MODERNIZATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

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MODERNIZATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

TUESDAY, JULY 18, 2017

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommitteee met, pursuant to notice, at 10:02 a.m., in Room 1100, Longworth House Office Building, the Honorable Dave Reichert [Chairman of the Subcommittee] presiding.

[The advisory announcing the hearing follows:]

WAYS AND MEANS
CHAIRMAN KEVIN BRADY

Chairman Reichert Announces Hearing on Modernization of the North American Free Trade Agreement (NAFTA)

House Ways and Means Trade Subcommittee Chairman Dave Reichert (R-WA) announced today that the Subcommittee will hold a hearing on "Modernization of the North American Free Trade Agreement (NAFTA)." The hearing will focus on how high-standard and ambitious trade agreements that when thoroughly implemented and fully enforced can open much-needed markets to U.S. agriculture exports and benefit rural and urban America. **The hearing will take place on Tuesday, July 18, 2017, in room 1100 of the Longworth House Office Building, beginning at 10:00 AM.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Tuesday, July 25, 2017**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at http://www.waysandmeans.house.gov/.

Chairman REICHERT. Well, good morning. The Subcommittee will come to order. Welcome to the Ways and Means Trade Subcommittee hearing on modernization of the North American Free Trade Agreement.

Before hearing from our witnesses, I am going to take the time to make just a couple of points. Since its entry into force in 1994, the North American Free Trade Agreement, or NAFTA, has transformed the United States and North American economy. It has reduced barriers to our exports, and allowed American businesses to sell goods and services more freely and competitively to markets around the world. NAFTA has given us a huge advantage in creating an integrated production base and supply chain.

For example, we have improved our competitive edge against China, because we can take advantage of our trading partners' role in the production process. We have done so while creating jobs here in the United States across all three economic sectors: agriculture, services, and manufacturing.

NAFTA has benefitted my home state of Washington, in particular. Our businesses have exported more than $134 billion in goods to Canada and Mexico since 1994, supporting jobs in communities around Washington State.

Because of the elimination of Mexico's 20 percent tariff on apples and pears through NAFTA, our exports of these products increased by 70 percent to Mexico. Now, each year, 15 percent of Washington State's apples and pears are destined for Canada and Mexico. Moreover, consumers across Washington and the country are able to save costs when they purchase goods from Canada and Mexico.

Despite its success, NAFTA was negotiated more than two decades ago, when the economic landscape looked very different. In 1994, the digital economy was in its infancy. Mexico had yet to undertake significant legal and regulatory reforms. And the North American supply chain had not yet fully developed. Today's challenges require new rules, not only to reduce tariffs on our exports, but to remove non-tariff barriers, as well.

And I am pleased that the Administration's NAFTA-negotiating objectives, which were released yesterday, set a high and ambitious bar to address many of these challenges head on. Red tape and burdensome customs procedures, the expansion of forced localization requirements, and the restrictions on the flow of cross-border data, and inadequate rules governing e-commerce and—are just some of the problems Washington's businesses are facing in today's digital economy.

Our farmers and ranchers are fighting against the adoption of arbitrary sanitary and pseudo-sanitary restrictions not based on science and the use of graphic indicators as a form of protectionism. For our dairy producers, we must address Canada's dairy policies, including the national ingredient strategy, which constrain our producers from exporting to Canada and around the world.

The need for modern trade rules is clear, particularly in light of our withdrawal from TPP earlier this year. We must continue to lead in setting the high standards needed for today's economy.

Today we will hear directly from U.S. companies across all sectors about the specific issues they face, how NAFTA has worked for them, and how NAFTA can be improved to grow American exports and create more jobs here at home. We will explore important questions like how NAFTA can better address distortions created by state-owned enterprises.

How can we help our technology sector continue to thrive and lead the world in innovation?

What challenges do small businesses face because of overly-burdensome customs procedures or outdated de minimi thresholds?

How do we ensure that Mexico applies the benefits of the information technology agreement to U.S. producers?

And we must be sure to enforce new and current rules and provisions through effective dispute settlement provisions, including the proven tool of investor-state dispute settlement.

It is important that we get this right. A modernized NAFTA agreement will serve as a template for future agreements with our trading partners, particularly in the Asia-Pacific region, where our withdrawal from TPP has left an urgent void.

Finally, it is vital that any transition to an approved NAFTA be seamless. Canada and Mexico remain our number one and three trading partners, two of our oldest allies. We will break down the remaining barriers in Canada and Mexico, but we must also preserve the good that NAFTA has done in enhancing U.S. strength and increasing the competitiveness of the North American trading block, as a whole, against the rest of the world. When North America wins, America wins.

Chairman REICHERT. I will now yield to Ranking Member Bill Pascrell for his opening statement.

Mr. PASCRELL. Thank you, Mr. Chairman. It is an honor to work with you. We have worked on many other projects together, and they have all turned out pretty good. We will see about this one.

[Laughter.]

Mr. PASCRELL. Before I start, Mr. Chairman, I want to bring your attention to the fact that today is Jason Kearns's last hearing, and as chief trade counsel, 11 years of service to this Committee.

I want to thank him. He has been appointed to the International Trade Commission. So he used us as a stepping stone for that.

[Laughter.]

Mr. PASCRELL. And we wish him the best of luck.

Chairman REICHERT. I would like to add my congratulations, too——

Mr. PASCRELL. Sure.

Chairman REICHERT.—Mr. Pascrell. And did he get approval from you before he decided to leave?

Mr. PASCRELL. Absolutely not.

[Laughter.]

Chairman REICHERT. Congratulations, Jason.

Mr. PASCRELL. Mr. Chairman, I have a different way of looking at this than what I just heard from you, with all due respect.

And on behalf of the Trade Subcommittee's Democrats, I want to thank our chairman for calling this important and much-needed hearing on the renegotiation of NAFTA.

