

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

January 26, 2023

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

Dear Ambassador Tai:

While the United States works to establish new trade rules with countries around the world, it is critical that the United States continue to press for the implementation of existing trade rules, as well as take enforcement action when our partners have failed to meet their obligations. The United States-Mexico-Canada Agreement (USMCA), as the most recent and innovative agreement entered into by the United States, can raise standards in a number of areas—agricultural market access, digital trade, environmental standards, labor rights, and services access—ensuring our workers and businesses can compete on a level playing field. To date, however, USMCA’s full potential remains unrealized, and the Office of the United States Trade Representative (USTR) must continue to pursue full implementation and, where necessary, robust enforcement. Last year, we wrote to you to highlight a number of issues that USTR should prioritize for enforcement, and while some have been resolved, there are still many remaining and new concerns. It is critical that all parties are in full compliance with the Agreement.

We hope you share our commitment to strong enforcement, particularly when it comes to USMCA. An improved, functional dispute settlement mechanism was a key bipartisan win in the negotiations to upgrade the North American Free Trade Agreement (NAFTA). As the Senate Finance Committee Report for the USMCA Implementation Act noted:

The Committee fully supports the changes made by the Protocol of Amendment to preclude a USMCA Party from blocking composition of a dispute settlement panel . . . . In light of the continued impasse to reform WTO dispute settlement, it is more imperative than ever that the United States have recourse to effective and efficient dispute settlement under its FTAs.

To reap the full benefits of USMCA and the improved dispute settlement mechanism that the United States secured, USTR must actively pursue enforcement in all areas of non-compliance, and all parties must comply with the results in good faith.

We appreciate that USTR has litigated, under the dispute settlement mechanism, aspects of Canada’s failure to allocate properly its dairy tariff-rate quotas (TRQs), and we commend USTR

for continuing to press that issue. We also appreciate that USTR has resolved five cases under the new Rapid Response Mechanism (RRM) to address labor violations in Mexico. Yet we remain concerned that Canada and Mexico continue to ignore many other critical USMCA obligations, requiring a forceful and timely response from USTR. 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 fully pursuing enforcement actions as necessary.

### *Energy*

- **State-Owned Preferences:** We strongly support USTR’s July 2022 decision to initiate dispute settlement consultations with Mexico to address policies that discriminate against U.S. energy producers—including renewable energy producers—in favor of its state-owned electricity provider (Comisión Federal de Electricidad, or CFE) and its state oil company (Petróleos Mexicanos). As USTR has said, “Mexico’s actions include, but are not limited to, amendments to Mexico’s electricity law that would prioritize the distribution of CFE-generated power over cleaner sources of energy provided by private sector suppliers, such as wind and solar,” as well as “Mexico’s delays, denials, and revocations of U.S. companies’ abilities to operate in Mexico’s energy sector, including with regard to renewable energy projects.” These measures jeopardize U.S. investment in Mexico’s energy sector, depriving American providers of a promised benefit under USMCA, and they also jeopardize Mexico’s ability to shift to cleaner energy sources and meet its climate goals. USTR must use the USMCA dispute settlement process to push Mexico to abandon these discriminatory policies.

### *Agriculture*

- **Biotechnology:** Not only has Mexico failed to ensure biotechnology products are subject to a timely, transparent, and science-based approval process—the government has actually been backsliding on these commitments. Of particular concern is a Presidential Decree banning biotech corn for human consumption by 2024. Such a ban would deprive American farmers of access to the large Mexican market and undermine access to innovative crops that will be key to supporting growing populations and weathering climate change. More recently, Mexico imposed an export tariff on white corn, further undermining trade in agricultural products. Mexico’s actions raise serious concerns under USMCA, and USTR must address these issues as soon as possible.
- **Dairy:** We commend USTR for its successful challenge to Canada’s dairy TRQs, which had reserved portions of the quota for domestic producers and shut many American producers out of the market. Concerningly, however, Canada’s efforts at compliance fell notably short, leading USTR to bring a follow-up dispute settlement action. We strongly support USTR’s efforts to resolve this issue once and for all, and we encourage the agency to closely monitor implementation of panel findings in this case.

