115th Congress, 2d Session – – – – – – – – – – – – House Document 115–104

REPORT TO THE CONGRESS ON THE EXTENSION OF TRADE PROMOTION AUTHORITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A LETTER REQUESTING THAT THE CONGRESS EXTEND TRADE PROMOTION AUTHORITY PROCEDURES FOR THREE YEARS, AND A REPORT TO THE CONGRESS ON THE EXTENSION OF TRADE PROMOTION AUTHORITY, AS REQUIRED BY SEC. 103(c)(2) OF THE BIPARTISAN CONGRESSIONAL TRADE PRIORITIES AND ACCOUNTABILITY ACT OF 2015

MARCH 21, 2018.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
79–011 WASHINGTON : 2018

To the Congress of the United States:

Today, I am requesting that the Congress extend trade authorities procedures for 3 years. As required under section 103(c)(2) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Trade Priorities Act), I have attached to this message the report describing the progress that has been made in trade negotiations by my Administration and the reasons why the extension is necessary.

As noted in the 2018 Trade Policy Agenda, my Administration has launched a new era in American trade policy, driven by a determination to use the leverage available to us as the world's largest economy to open foreign markets, and to obtain more efficient global markets and fairer treatment for American workers. One of the major pillars supporting my trade policy is the pursuit of better trade deals.

As you know, my Administration is pursuing the renegotiation of the North American Free Trade Agreement—something many have promised but have failed to deliver. In addition, my Administration is exploring potential trade agreement partners, including in Africa and Southeast Asia.

I hope my Administration can continue to work with the Congress to pursue new and better trade deals for America's workers, farmers, ranchers, and businesses. Extension of trade authorities procedures is essential to fulfill that task and to demonstrate to our trading partners that my Administration and the Congress share a common goal when it comes to trade.

DONALD J. TRUMP.

THE WHITE HOUSE, *March 20, 2018.*

Report to the Congress on the Extension of Trade Promotion Authority

Consistent With Section 103(c)(2) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015

I. INTRODUCTION AND REQUEST FOR EXTENSION OF TRADE PROMOTION AUTHORITY

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Trade Priorities Act) became law on June 29, 2015. The Trade Priorities Act provides for "trade authorities procedures" to apply to bills implementing certain trade agreements that the President enters into before July 1, 2018.

The Act provides for the extension of trade authorities procedures for agreements concluded before July 1, 2021, if the President so requests in a report submitted to the Congress by April 1, 2018, and neither House of Congress adopts an extension disapproval resolution.

As provided for in Section 103(c)(2) of the Trade Priorities Act, the President requests that trade authorities procedures be extended for agreements entered into before July 1, 2021. Section 103(c)(2) requires the submission of a report that includes:

(a) a description of all trade agreements that have been negotiated under Section 103(b) of the Trade Priorities Act and the anticipated schedule for submitting such agreements to the Congress for approval;

(b) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives (hereinafter "negotiating objectives") of the Trade Priorities Act, and a statement that such progress justifies the continuation of negotiations; and

(c) a statement of the reasons why the extension is needed to complete the negotiations.

Below is information addressing negotiations underway, the progress that has been made in those negotiations, information on future potential negotiations, and the reasons why extension of trade authorities procedures for agreements entered into before July 1, 2021 is needed.

II. EXTENDING TRADE AUTHORITIES PROCEDURES IS ESSENTIAL

President Trump and his Administration recognize the importance of negotiating free trade agreements to open markets for products made and grown by U.S. workers and farmers. At the same time, President Trump and his Administration also recognize the significant frustration felt by many workers who have been disadvantaged by changes in global markets and the growing threats of outsourcing. As a result, a key pillar of the President's trade policy agenda is to improve existing trade deals and negotiate new ones that lead to more efficient global markets and fairer treatment for American workers, ranchers, farmers, and businesses.