I was—want to thank the witnesses for participating, sharing their thoughtful views on what the renegotiation of NAFTA should accomplish. I had a chance to talk to a few of you before, and you got some great witnesses here.

It is especially helpful to hear these views, given, in my estimation, the lack of clarity and vision from the Administration thus far on what a new NAFTA should look like and should include.

On June 27th, I testified during the USTR's public comment period on the Administration—was putting together their negotiating objectives at the time. In my testimony I laid out several key priorities to improve outcomes for American families—and I am sure that is what everybody in this room is all about—that I think are important for any NAFTA renegotiation to focus on.

And to me, and to Donald Trump, we saw on the campaign trail in Wisconsin, Ohio, and Pennsylvania the number-one priority has to be jobs and wages here in the United States.

Well, the Administration published a summary of its negotiating objectives through the USTR just yesterday, with little specificity, no evidence or indication that they will bring jobs or wage growth to the United States. After waffling and contradicting themselves throughout the process, we finally have some milquetoast objectives that look like a recycled version of the same old, same old.

During the campaign, Mr. Trump declared NAFTA "a disaster." He has pointed out that in his words, "Our jobs are being sucked out of our economy" in places like Pennsylvania, Ohio, Florida, upstate New York, because our jobs have fled to Mexico and other places. That is what he said. He pledged to bring those jobs back, and to renegotiate NAFTA to make it a great trade deal. And we are all hopeful about that.

But the negotiating objectives released yesterday recycle many of the same policies he railed against in the TPP, an agreement the President made a big show out of pulling out of during his first week in office. When you go back to that first week in office and you see what he said and what occurred after that, well—anyway, credit word is due [sic].

The Administration proposal would make strides on the issues of countervailing duties, which is a good thing, and the treatment of state-owned enterprises, which is a good thing. But those are on the margins. The biggest issues impacting jobs and wages in the United States are low wages in Mexico and lax labor laws. Currency manipulation abroad and the lack of meaningful enforcement are nowhere to be found in these objectives.

So where are the jobs, and where are the higher wages this President promised? I see nothing to indicate that these objectives will improve the standard of living in Pittsburgh or Pueblo.

So, I have introduced legislation, the Jobs and Trade Competitives Act of 2017, and I believe stand in sharp contrast to the Administration's weak attempt at trade reform. H.R. 2756 would crack down on cheating in trade—it is going on; reward in-sourcing, instead of off-shoring American jobs—absolutely still going on; meaningfully combat currency manipulation and make it easier for small businesses and manufacturers to bring cases against countries that flout the laws and the rules.

We need—we should talk about how NAFTA can be modernized and updated, since it is being renegotiated anyway. But let's not fool ourselves, Mr. Chairman. The real questions we need to be asking are the following.

How do we change the terms of NAFTA to create a—new and good-paying jobs?

How do we change—I am almost done—how do we change the terms of NAFTA to raise wages and standards of living in the United States?

How do we change the terms of NAFTA to ensure the benefits of trade are shared with working people and middle-class families of America?

And how do we change the terms of NAFTA to ensure the American economy is healthy, vibrant, and sustainable?

So, I look forward to hearing every one of their testimony, and asking these questions about how we make NAFTA, in the President's word, "great trade agreement."

And I thank you, Mr. Chairman.

Chairman REICHERT. Thank you, Mr. Pascrell. And I want to thank the witnesses all for being here today. Your testimony will be invaluable, as we move this process forward. All good questions that Mr. Pascrell has posed, and some of those questions will be posed to you, as to how we might be able to accomplish those things.

And today we have two panels of distinguished witnesses, and I will introduce the first panel of four witnesses.

Now, the first witness is Mr. Tom Linebarger, chairman and chief executive officer of Cummins, Incorporated.

Our second witness is Mr. Patrick Ottensmeyer, president and chief executive officer of Kansas City Southern.

Our third witness is Mr. Dennis Arriola, executive vice president for corporate strategy and external affairs of Sempra Energy.

Our fourth witness is Ms. Celeste Drake, trade globalization policy specialist of the AFL–CIO.

We welcome all of you and look forward to your testimony today.

Before recognizing our witnesses, let me note that our time is limited, so please limit your testimony to five minutes. And your written statement will be made a part of the record.

Members should keep their questions to five minutes, please.
And, Mr. Linebarger, you are recognized for your statement.

STATEMENT OF TOM LINEBARGER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CUMMINS, INCORPORATED

Mr. LINEBARGER. It is a great honor to be before you today to discuss the importance of the North American Free Trade Agreement and the effort to modernize it.

My name is Tom Linebarger, I am the chairman and CEO of Cummins, Incorporated, as well as the international engagement committee chair of the Business Roundtable.

I believe trade expansion and NAFTA are good policy, and my support for both has grown even stronger over my career at Cummins. As CEO, I am charged with providing opportunities for the employees of Cummins, an Indiana-based company that employs 25,000 people in the United States.

For our employees and our communities, international trade has been the single most important contributor to growth and hiring for nearly two decades. Currently, 95 percent of the world's consumers reside outside of the United States. And for Cummins to continue to be successful and add new jobs, it is imperative that we are able to access these consumers with high quality and competitively-priced products.

NAFTA and our other free trade agreements have allowed us to do just that. One example is the engines we manufacture in Columbus, Indiana for Chrysler's Dodge Ram truck. Once we manufacture the engine, it is then exported to Mexico, where Chrysler finishes assembly, and then it is imported back into the U.S. for sale. The Ram is cost-effective and successful because of NAFTA. Its robust sales have contributed to significant growth and job creation for Cummins. At the Columbus, Indiana plant where we build the Ram, we have added nearly 100 jobs in the last few years.

The story of the Ram's journey is not unique to Cummins. For all goods imported from Mexico and the United States, approximately 40 percent of the content originated in the United States.