Further, it is critical that USTR continue to insist on Canada’s and Mexico’s full and timely compliance on other issues important to U.S. dairy farmers, including Canada’s milk pricing and export surcharges and Mexico’s recognition of certain common cheese names and new conformity assessment requirements for imported dairy products. We ask that USTR continue to consult with industry and other stakeholders to ensure these issues

are addressed in a timely manner.

### *Environment*

- **Marine Life:** Last year, USTR initiated consultations under USMCA's environment chapter with respect to illegal trafficking of the totoaba fish and the critical endangerment of the vaquita porpoises that are often caught in illegal totoaba nets. We strongly support this effort to hold Mexico accountable for the groundbreaking commitments on marine life and sustainability included in USMCA. However, we are concerned that Mexico has not made sufficient progress in addressing these issues, and we urge USTR to take additional action as necessary, including by elevating the environmental consultations to full-fledged dispute settlement consultations.

### *Digital Trade*

- **Discriminatory Taxation:** USMCA included the United States' first digital chapter in any free trade agreement, and it was intended to promote trade in digital goods and services throughout North America, supporting innovation, jobs in the technology industry, consumer protections, and the free flow of information. In spite of this, Canada has pursued a discriminatory digital services tax (DST) that is targeted at U.S. employers. Canada's DST raises concerns regarding its commitments under USMCA, as well as the OECD inclusive framework agreement, where 137 countries agreed not to enact unilateral DSTs while negotiations on international taxation of digital services are ongoing. We understand that you have raised these concerns with Minister Ng and emphasize the importance of continuing to press Canada to abandon these discriminatory measures through dispute settlement, use of other tools available under U.S. laws, or other appropriate avenues.

### *Services*

- **Online Content:** In addition to pursuing a DST, Canada has been moving ahead on other troubling policies that target U.S. technology companies and raise concerns under USMCA. The Online Streaming Act would require streaming services to fund Canadian-made content and promote it on their platforms. This bill would mandate preferential treatment for Canadian content and deprive U.S. creatives of the North American market access they were promised under USMCA.

Meanwhile, Canada's Online News Act would require the largest social media platforms to bargain with Canadian news organizations and pay for the right to display news stories, headlines, snippets, and links. Again, this policy targets U.S. companies for the benefit of Canadian news producers and raises national treatment concerns under USMCA.

### *Labor*

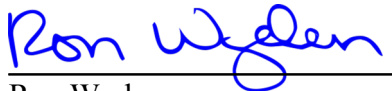
- **Mexico's Reforms and Forced Labor:** In USMCA, Mexico agreed to implement reforms to its labor laws that are important for leveling the playing field for workers across North America. Yet these reforms have been slow and inconsistent. We appreciate USTR's continued use of the RRM to redress violations of worker rights in many facilities across Mexico, but we also urge USTR to continue monitoring and pushing for full implementation of broad reforms.

In addition, USTR must work to eliminate forced labor in Mexico, including forced labor in the production of certain tomatoes that have been banned from importation into the United States pursuant to a withhold release order (WRO) issued by Customs and Border Protection (CBP) in October 2021. Forced labor in supply chains is not only morally abhorrent, but it also harms workers on both sides of the border. It is unacceptable that, nearly three years after USMCA entered into force, Mexico has not eliminated forced labor within its borders, and we urge USTR in the strongest terms to work with CBP to resolve this issue.

Congress approved USMCA with large bipartisan majorities, in no small part because the deal included strong rules and the mechanisms necessary to enforce those rules. Three years later, it is disappointing that Canada and Mexico have failed to come into full compliance with the Agreement—and, in some cases, have flouted their obligations. To ensure that all parties and stakeholders—including U.S. farmers, workers, and businesses—reap the full benefits of USMCA, USTR must take decisive action to ensure full compliance with the Agreement and with dispute settlement panel findings. It is critical to ensure that every chapter of USMCA is fully and timely enforced.

We stand ready to work with you and look forward to receiving a briefing on USTR’s progress on USMCA implementation and enforcement. Thank you for your time and attention to these important issues.

Sincerely,



Ron Wyden  
United States Senator  
Chairman, Committee on  
Finance



Michael D. Crapo  
United States Senator  
Ranking Member, Committee  
on Finance