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## United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

January 12, 2022

Ambassador Katherine Tai  
600 17th Street NW  
Washington, D.C. 20508

Dear Ambassador Tai:

The United States-Mexico-Canada Agreement (“USMCA” or the “Agreement”) has the potential to deliver tangible benefits for America’s workers, farmers, and businesses by improving and strengthening the relationship between the United States and its two closest trading partners. However, that potential will not be realized without full implementation and enforcement of the Agreement as written. Critically, while it would be preferable to resolve USMCA’s implementation issues through negotiation, the Office of the United States Trade Representative (“USTR”) must be prepared to use the strong and innovative enforcement tools that Congress pushed to include in USMCA to ensure that the Agreement lives up to its full potential.

Accordingly, we appreciate that USTR has initiated two cases under the Rapid Response Mechanism to address labor violations in Mexico and successfully litigated Canada’s failure to properly allocate its dairy tariff-rate quotas. Yet we remain concerned that Canada and Mexico continue to ignore many other critical USMCA obligations. To that end, we are highlighting a number of outstanding issues where USTR must ensure that the United States gets what it bargained for, including by taking enforcement actions if necessary.

### ***Labor***

- **Mexico’s Reforms:** Efforts to improve labor rights for Mexican workers, including through implementation of Mexico’s reform legislation, are uneven and in many cases not progressing rapidly enough. USTR has taken meaningful action through its use of the Rapid Response Mechanism to address specific concerns, but the situation calls for sustained engagement to ensure meaningful reform is achieved throughout Mexico.

Moreover, in addition to these significant labor reforms, USMCA contained obligations related to the goal of eliminating all forms of forced or compulsory labor. On October 21, 2021, U.S. Customs and Border Protection issued a withhold release order to stop

importation of certain tomatoes from Mexico produced by forced labor. This finding of forced labor in Mexico is of significant concern.

### *Agriculture*

- **Potatoes:** Mexico limited U.S. imports to a sliver of only 26 kilometers below the border. Although Mexico claims to be making progress, the ban is now two decades old. Mexico must promptly end this non-scientific ban to comply with USMCA commitments.
- **Biotechnology:** Despite agreeing to swiftly consider approval requests for biotechnology products through a transparent and science-based process and ensure its food safety measures are supported by science, Mexico has failed to properly consider or approve applications for innovative U.S. biotech products. The Mexican government's only decision, in fact, was to issue a rejection that lacked the appropriate science-based justification. In addition, Mexico announced its intention to eliminate biotech corn for human consumption by 2024, a troubling step that would adversely impact access to the largest U.S. export market for corn.
- **Dairy:** A USMCA panel found that Canada's policy of reserving portions of its dairy tariff-rate quotas for domestic producers violated its commitments on market access, and Canada must bring itself into compliance by February 3, 2022. USTR must scrutinize the implementation of this decision, as well as Canada's implementation of its other USMCA commitments on milk pricing and export surcharges.

With respect to Mexico, its failure to adopt measures to recognize certain common cheese names and its new conformity assessment requirements for imported dairy products are of significant concern to U.S. dairy producers seeking access to the Mexican market.

- **Campaign Against Imported Food Products:** The Mexican government has campaigned to curtail U.S. food and agriculture imports by (1) attacking the reputation of imported products, including by branding them as detrimental to the health of Mexican consumers; (2) restricting their placements on store shelves; and (3) preventing the legitimate use of trademarks. Mexico's invocation of consumer awareness (albeit unsupported by evidence or international standards) to defend its measures is notable given its history of attacking legitimate consumer information awareness efforts like the U.S. "dolphin-safe" tuna label.

### *Digital Trade*

- **Discriminatory Taxation:** USMCA promised to enhance opportunities for U.S. innovators in the digital industry, but Canada's proposed digital services tax ("DST") would subject these companies to targeted, discriminatory taxation. Canada's actions implicate not only its USMCA obligations, but also its commitments made as part of the G20 and Inclusive Framework in the multilateral agreement on international taxation. Under the terms of this agreement, 137 countries agreed to forbear from enacting new unilateral measures while the global tax agreement is being implemented over the next two years. Efforts by Canada to move forward with a unilateral DST risk setting a troubling precedent that could undermine years of work by negotiators at the OECD. On December 15, 2021, USTR said it would examine all options under USMCA and

domestic statutes to address this matter. USTR must be prepared to utilize these measures if Canada implements a DST in violation of these commitments.

### *Services*

- **Audiovisual Content:** Mexico has proposed quotas for audiovisual content that require a certain percentage of that content be produced domestically. Such a policy would impede market access for U.S. content providers and may conflict with USMCA obligations.
- **Home Shopping Services:** Canada continues to deny authorization to U.S. programming services for home shopping, despite making explicit commitments to do so.

### *Environment*

- **Marine Life:** Mexico has yet to implement fully its USMCA environmental commitments with respect to sustainable fishing practices. This is particularly troubling as two of the species that Mexico is failing to protect, the totoaba and the vaquita, are critically endangered. Two public submissions have been filed with the Secretariat of the Commission for Environmental Cooperation, each claiming that the Mexican government has failed to effectively enforce its environmental laws related to marine species conservation.

### *Energy*

- **State-Owned Preferences:** The Mexican government is actively pursuing policies to give preference to its state-run electricity provider and its state oil company (Petróleos Mexicanos) to the detriment of private competitors that often provide cleaner energy options. Mexico has suspended import permits for more than 80 energy companies; has ended permits for energy import facilities, which puts U.S. investment at risk; and is advancing a constitutional reform bill that would dissolve the Mexican power market, eliminate independent regulators, and cancel contracts and permits granted to private companies. Mexico's actions deprive private energy companies, including renewable energy companies, from market access, non-discriminatory treatment, and a level playing field in Mexico's energy sector.

### *Telecommunications*

- **Independent Regulator:** USMCA requires Mexico to maintain an independent regulator for the telecommunications sector, which is critical to ensure the market remains competitive. Nonetheless, the Mexican government is pursuing a constitutional amendment to eliminate independent regulators for telecommunications, broadcasting, and antitrust.

### *Pharmaceuticals*

- **Marketing Authorization:** USMCA requires that marketing authorizations be done reasonably, objectively, impartially, and transparently. Mexico's Federal Commission for Protection against Health Risks (COFEPRIS) appears to be contravening these requirements, resulting in severe delays for approval of U.S. pharmaceutical products.

USMCA earned broad support from bipartisan members of Congress, as well as stakeholders representing an array of interests. The Agreement promised to improve upon our existing trading relationship with Canada and Mexico, including through innovative provisions to swiftly address labor violations, promote agricultural market access through science-based decision-making, advance intellectual property rights protection, and improve the regulation of state-owned enterprises. Unless Canada and Mexico are held to their commitments under USMCA, however, U.S. workers, businesses, and farmers will be denied the full benefits they were promised. Therefore, it is of critical importance that USTR continue to diligently monitor Canada and Mexico's compliance with the Agreement and ensure that every chapter of the Agreement is fully enforced. We stand ready to work with you as closely in implementing USMCA as we did in negotiating and approving it.

We look forward to receiving a briefing soon regarding the progress made on addressing the aforementioned issues.

Sincerely,



Ron Wyden  
Chairman  
Senate Committee on Finance



Mike Crapo  
Ranking Member  
Senate Committee on Finance