Seymour, Indiana is another example of how trade supports American cities and towns. Seymour is our global high-horsepower engine headquarters. It is also a small town of less than 20,000 people about an hour-and-a-half south of Indianapolis. And while many rural towns are struggling, Seymour is thriving. We have invested more than $300 million to renovate the plant, and we have added a cutting-edge technical center there. We now have more than 1,300 employees in this community, nearly doubling the number based there just 5 years ago.

We were able to add jobs and make these investments almost exclusively because of our ability to access international markets. We directly export 65 percent of the products made in that plant, and another 20 percent are shipped to our plant in Fridley, Minnesota, where they are made into power generators and then exported. In total, 85 percent of the products made in Seymour are exported, 85 percent.

To me, it is simple. When we can trade, we add jobs and invest in American communities. Since NAFTA's bipartisan passage and enactment in 1994, overall trade has increased between the United

States, Canada, and Mexico. U.S.-manufactured goods exported to Canada and Mexico have more than tripled over that period. And for Cummins, the two largest importers of our products are now Canada and Mexico.

Prior to the agreement, Mexico was one of the most protectionist countries in the world, with automotive imports in New Mexico facing tariffs as high as 20 percent. Mexico also had non-tariff barriers like local content requirements of 80 percent, which all but mandated that our production take place within the country's borders. NAFTA brought down these trade barriers and allowed us to avoid duplication of our manufacturing capacity and in our supply chain, allowing us to manufacture more in our high-volume U.S. plants and purchase more from our 2,500 suppliers based in the U.S.

Today Cummins, Incorporated sells nearly $600 million worth of products in New Mexico's market each year, of which 80 percent is manufactured in the United States. We are also the largest engine provider for the on-highway heavy-duty truck market in Mexico. All of these engines are manufactured in our plant in Jamestown, New York.

It is clear that NAFTA has been a positive force, but we should embrace the opportunity to modernize this 23-year-old agreement. Improvements could be made by incorporating trade, investment, and related regulatory reforms, promoting digital commerce and cross-border data flows, ensuring fair competition with foreign, state-owned enterprises, and protecting U.S. intellectual property rights.

We also believe that NAFTA's environmental labor standards must be strengthened.

Mr. Chairman and Members of the Committee, my overwhelming support for trade and NAFTA comes from the difference that I have seen that it makes for Cummins, our suppliers, our employees, and their families. Thank you for the opportunity to speak with you today.

Chairman REICHERT. Thank you.

[The prepared statement of Mr. Linebarger follows:]

Written Statement by

N. Thomas Linebarger

Chairman & Chief Executive Officer

Cummins Inc.

House Committee on Ways and Means Subcommittee on Trade

U.S. House of Representatives

"Modernization of the North American Free Trade Agreement"

July 18, 2017

Good Morning, Chairman Reichert, Ranking Member Pascrell, and distinguished members of the Subcommittee. It is a great honor to appear before you today to discuss the importance of the North American Free Trade Agreement and efforts to preserve and modernize it.

My name is Tom Linebarger and I am Chairman and CEO of Cummins Inc. I also serve as Chair of the International Engagement Committee for the Business Roundtable.

Background

Cummins Inc. is a nearly one hundred year old company founded and headquartered in Columbus, Indiana. Since 1919, we've become the largest independent producer of diesel engines in the world and we've done this through constant technological innovation and by bringing our customers the right power solution at the right time for each unique application.

We also manufacture highly complex components like turbochargers, fuel systems, filters and aftertreatment systems – all of which has enabled us to build high-performing and clean products able to meet emission standards anywhere in the world.

We provide power for a wide range of products including small passenger trucks, tractor-trailers that move goods across the country, pick-up and delivery trucks, to transit and school buses. You will also find our products in refuse trucks, mining equipment, oil-and gas operations, passenger trains, tug boats, and mobile power systems that support our military to critical backup power systems that keep data centers and hospitals up and running 24 – 7.

We also provide power to National Landmarks that many of us see every day, like Wrigley Field and the Statue of Liberty.

We have more than 55,000 employees globally and operate in over 190 countries throughout the world. In the United States, we have manufacturing facilities in Indiana, Minnesota, New York, North Carolina, South Carolina, Tennessee, and Wisconsin. In addition to our manufacturing operations in the United States, we also own all of our distributor branches with locations in almost every state.

Importance of Trade to Cummins and the Business Community

I believe trade expansion, in general, and NAFTA are good policy. However, my support for both has grown even stronger over my career at Cummins. As CEO, I am charged with providing opportunities for the employees of Cummins and to help strengthen the communities in which we live and work. For our employees and our communities, international trade has been the single most important contributor to growth and hiring at Cummins for nearly two decades. In the past four years alone, we've created about 8,000 jobs in the United States, despite very challenging economic conditions over that entire span.

I appear in front of you today to share my perspective on NAFTA, to emphasize the positive impact that trade and trade agreements have on American businesses and workers and to offer my thoughts on potential areas of modernization.

Currently, 95 percent of the world's consumers reside outside the United States. For Cummins to continue to be successful, add new jobs, and invest in new technologies; it is imperative that we are able to access international markets and consumers with high-quality and competitively priced products.

NAFTA and our other free trade agreements have allowed us to do this and over the past decade we have added thousands of new, quality American jobs in cities like Minneapolis, MN, and Nashville, TN, and more rural locations like Whitakers, NC, Jamestown, NY, and Seymour, IN where we make our products.

Let's take the RAM truck, for example. Cummins manufactures the engine just outside of Columbus, Indiana; exports it to Mexico where Chrysler finishes assembly, and then it is imported back into the U.S. for sales in North America and other parts of the world.

The Ram is cost-effective and successful because of NAFTA. Its robust sales have contributed to significant growth and the addition of great jobs at the Columbus plant where the 6.7L RAM engines continue to be manufactured today. And just in the past four years, we've added nearly 100 jobs at this plant.

