RILA
RETAIL INDUSTRY LEADERS ASSOCIATION
Educate.Collaborate.Advocate.

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June 12, 2017

Mr. Edward Gresser
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Via Electronic Submission

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

Dear Mr. Gresser:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide comments to the Trade Policy Staff Committee on negotiating objectives with respect to the modernization of the North American Free Trade Agreement (NAFTA) with Canada and Mexico. RILA supports the Administration's goals to grow the U.S. economy by improving U.S. opportunities and we look forward to working with you to ensure the retail sector's priorities are reflected in the final renegotiated NAFTA.

RILA BACKGROUND

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. Retailers are the backbone of our nation's economy and the cornerstone of American communities. The retail sector, along with the suppliers and customers that it serves, all contribute to the growth of the U.S. economy.

Retail is known for its innovation and cutting edge business practices in areas such as supply chain management, marketing, and other professional disciplines. Retailers meet the needs of U.S. consumers, and in doing so are essential drivers of the U.S. economy. We also serve the global market for consumer goods and bring U.S. products to the foreign markets where they operate. As the second largest private sector employer, retailers provide opportunity and a path toward meaningful careers to 42 million Americans. Whether it's providing the first step or a fresh start in the workforce, answering the call in the wake of a disaster, giving back to our community, or stimulating the local and national economy, retailers are working to better the lives of Americans each and every day.

NAFTA COMMENTS

RILA believes U.S. trade policy can work for American businesses by reducing or eliminating duty costs and lowering barriers for the free flow of goods and services across borders and thus is a strong supporter of international trade. Retailers' supply chains play a critical role in keeping Americans working here at home while growing the U.S. economy.

We welcome the opportunity to review the NAFTA and provide commercially meaningful updates to the free trade agreement (FTA) that is more than two decades old. As the Administration considers the U.S. negotiating objectives in a modernized NAFTA agreement, we urge you to support the following principles:

1) **Do no harm to the current NAFTA.** U.S. businesses currently utilize the NAFTA, supporting millions of U.S. jobs throughout the entire supply chain; therefore, all efforts should be made to ensure current trade is not negatively impacted. This includes maintaining the trilateral agreement among the current NAFTA partners.
2) **Move quickly to conclude NAFTA renegotiations.** Retailers welcome Ambassador Robert Lighthizer's goal of concluding these renegotiations by the end of the calendar year. While ambitious, it can increase investment and provide greater business certainty.
3) **NAFTA 2.0 should be seamless.** Because retailers operate complex supply chains that depend on thousands of suppliers and vendors, we need adequate time to ensure a seamless transition while preparing to take advantage of the benefits under the modernized NAFTA deal.
4) **Follow TPA.** Congress passed the Trade Priorities and Accountability Act (TPA) in 2015 with bipartisan support. It is critical for the Administration to not only follow the notification and consultation requirements, but also the negotiating objectives that reflect Congressional priorities set forth in the law.

Current NAFTA

As previously discussed, the current NAFTA supports millions of jobs that are dependent upon the flow of trade moving across our U.S. borders. We strongly advise the Administration against moving towards a bilateral agreement because the uncertainty is too great a risk. Retailers also do not support moves to enact barriers to trade, including changes to rules of origin or any changes to increase duties, that impede the use of the NAFTA. For example, any changes impacting the NAFTA textiles and apparel supply chain, including the consideration of safeguards, must be carefully evaluated to avoid disruptions to existing current trade and undermine demand for U.S. exports or generate other unintended consequences that could undermine U.S. jobs. Similarly, we do not support efforts to impose new duties or taxes on imports from Canada or Mexico. We certainly see opportunities to provide improvements to the agreement that could enhance the ability of retailers to take advantage of the NAFTA rules and our comments below reflect those potential areas of modernization.

New Issues

We agree with the Administration that e-commerce and cross border data flows are potential areas of improvements in the NAFTA agreement. The United States is a world leader in the digital economy, especially as retailers continue to expand their e-commerce business to provide customer services in addition to offering world class products. This growth in the retail business can be supported through cutting-edge trade commitments that support innovative products and new services as well as combat various forms of forced localization. Because 95 percent of the world's consumers live outside the United States, it is critical that companies secure the ability to move data across borders while protecting the personal information of consumers.

RILA would support a U.S. negotiating position that all NAFTA partner countries must join the World Trade Organization (WTO) Information Technology Agreement (ITA) and the recent expansion commitments. Currently, Mexico is not a participant in both initiatives. The ITA is one of the most successful WTO agreements and offers immense benefits to U.S. companies by providing duty free treatment on a wide variety of information and communications technology products.

Canada maintains significant regulatory barriers to entry for U.S. teleshopping companies because 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 United States should seek to remove these regulatory barriers that prevent U.S. teleshopping companies from operating in Canada.

We also support the inclusion of provisions that would expedite express delivery shipments; provide disciplines for state-owned enterprises that could distort competition or circumvent trade agreement obligations; ensure strong competition policy to allow for a level-playing field, expand agriculture market access into Canada and Mexico for U.S. producers as well as ensure that regulations are science-based.