President Trump has been focused on improving U.S. trade policy from the very first days of his Administration. As early as February 2, 2017, the President invited Congressional leaders to begin the process of engagement and consultations necessary for renegotiation of the North

American Free Trade Agreement (NAFTA). The Administration has begun to deliver on its promise of a new path on trade with the NAFTA renegotiation, and it intends to go much further by aggressively negotiating new trade agreements that work better for all Americans. Extending trade promotion authorities for agreements entered into before July 1, 2021 is critical for this Administration to be able to carry out its transformative trade agenda.

The Administration recognizes the value in receiving an up-or-down vote within a set period of time when an agreement is submitted to Congress. In light of this, the Administration is fully committed to close and frequent collaboration with Congress throughout the process of a negotiation, consistent with the Trade Priorities Act. To help achieve this, the Act establishes two congressional advisory groups, the House Advisory Group on Negotiations and the Senate Advisory Group on Negotiations, to provide advice to the Administration in connection with trade negotiations, and also provides for certain consultation requirements. In addition, the Administration's trade negotiators brief and seek advice from Congressional committees before or during each negotiating round. This process of close coordination and a regular exchange of information between the two branches helps ensure the successful passage of agreements once submitted to Congress.

In addition to Congressional consultations, the Trade Priorities Act provides a framework for receiving crucial advice from the private sector and the public before and during negotiations. The Administration also works closely with private sector and civil society advisors who are appointed as part of its official trade advisory system. These advisors play an important role by providing views and recommendations to the Administration before, during, and after the negotiations and by providing advisory opinions to the Congress and to the President on agreements once they are completed.

The advice received through the Congressional consultations, trade advisory committee consultations, and public engagement is vital in assisting U.S. negotiators as they seek to achieve the best result for U.S. workers, ranchers, farmers, and businesses. The Administration looks forward to continuing on these engagements in the future as we continue to negotiate new agreements that deliver for all Americans.

III. NEGOTIATIONS IN PROGRESS AND FUTURE NEGOTIATIONS

A. North American Free Trade Agreement (NAFTA)

NAFTA entered into force on January 1, 1994, nearly a quarter of a century ago. At the time, President Clinton and his Administration promised that the agreement would be a "force for social progress as well as economic growth."

Unfortunately, NAFTA has fallen short in critical respects and has not achieved these lofty promises. While NAFTA has had positive effects for certain segments of the U.S. economy, it has left others behind. For too many Americans, NAFTA has meant job losses, especially in the manufacturing sector, and the closing down and relocation of factories from American towns and cities across both borders. For example, our goods trade balance with Mexico, until 1994 characterized by reciprocal trade flows, quickly became a deficit of over $15 billion in 1995, and over $71 billion by 2017. In addition, the United States has had a trade deficit in goods with Canada in every year since 1994.

NAFTA also needs to be modernized. The U.S. economy and U.S. businesses have changed considerably since NAFTA was negotiated 25 years ago. Many NAFTA chapters are outdated and fail to reflect modern standards. Digital trade, a major driver of our economy, was in its infancy when NAFTA was negotiated and entered into force. The Trade Priorities Act also contains new negotiating objectives to address new challenges to trade – for example, the impact of state-owned enterprises. It also recognizes the importance of disciplines in the areas of labor and environment, which are relegated to side agreements in the current NAFTA. After 25 years, it makes sense to review what has worked and what has not worked, and to make improvements to adapt to new realities.

Many politicians have called for the renegotiation of NAFTA over the years. President Trump has made this a priority since early on in his Administration. Almost immediately after inauguration, President Trump began to fulfill this promise by engaging in high level consultations with Congress on plans to renegotiate. On May 18, 2017, within a few days after his confirmation as the U.S. Trade Representative, Ambassador Lighthizer provided Congress with the 90-day notice required under the Trade Priorities Act to launch renegotiations.