The story of the RAM's journey is not unique to just Cummins. On average, of the goods that are imported from Mexico into the United States, 40 percent of the content originated from the United States. Cummins alone relies on 2,500 direct U.S.-based suppliers like Indiana-based Batesville Tool and Die or Illinois-based Camcraft – a supplier I will discuss in more detail later.

Seymour, Indiana is another example of how trade injects an incredible stimulus of jobs and economic impact to a small town. Seymour is where our global high-horsepower engine headquarters is based. Seymour is a small town of less than 20,000 about an hour and half south of Indianapolis in the heart of the Midwest.

While many surrounding rural communities are struggling, Seymour is thriving. Seymour has an incredibly low unemployment rate of about three and a half percent and job growth is at the same rate – three and a half percent. Trade is a key contributor to this success.

Cummins decided to locate our high-horsepower headquarters in Seymour over other international locations including India and the United Kingdom because of our access to a great American workforce, our ability to access high quality domestic suppliers and proximity to our supply chain.

Since we made that decision, we have invested more than $300 million to renovate the plant and added a state of the art technical center. We now have more than 1,300 employees in this community – nearly doubling the number based there five years ago.

We were able to add jobs and make these investments almost exclusively because of our ability to access international markets. We directly export 65 percent of the products made in Seymour, Indiana to countries across the world and another 20 percent are shipped to our plant in Fridley, Minnesota where they are made into power generators and then exported. This means about 85 percent of the products made in Seymour are exported.

Being able to access the 95 percent of consumers that live outside our borders is also critical if we want to remain a technology leader. Cummins invests nearly $700 million annually in research and development. We are looking at technologies, like electrification, that will ensure we will be around for the next 100 years. We are positioned to lead and win because our broad and global customer base gives us the scale advantage to make necessary investments to the technologies that will carry us into the future.

There is no question U.S. jobs are reliant on our ability to access international markets. To me it is simple – when we can trade, we add jobs and invest in our American communities.

And it is not just Cummins and its employees that benefit. This fuels related jobs and economic growth and allows our employees to improve the community by getting involved in organizations like the Community Education Coalition in Seymour, Indiana to build stronger education systems and help to ensure that the next generation will have the skills needed for the jobs of tomorrow. A modernized NAFTA and other free trade agreements make success stories like this possible.

NAFTA breaks down barriers to create markets for U.S. manufactured goods

Since NAFTA's bipartisan passage and enactment in 1994, overall trade has increased between all three countries, with U.S. manufactured goods exports to Canada and Mexico more than tripling over that period. The two largest importers of Cummins products are Canada and Mexico.

Prior to the agreement, Mexico was one of the most protectionist countries in the world, with automotive imports into Mexico facing tariffs as high as 20 percent. Mexico also had non-tariff barriers, like local content requirements of 80 percent, which all but mandated that our production take place within the country's borders. Additionally, importation of parts faced extremely high duties and we were required to export 107 percent of our imports value to be able to import service parts.

NAFTA brought down these trade barriers and allowed us to avoid duplication of our manufacturing capacity to take care of Mexico engine and components demand. We were able to close our assembly operations in Mexico and leverage our installed capacity in United States therefore increasing our efficiency in United States.

Additionally, we were able to reduce duplication in our supply base and increase the volume purchased from our existing suppliers in United States. Today, Cummins Inc. sells nearly $600 million worth of products into Mexico's market each year, of which, 80 percent is imported from the United States. While we still have a manufacturing presence in Mexico, on average, of the goods we ship into the United States from these plants, 60 percent of the raw materials originated from the United States.

Similarly, Canada has proved a strong market for Cummins products. With its extractive industries, remote locations and long distances between major cities, Canada is a top destination for many of our larger engines. Just looking at the mining sector, our top 10 mining customers in Western Canada bought nearly $77 million of engines, parts and services in 2015.

United States' Suppliers Benefit from Trade

The benefits don't stop directly with Cummins though. Trade has a positive ripple effect throughout the U.S. economy in a supply chain generating billions of dollars in revenue and thousands of jobs. Our success also enables our 2,500 domestic suppliers to be more successful and create jobs.

For example, we will purchase more than $15 million in fuel system components from Camcraft this year, whose facilities are located in the western suburbs of Chicago. Additionally, more business is being created at Camcraft to support our latest technologies and that amount is forecast to grow to over $25 million over the next two years.

Employment at Camcraft has grown to approximately 300 employees with dozens more needed to support current growth, half of which are directly supported by products that they supply to plants in Mexico for not only Cummins but companies like Caterpillar as well as Tier One and Tier Two North American auto suppliers.

The components we buy from Camcraft are some of the most complicated we design and are critical in allowing us to maintain our position as a global leader in meeting the most stringent emission and fuel economy standards across all markets.

Manufacturing this type of product requires well trained and highly skilled people working on the latest machine tool technologies -- these are excellent, high paying jobs that represent the best in American manufacturing. Because of the work we've placed at Camcraft along with their other customers, they are now building an additional 100,000 square foot building in Bartlett, Illinois.

Camcraft along with its subsidiary, Matrix Design, LLC -- an automation integration company located in South Elgin, Illinois -- have added 150 employees over the last four years and now employ over 420 people.

Revenue is up 56 percent since 2010, with forecasted growth of another 20 percent over the next two years, and 36 percent of that total shipping to Mexico or Canada.

Camcraft CEO, Mike Bertsche, recently shared with me that since making their first shipments to Mexico in 2001, Camcraft's revenue is up 134 percent. Trade agreements like NAFTA and others have allowed their sales to expand globally in a fashion that was not available to them previously.

NAFTA Modernization

As the United States embarks on renegotiating NAFTA next month, it is imperative we take a comprehensive approach to this and other trade expansion tools, because our foreign economic competitors are certainly not standing still. Currently, 41 million U.S. manufacturing, services and other trade-related jobs are tied to international trade. That's more than one in five jobs. In our own backyard, a Brookings Institute led study cited Columbus, Indiana as the single most trade dependent community in the United States.

