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UNITED STATES CONGRESS

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Ambassador Ron Kirk  
U.S. Trade Representative  
600 Seventeenth Street NW  
Washington, DC 20508

Dear Ambassador Kirk,

As Chairman of the Subcommittee on Terrorism, Nonproliferation and Trade, I have received inquiries about the trade sanctions imposed by Mexico in connection with the NAFTA cross-border trucking dispute.

I am writing to inquire whether you intend to challenge Mexico's March 16, 2009 application of sanctions against \$2.3 billion worth of U.S. trade. NAFTA Article 2019(3) specifically contemplates such a review. *"On the written request of any disputing Party delivered to the other Parties and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive."*

As you are aware, under NAFTA, the maximum "sanction" allowed to be imposed against each category of goods is limited to a snap-back to the pre-NAFTA tariff level. A Mexican official cited in the March 30, 2009 edition of *Inside U.S. Trade* explained that the tariffs Mexico had imposed against \$2.3 billion in U.S. trade would generate about \$427 million in tariff revenue. The official said that this was roughly the amount of income Mexican truckers are losing by being denied NAFTA-granted access to U.S. roadways, which he said was close to \$500 million.

However, with the information available regarding the Mexican trucking fleet and relative cost structures, an independent assessment, conducted by Public Citizen, has estimated Mexico's highest possible annual losses to be between \$69 million to \$227.6 million. That is to say that Mexico's real losses are 16 to 53 percent of what is being imposed. It has been nearly three months since Mexico slapped these sanctions against U.S. trade. If Mexico has imposed tariffs that greatly exceed the actual damages in this matter, I would assume that USTR is working to seek immediate relief for U.S. producers.

In this regard, can you please inform me what actions the USTR has taken or has requested other U.S. government agencies to undertake so as to calculate both the cost on U.S. producers of the sanctions Mexico has imposed and the actual losses Mexico might



legitimately claim? Can you please inform me if there are delays in obtaining this information and what is the nature of these delays? This data is needed to file a challenge against Mexico's sanctions as being "manifestly excessive." Finally, can you please inform me about what other activities are now underway to initiate a NAFTA sanctions-level challenge? If you have decided not to proceed with such an action, please inform me and provide the reasoning behind such a decision.

Congress is committed to ensuring the safety of American roadways. Unfortunately, NAFTA set a specific date by which cross-border trucking market access was to go into effect, but did not set any deadline for the upward harmonization of safety, environmental and other standards necessary to ensure such cross-border trucking did not pose serious threats to public safety and health. There remain many outstanding issues with respect to Mexico's domestic trucks' safety and emission standards, driver licensing, insurance and data-keeping systems. That is why I joined my colleagues in voting to eliminate the funding for the Bush administration's attempts to permit access to all U.S. roads by Mexican-domiciled trucks.

There is precedent of other governments successfully challenging sanctions levels and maintaining their laws. When the WTO ordered the European Union (EU) to allow imports of beef that did not meet its non-discriminatory domestic consumer safety standards, the EU decided to stand by the consumer safety law in question. The EU then initiated a challenge at the WTO to the U.S. claim of \$500 million in damages and had the damages reduced significantly to approximately \$120 million.

The Mexican government has yet to take responsibility to raise its level of safety enforcement for Mexican trucks and drivers. Until that happens, it is unlikely that the United States alone can ensure that all Mexican trucks and drivers entering the U.S. meet our standards for safety. Further, were this even possible, it is unacceptable that U.S. taxpayers should bear the burden of making up for the Mexican government's shortcomings with respect to safety enforcement so that Mexican-domiciled trucks can enjoy NAFTA-granted access to U.S. roads. These are issues that should be included in the NAFTA renegotiation to which President Obama committed in 2008. However, such a renegotiation will take time. Given all of these factors, getting Mexico's sanctions against the United States down to levels that represent Mexico's real losses is critical.

American businesses and workers may have been unfairly harmed by inappropriate tariffs recently levied by the Mexican government. I look forward to hearing what steps the USTR is undertaking to bring relief to U.S. producers.

Sincerely,



BRAD SHERMAN  
Member of Congress