Progress to Date

The NAFTA renegotiation began on August 16, 2017 – immediately after the 90-day Congressional notification period expired. These negotiations are currently ongoing. Since the 90-day notice of intent to negotiate was sent, USTR has moved rapidly on the negotiations. The following summarizes some of the key steps taken in an effort to allow for a seamless transition to an updated rebalanced and modernized version of NAFTA:

- USTR reviewed more than 12,000 public comments received with respect to the renegotiations.
- USTR prepared a complete new text for the Agreement, replete with new ideas and fresh approaches.
- Since August 2017, USTR and other U.S. government agencies have participated in seven negotiating rounds with Canada and Mexico and held many other informal discussions.
- As required by the Trade Priorities Act, USTR published its objectives for the renegotiation in July 2017, and provided an update in November 2017 to reflect the full scope of U.S. proposals.

- Since launching negotiations, Ambassador Lighthizer and USTR Staff have met personally with dozens of Members of Congress, and have spent more than 1,400 hours in consultation with Members and their staffs.

- During this process, USTR has also held extensive consultations with members of the private sector, representatives of labor, ranchers, farmers, and members of the Non-Government Organizations (NGO) community. There have been dozens of scheduled briefings to official advisory committees, hundreds of hours of stakeholder consultations, and a continuing open door policy.

- At each negotiating round, USTR chapter leads brief Congressional staff and members of advisory committees. These advisory committees cover agricultural, industry, small and medium-sized business, and labor and environmental concerns.

Negotiating Goals

Overall, the Administration has two primary goals with respect to the NAFTA renegotiation.

First, it wants to update NAFTA with modern provisions representing a high-standard agreement for the 21st century – including strong provisions on digital trade, intellectual property, good regulatory practices, and treatment of state-owned enterprises. The three NAFTA Parties agree that NAFTA is outdated – it was signed before most Americans had ever heard of the Internet. The Administration believes it is time to bring NAFTA up to date.

Second, the Administration seeks to rebalance NAFTA. NAFTA provides Canada and Mexico with unique access to our market, access that other countries lack. It should not serve as a vehicle for encouraging companies seeking to serve the U.S. market to put their operations elsewhere, but should serve to provide additional opportunities to send our goods and services into our partners' markets.

With this in mind, and as reflected in its Summary of Specific Negotiating Objectives, USTR has set as one of its primary objectives for these renegotiations to "improve the U.S. trade balance and reduce the trade deficit with the NAFTA countries." To accomplish this, we are focusing our efforts on tightening rules of origin for products imported into the United States from Canada and Mexico for which we have significant trade imbalances, like automobiles and automotive parts. Our proposals seek to strengthen the rules of origin for such products, and make them more enforceable through stricter tracing requirements to ensure that they contain considerable regional and U.S content.

We are also determined to avoid provisions that will encourage outsourcing. If a company decides to build a factory in Canada or Mexico – and it has legitimate, market-based reasons for doing so – then it should act as the market dictates. A trade deal should be about increasing opportunities for market efficiency, not encouraging foreign investments that are otherwise not viable.

In addition, one area where NAFTA is in definite need of an update is with respect to labor and environment, which were included in side agreements 25 years ago. We have made serious proposals for labor and environment chapters within the core of the Agreement that will help level the playing field for American workers and businesses and raise standards in these areas. For labor, these include requiring freedom of association and the effective recognition of the right to collective bargaining as well as requiring NAFTA countries to have laws governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. For the environment, our proposals would require that NAFTA countries not fail to effectively enforce their environmental laws and that they adopt and maintain measures implementing their obligations under select Multilateral Environmental Agreements, and that they address a wide array of environmental issues including conservation and combatting trafficking of wildlife, timber, and fish. For both chapters, we are insisting that all of the provisions be subject to the same dispute settlement mechanism that applies to other obligations in the agreement.

Furthermore, we are seeking to ensure that there are mechanisms for ensuring that the Parties assess the benefits of the Agreement on a periodic basis and that there are appropriate mechanisms to ensure that the rules are enforced, while preserving our ability to act in our national interest.

The Summary of Objectives for the NAFTA Renegotiation, updated in November 2017 and attached to this report, provide more specific information on the objectives we are seeking to achieve with the NAFTA renegotiation. Those objectives are consistent with the negotiating objectives set out in the Trade Priorities Act.

Achieving our core and specific objectives for a renegotiated NAFTA would certainly prove a fairer deal for all Americans.