However, the original NAFTA was negotiated over 20 years ago, and as you are very aware, the manner and landscape in which we do business has changed a great deal since this time. I believe we should proactively embrace this opportunity to modernize and strengthen NAFTA. At the same time, we should preserve the existing agreement and not move backwards.

A modernized NAFTA should incorporate trade, investment and related regulatory reforms in Canada and Mexico since its adoption; promote digital commerce and cross-border data flows; ensure fair U.S. competition with foreign state-owned enterprises and protect U.S. intellectual property rights.

In a digital age, we think a modernized NAFTA should include provisions that enable cross-border data flows—for all types of data. This will provide Cummins with the most flexibility to move telematics (and other) data between the US, Canada and Mexico. An updated NAFTA should also prohibit members from forcing companies to use or locate computing facilities or servers within a member country. We also believe it should restrict members from requiring the transfer of, or access to, software source code and encryption as a condition for the import, distribution, sale, or use of commercial software in a member country.

We also believe that NAFTA's environmental and labor standards should be strengthened and incorporated into the updated agreement itself. Over the last two decades, other U.S. trade agreements have included stronger labor and environmental standards.

In addition to the areas I just highlighted, we worked closely with the Business Roundtable to develop a more in depth outline of opportunities to modernize NAFTA and have submitted them to USTR Robert Lighthizer. I have included a copy of this letter in this submission, for your reference.

Closing

Mr. Chairman, Mr. Ranking Member and members of the Subcommittee, my overwhelming support for trade expansion and NAFTA comes from the difference I have seen that it makes for Cummins, our suppliers, our employees and their families. I know that it makes our communities and economy stronger.

It provides high quality jobs at Cummins in communities across the United States like Jamestown, New York to Rocky Mount, North Carolina, to Columbus and Seymour Indiana. It helps families thrive and it allows our employees to get involved and make these communities even better places to live.

Thank you again, for the great honor and privilege to speak to you all today. If I can provide any information to you in the future on behalf of Cummins Inc. or the Business Roundtable, I would be honored to discuss this issue or any other issue with you or your staff.

Chairman REICHERT. Mr. Ottensmeyer, you are recognized for five minutes.

STATEMENT OF PATRICK J. OTTENSMEYER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, KANSAS CITY SOUTHERN

Mr. OTTENSMEYER. Good morning. My name is Pat Ottensmeyer. I am president and CEO of Kansas City Southern, a railroad holding company with operations in the U.S., Mexico, and Panama, and headquartered in Kansas City, Missouri since 1887. Thanks to the chair, the Ranking Member, and the Subcommittee for holding this hearing today.

Today I also represent the U.S.-Mexico CEO Dialogue Strategic Trade Initiative Working Group, of which I am the U.S. chair, as well as the Association of American Railroads.

The CEO Dialogue is a private-sector forum initiated by the U.S. Chamber of Commerce and CCE in Mexico to engage U.S. and Mexico CEOs on key economic and trade issues. U.S. Secretary of Commerce, Wilbur Ross, and Mexico Secretary of Economy, Ildefonso Guajardo, spoke to the 8th Semiannual Dialogue on June 6th, here in Washington. We welcomed their comments, which focused on the need to modernize NAFTA and to do no harm to the tremendous benefits that the current agreement provides American workers, farmers, and consumers.

As Congress and the Trump Administration turn their attention to modernizing NAFTA, we support their efforts to update the agreement. NAFTA is critically important to the U.S. railroad industry, including KCS. According to a study conducted by the AAR in March of this year, at least 42 percent of rail carloads, and more than 35 percent of annual revenues are derived from international trade.

International trade accounted for $26.4 billion of freight rail revenue and 511 million tons of rail traffic in 2014. During the same period, approximately 50,000 rail jobs, which contributed over $5 billion of annual wages and benefits to the U.S. economy, depended directly on international trade.

Rail movements associated with international trade include virtually every type of commodity railroads haul, and involve every region of the United States. A major shift toward more protectionist policies would threaten rail jobs all over the country.

Treasury Secretary Mnuchin recently stated that, "We believe in free trade. We are in one of the largest markets in the world. We are one of the largest trading partners in the world. Trade has been good for us. It has been good for other people." We agree with that statement.

In a letter to President Trump dated May 25th, I joined 31 other CEOs of major U.S. companies, offering our support to modernize NAFTA without disrupting current trade flows and the livelihoods of millions of Americans who depend on them. We offered to work with the Administration to update NAFTA, expand and promote free and fair trade with Canada and Mexico, ensure a level playing field, and spur economic growth and job creation for American workers, farmers, and businesses.

We all agree to the following. NAFTA has been good for the U.S. and for North Americans' competitiveness in the world. Notwithstanding, NAFTA was negotiated almost 25 years ago, so updating the agreement for today's economy is entirely appropriate. Fourteen million American jobs and the livelihoods of millions of American families depend on NAFTA, especially in rural America. The Administration should approach negotiations with an emphasis on updating the agreement and expanding the opportunities for U.S. exports, where there is substantial growth potential.

There should be a U.S. focus on enhancing the flow of trade across our borders, avoiding the high tariff that existed prior to NAFTA, and eliminating other trade barriers that preceded NAFTA. The following procedures established—and following the procedures established in the bipartisan Congressional Trade Priorities and Accountability Act of 2015.

Negotiations should proceed promptly and trilaterally to avoid uncertainty that disrupts supply chain and investment, and should use NAFTA's amended process under Article 2202.

And again, U.S. negotiators should be careful to do no harm in areas beneficial to the U.S., especially to our U.S. agriculture and food products exporters.

In addition, KCS believes the U.S. negotiation should work to achieve trilateral uniformity for customs and border control procedures to improve the fluidity and security of export freight movements, and preserve Chapter 11 and ISDS to protect investments by U.S. companies like KCS that have created the supply chain infrastructure required to support U.S. exports.

