abroad and sell those goods, U.S. retailers want to know that their intellectual property will be respected and protected. They also want to guard against the sale of counterfeited goods in their stores, both in the United States and abroad. A modernized NAFTA should contain strong provisions for closing loopholes used by counterfeiters and for civil and administrative procedures and remedies for violations of intellectual property rights, including criminal prosecution of such violations. Strong enforcement of intellectual property rights will protect consumers from purchasing counterfeit goods, which do not meet product safety requirements and could be harmful to consumers.

Services Issues

TV Distribution Issue – Canada maintains significant regulatory barriers to entry for U.S. teleshopping companies as a result of its restrictions or limitations on licensing, ownership, and related requirements applicable to television programmers generally, without regard to the type of content they are broadcasting. In this regard, cultural, historical, and editorial programming is treated in the same manner as teleshopping programming. The restrictions needlessly limit or preclude U.S. television shopping retailers from engaging in purely commercial activities and thereby restrict their ability to participate in this portion of the retail industry in Canada. The U.S. should seek to remove these regulatory barriers that prevent U.S. teleshopping companies from operating in Canada.

Investment Issues

A number of American retailers have stores in Canada and/or Mexico. A modernized NAFTA should continue to contain provisions that would protect these investments. For example, it should require that NAFTA parties treat investment from sources in other NAFTA parties no less favorably than it treats investment from sources in its own country.

Labor and environment protections

Retailers that source goods globally demand that their foreign suppliers adhere to codes of conduct that typically govern the business those suppliers do with U.S. retailers. They stipulate retailers' requirements for how foreign factories treat their workforce and how those factories ensure that their production does not harm the local environment. A modernized NAFTA should work to complement retailers' efforts to ensure that factories adhere to labor and environment conditions in their codes of conduct. NRF supports including the labor and environment chapters which were agreed to under the Transpacific Partnership Agreement.

Enforcement

Under no circumstances should a modernized NAFTA establish enforcement provisions predicated on changes in bilateral trade balances (goods only or total) as measures of whether a NAFTA party is fairly implementing the agreement's provisions. As we have detailed in another submission to the Administration, bilateral trade balances are largely determined by factors related to U.S. savings and investment behavior, not the behavior of U.S. trade partners.[4] They are also affected by changes in the value of the U.S. dollar relative to trade partner currencies, and those changes themselves may also be determined by uncertainty generated by policy makers' pronouncements on trade.[5]

[4] National Retail Federation May 10 Written Comments on Omnibus Report on Significant Trade Deficits - https://www.regulations.gov/document?D=ITA-2017-0003-0034.

[5] Ibid.

Conclusion

We would like to thank the Administration for the opportunity to submit comments on a modernized NAFTA. We continue to believe NAFTA has been a positive free trade agreement that has shown positive gains for the U.S. economy. The agreement has benefited U.S. importers and exporters, and more importantly, U.S. workers and consumers. We hope a modernized NAFTA will seek to continue to provide benefits to all stakeholders while recognizing today's value chain and the potential for the future. If you have any questions, please contact Jonathan Gold, NRF's Vice President for Supply Chain and Customs Policy.

Sincerely,

Matthew R. Shay
President and CEO
National Retail Federation