Anticipated Schedule

NAFTA negotiations are ongoing. The Administration does not want to set artificial deadlines for conclusion. A renegotiated NAFTA and an implementation bill will be sent to Congress for approval at an appropriate time.

B. World Trade Organization

If the WTO is to reclaim its credibility as a vibrant negotiating forum, Members must take advantage of every opportunity to advance work and seize results as they present themselves. The United States seeks to work with other WTO Members to begin the process of identifying opportunities to achieve accomplishments, even if incremental ones, and avoid buying into the predictable and often risky formula of leaving everything to a package of results for Ministerial action. In particular, the United States is looking forward to discussions on agriculture, fisheries subsidies, and digital trade among other issues.

While it is unclear what kinds of outcomes these efforts will result in, extension of trade authorities procedures will send a positive signal that the United States is serious about our engagement in these and other areas.

a. WTO Agriculture Negotiations

In 1994, America's farmers and ranchers entered into a new world in trade with countries around the world for the first time agreeing to reduce import tariffs on food and agricultural products and concomitantly reduce trade distorting domestic support and export subsidies. U.S. food and agricultural exports since then have expanded 192 percent providing important additions to American farmer's incomes and supporting our rural communities. Since 1994, however, we have witnessed a failure of the WTO to make significant headway in further negotiations to eliminate trade distortions in agricultural trade. As import tariffs faced by U.S. exporters declined with the implementation of the Uruguay Round commitments, our farmers and ranchers have experienced an increase in unwarranted non-tariff barriers other countries have imposed on our exports. As we embark in 2018, the Trump Administration will renew efforts at the WTO in two key areas to help America's farmers and ranchers compete on an even playing field: a reset of the WTO agriculture negotiations and work to eliminate barriers to the use of safe tools and technologies by our farmers.

Agriculture Negotiations Reset

The WTO is a critical institution for eliminating unfair policies and promoting a market-based trading system for agricultural producers around the world. The Trump Administration strongly supports the continuation of the reform process to eliminate unfair trade policies and pursue the long-term objective of substantial, progressive reductions in market-distortive support and protection.

Unfortunately, the recent negotiating history at the WTO has focused on perpetuating unfair and protectionist measures that run counter to what is best for America's, and the world's, farmers and ranchers. With the failure of the Doha Development Agenda, the Trump Administration in December 2017 called for WTO countries to reset and reinvigorate the agriculture negotiations to tackle the real-world international trade concerns facing agriculture today. To reset the negotiations, the United States advocates for countries first to improve the transparency of their policies and programs by providing mandated notifications on a timely basis. Second, the United States calls on countries to embrace the role that fair and liberalized trade plays in advancing farmer welfare in all countries and to support market-oriented reforms as the primary objective of the WTO.

Enabling Farmer Access to Safe Tools and Technologies

Foreign regulatory barriers, such as the failure to authorize in a timely manner safe and effective production tools and technologies, increasingly limit the ability of American farmers to use such tools and technologies, which enhance production and provide for economic well-being in rural communities. Regulatory approaches of our trading partners that lack sufficient scientific justification, are unnecessarily burdensome, and are not in line with international standards result in unwarranted barriers to U.S. trade and innovation. At the WTO 11th Ministerial Conference, the United States joined with 16 other WTO Members in a joint ministerial statement outlining our concerns that these barriers are having a substantial negative impact on production of, and trade in, safe food and agricultural products, and we made recommendations for how to address those barriers. In 2018, the Trump Administration will build on this work to reduce regulatory barriers to exports of food and agriculture products. Specifically, working with a coalition of WTO countries, the United States will advance implementation of the recommendations in the ministerial statement to address pesticide-related issues that impede and disrupt agricultural production and trade.