In the 20 years our company has been doing business in Mexico, we have invested $4.5 billion. There are very significant and growing opportunities to increase U.S. agriculture, energy, petro-chemical, and plastics exports to Mexico. Our company is investing money today in Mexico to facilitate and expand liquid fuels exports from the U.S. Gulf Coast to Mexico.

Without the past and future investment in Mexico facilitated by NAFTA, these opportunities could not be realized. Chapter 11 of NAFTA helps ensure this vital export infrastructure going forward, and is a critical element of NAFTA that must be retained. Again, thank you for the opportunity to testify and provide written comments.

Chairman REICHERT. Thank you.

[The prepared statement of Mr. Ottensmeyer follows:]

ORAL TESTIMONY OF PATRICK J. OTTENSMEYER, PRESIDENT AND CEO, KANSAS CITY SOUTHERN, MODERNIZATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT

**Before the
U.S. House of Representatives Committee on Ways & Means
Subcommittee on Trade**

**Hearing Room of
The House Committee on Ways & Means, 1100 Longworth House Office Building
Tuesday, July 18, 2017**

Good morning. My name is Pat Ottensmeyer. I am President and CEO of Kansas City Southern, a railroad holding company with operations in the U.S., Mexico, and Panama and headquartered in Kansas City, Missouri since 1887.

Thanks to the Chair, Ranking Member, and Subcommittee for holding this hearing.

Today I also represent the **U.S.-Mexico CEO Dialogue Strategic Trade Initiative Working Group**, of which I am the U.S. Chair, and the **Association of American Railroads (AAR).**

The CEO Dialogue is a private sector forum initiated by the U.S. Chamber of Commerce and the Consejo Coordinador Empresarial of Mexico to engage U.S. and Mexican CEOs on key economic and trade issues.

U.S. Secretary of Commerce Wilbur Ross and Mexican Secretary of the Economy Ildefonso Guajardo spoke to the eighth semi-annual Dialogue on June 6. We welcomed their comments, which focused on the need to modernize NAFTA, but to "*do no harm*" to the tremendous benefits that the current agreement provides American workers, farmers, and consumers.

As Congress and the Trump Administration turn their attention to modernizing NAFTA, we support their efforts to update the agreement.

NAFTA is critically important to the U.S. rail industry, including KCS. According to a study done by AAR in March of this year, at least 42 percent of rail carloads and intermodal units, and more than 35 percent of annual rail revenue, are derived from international trade.

International trade accounted for $26.4 billion of freight-rail revenue and 511 million tons of rail traffic in 2014. During the same period, approximately 50,000 rail jobs, which contributed over $5.5 billion in annual wages and benefits to the U.S. economy, depended directly on international trade.

Rail movements associated with international trade include virtually every type of commodity railroads carry and involve every region of the U.S. A major shift toward more protectionist policies would threaten rail jobs all over the country.

Treasury Secretary Mnuchin recently stated that, "*We believe in free trade, we are in one of the largest markets in the world, we are one of the largest trading partners in the world, trade has been good for us, it has been good for other people*." We agree.

In a letter to President Trump dated May 25, I joined 31 other CEOs of major U.S. companies offering our support to modernize NAFTA without disrupting current trade flows and the livelihoods of millions of Americans who depend on them. We offered to work with the Administration to **update NAFTA**; **expand and promote free and fair trade** with Canada and Mexico; **ensure a level playing field**; and **spur economic growth and job creation** for American workers, farmers, and businesses.

We all agree:

- NAFTA has been **generally good** for the U.S. and for North America's competitiveness in the world.

- Notwithstanding, NAFTA was negotiated 25 years ago so **updating the agreement for today's economy is entirely appropriate**.

- **14 million American jobs and the livelihoods of millions of American families depend on NAFTA**, especially in rural America.

- The Administration should approach negotiations with an emphasis on **updating the agreement and expanding the opportunities for U.S. exports** where there is substantial growth potential.

- There should be a U.S. focus on **enhancing the flow of trade across our borders; avoiding the high tariffs and other trade barriers that preceded NAFTA; and following the procedures established in the Bipartisan Congressional Trade Priorities and Accountability Act** of 2015.

- Negotiations should proceed **promptly and trilaterally**, to avoid uncertainty that disrupts supply chains and investment, and should use NAFTA's amendment process under **Article 2202.**

- And again, U.S. negotiators should be careful to **do no harm in areas beneficial to the U.S., especially to our U.S. agricultural and food products exporters**.

In addition, KCS believes that U.S. negotiators should:

- Work to achieve **trilateral uniformity** for Customs and Border Control procedures to improve the fluidity and security of export freight movements; and,

- **Preserve Chapter 11 and ISDS** to protect investments by U.S. companies like KCS that have created the supply chain infrastructure required to support U.S. exports. In the 20 years our company has been doing business in Mexico, KCS has invested $4.5 billion.

There are very significant and growing opportunities to increase U.S. agricultural, energy, petrochemical and plastics exports to Mexico. Surging petroleum, refined petroleum and natural gas product exports to Mexico have turned a previous trade deficit with Mexico in these products to a trade surplus.

KCS is investing money today in Mexico, to facilitate and expand liquid fuels exports from the U.S. Gulf Coast to Mexico

There is also the opportunity for export growth from the substantial investment in new ethylene and plastics plants that are currently being built in the U.S. Gulf Coast.

Without the past and future investment in Mexico facilitated by NAFTA, these opportunities could not be realized. Chapter 11 of NAFTA helps insure this vital export infrastructure going forward and is a critical element of NAFTA that must be retained.

Thank you again for the opportunity to testify and provide written comments.

