

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

January 12, 2022

The Honorable Katherine Tai
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Tai,

It has been eighteen months since the entry into force of the United States-Mexico-Canada Agreement (“USMCA”), which modernized our trilateral trading relationship in ways that advance the interests of all Americans. The Agreement not only represents the high-water mark for bipartisan collaboration on trade but also creates a clear roadmap for the successful conclusion of new trade agreements with other key trading partners. As you have rightly emphasized, USMCA’s success will be measured by the extent to which it is fully implemented and enforced. I applaud the successes you have already achieved in the recent dairy market access case against Canada and in enforcing USMCA’s Labor Chapter commitments in Mexico under the Rapid Response Mechanism.

Nevertheless, I remain concerned about numerous measures the Governments of Canada and Mexico have adopted or proposed that appear to violate the letter of USMCA and threaten to fundamentally alter the benefit of the bargain that we negotiated. As your Deputy, Ambassador White, engages with his counterparts this week, I urge that he prioritize the measures referenced below, which are of particular concern to Republican Ways & Means Committee Members.

Mexican Energy Sector Measures

As you know, President López Obrador has embarked on an ambitious program to roll back Mexico’s 2013 constitutional reforms allowing private participation in the Mexican energy sector, threatening major investments by U.S. companies. He has directed Mexican regulators to use all available resources to preference Mexico’s state-owned petroleum company, *Petróleos Mexicanos* (PEMEX), and Mexico’s state-owned utility company, the *Comisión Federal de Electricidad* (CFE), to the detriment of U.S. energy-sector operators. His party has championed a legislative and constitutional “reform” agenda that would empower Mexican regulators to discriminate against U.S. companies by repudiating permits related to fuels and electricity.

These measures violate the letter and intent of USMCA’s innovative chapter on State-Owned Enterprises (SOEs). They also implicate the core obligations in USMCA’s Investment chapter and run directly counter to several commitments—including the national treatment obligation—in USMCA’s Goods chapter. Finally, several of these proposed measures, if enacted, will significantly increase Mexico’s greenhouse gas emissions, while undermining environmental and workplace safety conditions in Mexico’s hydrocarbons sector.

More specifically, we urge Ambassador White to raise the following Mexican energy sector measures with his Mexican counterpart:

- *Electricity Sector Constitutional Reform Bill:* On September 30, 2021, President López Obrador sent a Constitutional Reform Bill to the Mexican Chamber of Deputies to amend various provisions of the Mexican Constitution. If enacted, these amendments will prohibit CFE from contracting with private investors to supply electricity in Mexico and empower it to revoke pending and existing electricity generation permits. They will also discriminate against private sector investors by arbitrarily limiting or blocking their participation in the Mexican electricity market and in mining of lithium and other strategic minerals. These amendments would significantly delay the transformation of Mexico's power market into a reliable, financially robust, and low-carbon system.
- *Hydrocarbons Law:* In May 2021, the Mexican Legislature amended the Mexican Hydrocarbons Law to grant discretionary powers to the government to suspend or revoke permits across the fuels value chain. The new law would empower the Mexican government to expropriate privately-held facilities and turn their operations over to PEMEX. While Mexican courts have suspended the entry into force of this law pending judicial challenge, the Mexican government has adopted a slew of administrative and regulatory actions that discriminate against private investors in the hydrocarbons sector. These troubling actions, including limiting the places from which private companies can import or export energy products, all appear designed to benefit PEMEX and CFE while making it difficult for U.S. and other private companies to operate in Mexico.
- *Export-Import Permits:* On December 26, 2020, the Mexican Ministry of Energy (SENAR) eliminated 20-year import-export permits for hydrocarbons and replaced them with 1- to 5-year permits. It also increased the range of products requiring such permits. In addition to severely hindering the efforts of U.S. companies to establish and expand retail networks in Mexico, this measure impairs the ability of U.S. producers to import fuels from U.S. refineries, which are subject to more stringent emissions and safety standards. My understanding is that SENAR subsequently has cancelled 1,866 permits for the import and export of gasoline, diesel, LP gas, jet fuel, fuel oil, and crude.

Mexican Approvals of Agricultural Biotechnology Products / Ban on GMO Corn

Mexico remains in violation of its USMCA commitment to promptly consider applications for innovative U.S. agricultural biotechnology products and support all approval decisions with scientific evidence.

In addition, on December 31, 2020, President López Obrador issued a Decree stating his government's intention to phase out the use of glyphosate and genetically modified (GMO) corn for human consumption, a policy that lacks scientific support and would threaten the success of U.S. farmers in building Mexico into the top export market for U.S. corn and related products.

On October 20, 2021, following a meeting with his Mexican counterpart, Secretary Vilsack announced that Mexico would not move to block imports of GMO from the United States. We urge you to continue to press Mexico to confirm this commitment.

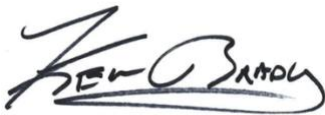
Canadian Digital Service Tax

Canada's proposed digital services tax (DST) would subject American technology companies to a three percent tax on annual revenues in Canada—a tax that will not apply to their Canadian competitors. This discriminatory tax implicates numerous USMCA commitments and erodes confidence in the OECD/G20 global tax agreement announced in October 2021.

Ambassador Tai, as you know, I and fellow Republican Ways & Means Committee Members have the highest confidence in your abilities. But we believe your hand in future enforcement efforts and negotiations will be significantly weakened if USTR does not zealously enforce *all commitments* within USMCA.

It is particularly imperative that USMCA's innovative provisions to discipline government measures that distort the conditions of competition and harm American firms and their workers are enforced. I urge you to empower Ambassador White to communicate these concerns in the clearest possible terms.

Sincerely,

A handwritten signature in black ink, appearing to read "KEVIN BRADY", written over a horizontal line.

Kevin Brady
Republican Leader
Committee on Ways and Means