The initiative will reaffirm the central role of risk analysis in assessing, managing and communicating risks associated with pesticide use to protect public health. Focusing on risk analysis will also enable farmers around the world to have access to the safe use of pesticides and technology and facilitate trade in food and agricultural products. Through science-based decision-making and countries' abiding by the rules of the WTO on food safety, we can reduce unfair regulatory barriers in foreign markets to America's agriculture products.

b. Fisheries Subsidies

WTO Members began work to discipline harmful fisheries subsidies in 2001, when global trade in seafood totaled approximately $57 billion. At the time, approximately 15 to 18 percent of global fish stocks were estimated to be in an overfished condition, and about half of the stocks were considered to be in a fully fished condition (meaning no room to expand catches).

Today, the situation has significantly worsened for the fish, the legitimate fishermen trying to support their families by catching them, and the millions of developing country consumers who rely on fish as a key source of protein. As of 2016, global trade in seafood had increased to $126 billion, and China alone exported nearly as much seafood annually as the next three largest exporters combined. Global fishing capacity has increased approximately 50 percent from 2001 to a level that some have estimated is 250 percent greater than what is needed to fish at sustainable levels.

Harmful global subsidies to support fishing are estimated to total up to $20 billion annually. These harmful fisheries subsidies are considered to be a major contributing factor in the unsustainable exploitation of fisheries resources. The Food and Agriculture Organization (FAO) most recently estimated that approximately 31 percent of global fish stocks are now in an overfished condition, and almost 60 percent are fully fished and therefore are at risk of overexploitation without effective management.

Urgent action is needed to address the overexploitation of fisheries resources. WTO Members can make a significant contribution to ending the destructive subsidy programs that are exacerbating overfishing and overcapacity by agreeing to new prohibitions on the most harmful fisheries subsidies. The Trump Administration supports strong prohibitions on subsidies that contribute to overfishing and overcapacity and those that support illegal fishing activities. The Administration will continue to press for an ambitious agreement on fisheries subsidies that includes enhanced transparency and notification of fisheries subsidies programs, which has been lacking in the WTO for years. To be meaningful, we will insist that an agreement must not exempt the largest subsidizers, producers, and exporters of seafood, including China and India. The

United States will continue to work with like-minded WTO Members to achieve new WTO rules that can help our oceans and our law-abiding fishermen.

c. Digital Trade

Digital trade provides enormous value to all sectors of the U.S. economy, and U.S companies face significant challenges when foreign governments impose restrictions on digital trade. These barriers disproportionately impact small businesses, manufacturers, and family farmers who utilize Internet-enabled tools to create and reach new foreign markets and customers. In December, the United States joined 70 other WTO Members in initiating exploratory work on possible future negotiations on these issues. The Trump Administration intends to use these discussions as a valuable forum to develop commercially meaningful rules that address restrictions on digital trade, and will work with like-minded WTO Members who share the Administration's interest in moving forward on digital trade issues within the WTO.

C. Expanding Trade and Investment with the United Kingdom

The United States and the United Kingdom (UK) have a deep, long-standing trade and investment relationship. The UK is America's seventh-largest goods trading partner and largest partner in services trade. In 2016, total two-way goods and services trade was $227 billion, with a goods surplus of $1 billion and a services surplus of $14 billion. The United States and the UK have directly invested more than $1 trillion in each other's economies. We share a common language, business culture, good regulatory practices and transparency, and respect for intellectual property rights.

In 2016, the UK voted in a referendum to leave the European Union (EU), and the UK is in the process of negotiating the term of that departure (commonly called "Brexit"). The Trump Administration seeks to maintain and deepen our economic relationships with both the UK and the EU. The UK's negotiations with the EU on the terms both of its exit and its future relationship with the EU will likely have significant consequences for U.S. trade with both the UK and the EU.

In March 2017, the UK initiated a two-year process to negotiate its exit from the EU. In December 2017, the UK and EU issued a Joint Progress Report that laid out their agreement in principle on several issues related to the exit, referred to as the first phase of negotiations. During the second phase of negotiations, which has already begun, the UK is discussing a transitional arrangement for their future relationship outside of the EU, which is expected to start in March 2019, and last at least through 2020. We anticipate that during the transition period, the UK would be out of the EU and free to negotiate trade agreements with other countries, but it would remain unable to implement any agreements until the end of the transition period.