NAFTA NEGOTIATIONS

**BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

REQUEST FOR COMMENTS ON NEGOTIATING OBJECTIVES REGARDING MODERNIZATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT WITH CANADA AND MEXICO

**COMMENTS OF PATRICK J. OTTENSMEYER
PRESIDENT AND CEO, KANSAS CITY SOUTHERN**

**Hearing Room of
The United States International Trade Commission
500 E Street SW, Washington, D.C.
Tuesday, June 27, 2017**

Introduction and Summary

My name is Pat Ottensmeyer. I am President and CEO of Kansas City Southern (KCS), a railroad holding company proudly headquartered in Kansas City, Missouri since its predecessor was founded there in 1887.

KCS thanks the Office of the United States Trade Representative (USTR) for holding hearings and soliciting comments on modernization of the North American Free Trade Agreement (herein, NAFTA or Agreement). On behalf of KCS, I join other U.S. business leaders to encourage the USTR to move promptly and trilaterally to modernize NAFTA while preserving the benefits to thousands of U.S. businesses and millions of U.S. citizens – particularly U.S. farmers - who have prospered due to the tremendous growth in U.S. exports that NAFTA has facilitated. KCS particularly encourages the USTR to work to modernize border practices to facilitate the flow of goods, and to preserve Chapter 11 protections to protect existing investments in Mexico and to encourage the investment that will be necessary for the U.S. to capitalize on the transformative export opportunities becoming available in the energy sector.

In its growth from a 40-mile local switching railroad in the 1880's to its current position as a 6,600-mile system connecting the U.S. heartland to markets throughout Mexico, KCS has faced many challenges. Our company's history teaches that trade brings prosperity to American business, and that opportunities to facilitate that trade – such as by modernizing NAFTA – will benefit Americans when people of good will put their minds and effort to the task.

KCS Company History and Role in NAFTA Trade

In the mid-1990s, KCS faced many challenges as large mergers in the U.S. rail industry confronted the company's U.S. rail operation - The Kansas City Southern Railway Company (KCSR) – with competitors many times KCSR's size. But the completion of NAFTA in 1994 created new opportunity for the company and its shareholders, employees and customers in the ten Midwest and Southeastern states that KCSR serves.

In 1995, KCS entered into an agreement with Mexico-based Grupo TMM, S.A. de C.V. (Grupo TMM) to pursue purchase of the concession of one of Mexico's soon-to-be privatized rail lines. Under the agreement, KCS also purchased an interest in Mexrail, Inc., owner of The Texas Mexican Railway Company (Tex Mex) and the U.S. portion of the International Rail Bridge at Laredo.

Tex Mex operates between Laredo and Corpus Christi, Texas, and provides a link between the United States and Mexico via the International Rail Bridge at Laredo. Laredo-Nuevo Laredo is the principal international gateway through which rail and truck traffic between the United States and Mexico crosses the border.

In 1996, in response to major U.S. rail mergers, the Surface Transportation Board granted Tex Mex trackage rights over Union Pacific from Robstown to Beaumont, Texas, linking KCS and Tex Mex. Then, in 1997, the Mexican government accepted the KCS/Grupo TMM bid for the Mexican Northeast Line rail concession, the premier Mexican rail corridor serving most of the large industrial markets in Mexico. This year, KCS celebrates the 20th anniversary of that successful privatization.

In 2005, KCS acquired Grupo TMM's interest in the joint venture, making the Mexican railroad known as Transportacion Ferroviaria Mexicana – TFM - a wholly-owned subsidiary of KCS. KCS then renamed the company Kansas City Southern de Mexico, S.A. de C.V. (KCSM).

Today, Kansas City-headquartered KCS is a transportation holding company that has railroad investments in the U.S. and Mexico, along with a 50% ownership interest in the Panama Canal Railway Company. As of December 31, 2016, KCS and its subsidiaries employed approximately 6,820 people.

KCS' North American rail holdings and strategic alliances are primary components of a North American railroad system, linking the commercial and industrial centers of the U.S., Mexico and Canada.

The KCSR- Tex Mex - KCSM System

Source: KCS

KCS's North American network is strategically focused on the north/south freight corridor connecting key commercial and industrial markets in the central United States with major industrial cities in Mexico. KCSR serves a ten-state region in the Midwest and Southeast regions of the United States and has the shortest north/south rail route between Kansas City, Missouri and several key ports along the Gulf of Mexico. Meanwhile, KCSM serves most of Mexico's principal industrial cities and three of its major seaports, and provides the shortest, most direct rail route between Mexico City and the principal U.S.-Mexico border crossing at Laredo-Nuevo Laredo.

The 6,600-mile KCS rail network (KCSR, KCSM and Tex-Mex) connects with all other Class I railroads, providing shippers with an effective alternative to other railroad routes and giving U.S. businesses direct access to major markets in Mexico.

KCS's Network is the center of the North American rail system

Importance of NAFTA to KCS, the U.S. Rail Industry, and American Business

NAFTA is critically important to the U.S. rail industry, including KCS. According to an Association of American Railroads study in March of this year (AAR Study), at least 35% of U.S. rail revenue is derived from international trade. In 2014, railroads handled 329 million tons of exports and 171 million tons of imports of many major freight types.

