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November 9, 2017

Ambassador Robert Lighthizer
United State Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Lighthizer,

I write regarding attempts to restrict cross-border imports of fresh fruits and vegetables by changing anti-dumping and countervailing duty proceedings to serve specific interests in perishable seasonal products.

Being more than two decades old, I believe that there are areas in which the North American Free Trade Agreement (NAFTA) will benefit from strengthening and modernization. However, I also believe that efforts that will lead to unnecessary restrictions on trade with our North American partners will have devastating economic consequences both in Arizona and nationwide. By now, you are no doubt aware of a number of concerns regarding attempts to use the on-going NAFTA negotiations to add ill-advised seasonal or regional components to the existing trade remedies available to perishable seasonal products.

The potential direct impacts of such efforts include the opportunity for such trade remedies to be used against U.S. fruit and vegetable exports as well as increased costs and decreased selection of fruits and vegetables available to U.S. families and consumers. Such a move could result in similar anti-dumping cases originating from Mexico on any number of non-perishable agricultural products as well as products from other sectors.

With these concerns in mind, I request answers to the following questions:

1. In the on-going negotiation rounds, what is the current status of the proposal by U.S. negotiators to add seasonal or regional components to existing anti-dumping and countervailing duty proceedings? What have been the received or expected responses from Mexico and Canada regarding the proposal?
2. Press reports indicate that the proposed "special anti-dumping measures for seasonal produce" have been demanded in order to benefit a specific industry.¹ Having been included in the *Summary of Objectives for the NAFTA Renegotiation*, some level of Congressional and industry consultation presumably occurred. What specific consultations occurred with proponents of the seasonal/regional produce trade remedy

¹ https://www.washingtonpost.com/business/economy/how-a-group-of-florida-tomato-growers-could-help-derail-nafta/2017/10/16/e1ec5438-b27c-11e7-a908-a3470754bbb9_story.html?utm_term=.9cb4588694c1

provision? What specific consultations occurred with those likely to be negatively impacted by such a proposal or those that represent them?

3. In previous testimony, you have indicated "[i]t is very important that we do no harm" and that "[o]ur very high priority will be making sure that we do not disrupt our sales in agricultural products to either Canada or Mexico." How is this consistent with seeking a provision many in the agriculture sector believe could lead to harm and to a disruption in not only sales in agricultural products to either Canada or Mexico but potentially non-agricultural products as well?
4. Section 102(b) of The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26) provides an extensive list of principal trade negotiating objectives. Is it the position of the Office of the U.S. Trade Representative that the *only* means of making progress in meeting Section 102(b)(3)(J) is through the inclusion of the ill-advised seasonal or regional components to the existing trade remedies available to perishable seasonal products?
5. Given the opposition and credible concerns raised regarding both direct and indirect impacts associated with changing anti-dumping and countervailing duty proceedings to serve specific interests, will you commit to withdrawing the proposal at the upcoming round of negotiations?

As I have written to you in the past, NAFTA has facilitated significant gains in Arizona's economic prosperity since its implementation in 1994. In 2016, Arizona's trade with Mexico exceeded \$15 billion, including considerable activity related to cross-border trade in fresh fruits and vegetables. Certainly, U.S. trade laws regarding dumping and unfair practices should be dutifully enforced and, in this instance, remedies have been sought and obtained under the existing process. I hope we can avoid courting unnecessary consequence for U.S. business and consumers and avoid creating unnecessary trade disputes. I look forward to your answers to the above question.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Flake". The signature is stylized and cursive.

JEFF FLAKE
Member of Congress