President Trump and UK Prime Minister Theresa May met in January 2017 and agreed to deepen current U.S.-UK trade and investment and lay the groundwork for a future trade agreement. While U.S.-UK trade is already substantial, and our economies are highly integrated, there is a range of areas where one could expect an ambitious FTA to be mutually beneficial. These include trade in industrial and agriculture goods, differences in regulatory systems, and commitments in services, investment, and intellectual property that can foster deeper trade and innovation.

In July 2017, the United States and the UK established a Trade and Investment Working Group, which is focused on providing commercial continuity for U.S. and UK businesses, workers, and consumers as the UK leaves the EU and exploring ways to strengthen trade and investment ties ahead of the exit. The Working Group will also begin to lay the groundwork for a potential free trade agreement, once the UK has left the EU, and explore areas in which the two countries can collaborate to promote open markets around the world. The Working Group is examining a range of trade-related areas, including industrial and agricultural goods; services, investment, financial services, and digital trade; intellectual property rights and enforcement; regulatory issues related to trade; labor and environment; and small- and medium-sized enterprises (SMEs).

Because the UK is constrained in starting negotiations before its formal exit from the EU in March 2019, it is imperative that trade authorities procedures be extended.

D. Countries of the Trans-Pacific Partnership

The U.S. withdrawal from the Trans-Pacific Partnership Agreement (TPP) allows the United States to pursue better and fairer trade relationships with the 11 other countries in the TPP. It should be noted that the United States already has free trade agreements with six TPP countries: Canada, Australia, Mexico, Chile, Peru, and Singapore. In 2017, these countries accounted for 44 percent of the total gross domestic product ("GDP") of the 11 TPP countries. As discussed above, the United States is currently in talks to update our free trade agreement with Mexico and Canada.

The five remaining TPP countries are Japan, Vietnam, Malaysia, New Zealand, and Brunei. Japan is by far the largest of these countries – it accounts for 88 percent of their combined GDP. Since President Trump's visit with Japan's Prime Minister Shinzo Abe in February 2017, the United States has made clear that it seeks a closer trade relationship with Japan. President Trump has also indicated a willingness to engage with the other TPP countries – either individually or collectively – on terms that will lead to significantly improved market outcomes. In 2018, the Trump Administration will continue efforts to build better and fairer trading relationships with these countries.

E. Other Negotiations

President Trump and his Administration are committed to undertake bilateral trade agreements with nations that want to be our partners and that will abide by the principles of fair and reciprocal trade. This will help U.S. businesses gain access to markets around the world and ensure that they are not disadvantaged vis-à-vis competitors. The Administration is exploring numerous potential trade agreement partners, including in Africa and Southeast Asia. The Administration will seek balanced deals for American workers, farmers, ranchers, and businesses, small and large. Extension of trade authorities procedures will allow the Administration to explore potential trade agreement opportunities in consultation with Congress.

F. Priorities and Objectives Generally

In all negotiations, current and future, the Administration will be guided by the negotiating objectives set out in the Trade Priorities Act. The Administration will consult with Congress and seek robust agreements that level the playing field for our workers, farmers, ranchers, and businesses. The Administration will also seek mechanisms to ensure that agreements are properly implemented by our trading partners and that there are appropriate remedies when they are not properly implemented or fall short of the expected benefits. This is essential for maintaining popular support at home.

In addition, the Administration will seek to resolve actual problems in the context of the negotiations, and to the extent possible, even before negotiations can start.

IV. CONCLUSION

The Trump Administration is determined to negotiate and conclude trade agreements that level the playing field for U.S. workers and serve the U.S. national interest. The task has only just begun and it can only be successful by having the executive and legislative branches work together, on a bipartisan basis, with the guidance provided through the Trade Priorities Act consultative mechanisms and the assurance of an up-or-down vote on trade agreements.

Seven previous presidents have enjoyed trade authorities procedures. It is essential that the authorities be renewed to demonstrate to our trading partners that the Administration and Congress share a common goal when it comes to trade.