Apparel and Footwear

NAFTA is essential for U.S. retailers operating apparel and footwear supply chains in the NAFTA region, supporting millions of jobs in the United States, Canada, and Mexico. While supply chains have been built around the NAFTA yarn forward rule of origin, there remains less apparel production in the United States despite significant changes in the apparel industry over the past 20 years. One of the goals of the NAFTA yarn forward rule of origin was to create an integrated industry among the three countries, but Asia continues to dominate as the world's supplier of apparel. The NAFTA renegotiation provides an opportunity to drive trade within the Western Hemisphere and create the conditions here in the United States to accelerate – at scale –

the regionalization of apparel manufacturing, particularly in the application of advanced technologies in the United States. Technology innovation is unlocking new manufacturing models, such as fabrication, fiber, chemical and coloration technologies that accelerate production and manufacturing in the United States. This agreement should provide incentives and flexibilities that encourage such innovation.

To achieve these 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. In addition to incentivizing advanced manufacturing, NAFTA could also attract more traditional apparel manufacturing to the Western Hemisphere without risk of undermining existing Western Hemisphere supply chains by including flexibilities that would allow for the cumulation of inputs among U.S. FTA partner countries, such as the rules enacted for Haiti. These efforts would spur increased regional integration in the Western Hemisphere.

We encourage the United States to work with the retail industry to refine a list of specific products that would meet the single transformation rule for discrete items that are currently supplied by Asian countries, including China, in an effort to drive further growth in the West. These flexibilities, while key to expanding the integration of U.S. yarns and fabrics, is just as important as maintaining the current exceptions to the yarn-forward rule of origin, such as tariff preference levels (TPLs) and single transformation rules for specific products. Those current exceptions should be preserved or expanded so as not to undermine the supply chains that rely on them. Additionally, updating the short supply list and providing other flexibilities could enable manufacturers in the NAFTA countries to fill capacity as NAFTA suppliers continue to evolve and develop broader capabilities.

Customs

Modernization of customs procedures have significantly outpaced the current NAFTA rules, so it is one of the key areas that has the potential to facilitate the movement of trade for businesses of all sizes by cutting red tape and eliminating barriers or redundancies at the border. The WTO Trade Facilitation Agreement should provide the basis and momentum to the NAFTA partners to push for further binding commitments, setting an even higher standard for customs processing and clearance. Modernized customs provisions in the NAFTA should include binding commitments on advanced rulings, simplified entry, automation and account-based processing, risk management, single window development and interoperability, elimination of redundant and outdated regulations, and modernization of the border process for all partnering government agencies. On this last point, the United States leads the way in advancing a “One Government at the Border” concept that has streamlined the process for dozens of federal agencies to clear cargo at the border. NAFTA should also follow the U.S. example by requiring Canada and Mexico to commit to increasing their de minimis value applicable to imports from unreasonably low levels ($20 in Canada and $50 in Mexico).

U.S. FTA practices have evolved to reflect the use of electronic data submissions that have helped to expedite customs clearance processes, while providing advance information for trade enforcement targeting. NAFTA should be modernized to allow for increased data sharing while protecting business confidential information as a way of expanding customs cooperation. Also, NAFTA should reflect current U.S. FTA record-keeping requirements and verification by requiring importers to provide the certification of origin and supporting documents to customs officials upon request if the claim is based on a written or electronic certification by the importer, exporter, or producer.

The retail industry is very dependent upon global supply chains and thus have a longstanding history of working with customs officials, particularly here in the United States. We believe aligning and improving trusted trader programs would allow customs officials to identify those importers with a strong record of compliance as well as utilize limited enforcement resources to target those shipments that pose the greatest risk. Transparency is critical to this partnership, such as providing adequate notice and comment regarding changes to customs regulations. Another example is Canada's practice of publishing its annual audit priorities, which provides clarity and allows importers to assist the government on those priorities. Conversely, retailers continue to experience overly detailed and intrusive customs enforcement by Mexico's Servicio de Administratción Tributaria (SAT).

Labor and Environment

The U.S. retail industry is committed to strong labor and environmental protections as we recognize our responsibility to improve human conditions and environmental impacts both where our consumers consume and where our products are produced. NAFTA should be modernized to include enforceable provisions aimed at elevating worker and bolstering environmental protections in producing countries. We encourage the United States to lead in bringing NAFTA to the same level of commitment as recent U.S. FTAs and provide assistance in specific areas to bring each country into compliance with those obligations.

Enforcement

RILA members are among the largest U.S. importers with a tradition of driving compliance. We believe in strong enforcement of U.S. and FTA partner commitments, which helps American workers and businesses realize the benefits of international trade. Without strong enforcement, we fail to build the strong support needed in Congress and the public to enact new market opening FTAs. Therefore, we welcome efforts to make the NAFTA commitments fully enforceable, including commitments to protect intellectual property rights and patents. However, we recommend avoiding any efforts to utilize the NAFTA negotiations to make changes to U.S. antidumping and countervailing duty laws, including any deterioration of the party's rights to due process. Similarly, we believe any enforcement provisions based on changes in bilateral trade balances as a measure of whether a NAFTA party is properly implementing the agreement's provisions is misguided and fails to take other factors into consideration.

CONCLUSION

RILA strongly supports NAFTA and the Administration's efforts to modernize the agreement in a way that bolsters the competitiveness of the NAFTA region. We appreciate the opportunity to submit our comments on the negotiating objectives for a modernization of NAFTA and look forward to working closely with the Office of the United States Trade Representative and the rest of the Administration to build on the success of NAFTA and secure an updated agreement that supports economic growth and jobs.

Sincerely,

Hun Quach
Vice President, International Trade
Retail Industry Leaders Association (RILA)