	Freight Metrics Rail Total	Freight Metrics International	Percent International
Revenue ($ x billions)	$75.1	$26.4	35.2%
Tons (millions)	1,879.4	511.0	27.2%
Units (millions)	32.2	13.4	41.6%

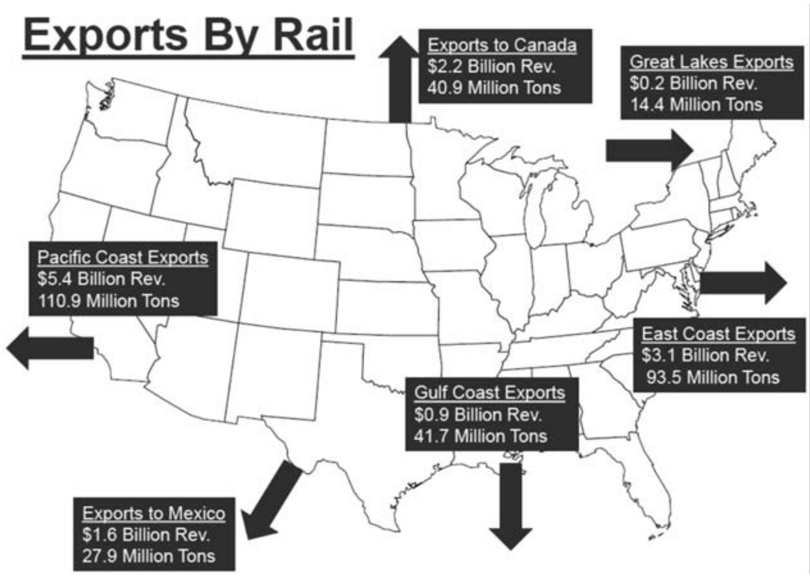
Source: AAR presentation, 2017

Consistent with U.S. rail export tonnage exceeding imports, U. S. rail export revenue exceeds revenue from imports.

	Carload	Intermodal	Total
Import	$7.2 Billion	$5.2 Billion	$12.4 Billion
Export	$9.1 Billion	$4.2 Billion	$13.3 Billion
Transit	$0.5 Billion	$0.2 Billion	$0.7 Billion
Total	$16.8 Billion	$9.6 Billion	$26.4 Billion

Source: AAR presentation, 2017

And the AAR Study shows that nearly 29% of U.S. exports, about 68.8 million tons, are destined to America's NAFTA partners, Mexico and Canada.



Source: AAR presentation, 2017

The KCS North American rail network is crucial to U.S.-Mexico trade, and that trade is crucial to KCS. KCS estimates that close to 40% of its traffic moves cross-border, while the remainder is intra-U.S. or intra-Mexico.

Of KCS's cross-border traffic, about 60% is south bound movements from the U.S. to Mexico. These shipments include automotive parts; grain and food products; various types of containerized freight (a/k/a intermodal); steel; paper, and industrial machinery. KCS cross-border northbound traffic moving includes intermodal freight and finished vehicles.

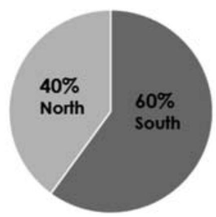
KCS Cross-Border Traffic

Total KCS Cross-Border Traffic

Includes both:

- *KCS Cross-Border*
- *KCS Cross-Border, Interchange*

Volume Breakdown:



Southbound Movements (60%)

- Car Parts (for use in finished vehicles)
- Grain & Food Products
- Intermodal
- Industrial Materials

Northbound Movements (40%)

- Intermodal
- Finished Vehicles

Source: KCS

Not only is international trade important to rail revenues, it is also crucial to good-paying U.S. rail jobs. The AAR Study estimated that industrywide, 50,000 U.S. rail jobs - worth over $5.5 billion in wages and benefits - depend on international trade.

International trade not only directly supports U.S. rail jobs; it also supports massive private infrastructure investment. The AAR reports that from 2010 through 2016, U.S. railroads invested an average of $25.5 billion per year on infrastructure and equipment. Rail, locomotives, new and improved rail cars, and sophisticated new signaling systems, are among the many U.S.-produced products in which railroads have invested heavily over the past several years. With an estimated 35% or more of rail revenue derived from international trade, it is easy to see how reducing international trade by rail could lead to billions of dollars in reduced domestic capital spending by railroads.

KCSR is a prime example of trade-driven rail investment. In 2008-2009, despite the significant downturn in the U.S. economy, KCSR invested over $170 million in building nearly 90 miles of new rail line between Rosenberg and Victoria, Texas. Thousands and thousands of tons of rail from multiple U.S. manufacturers; thousands of tons of base rock and ballast quarried in Arkansas and Georgia; hundreds of reinforced concrete spans produced in Texas; and steel H-pile and pipe pilings from companies in Arkansas and Texas were among the many materials purchased for the project. The new line made international trade quicker and more efficient while providing U.S. industry with much-needed work.

Modernization of NAFTA is a Worthwhile Goal But Cannot Come at the Expense of Disrupting These Vital Trade Flows

Certainly, a 23-year old agreement should and can productively be reviewed and updated to include issues not contemplated or included when it was originally negotiated; however, this should not come at the expense of disrupting vital North American trade and its importance to U.S. interests.

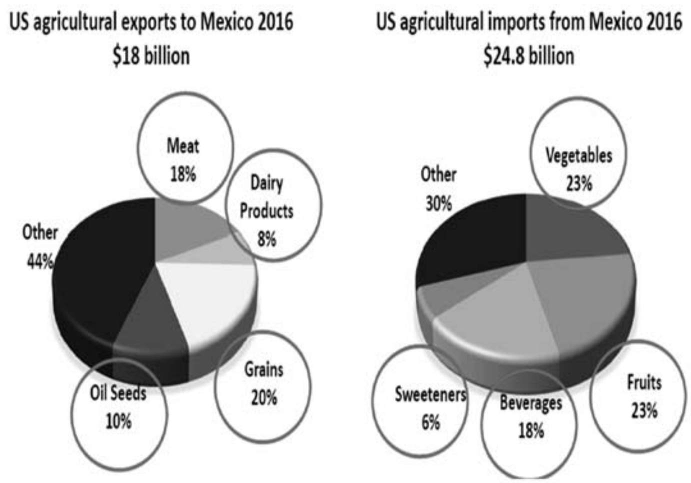
The benefits of NAFTA to date are undeniable:

- Over $1trillion in annual trade,
- Trade between the U.S. and Mexico has nearly quadrupled since NAFTA was implemented,
- 14 million U.S. jobs are supported by NAFTA, and,
- U.S. agricultural exports to Canada and Mexico have increased by 350% under NAFTA, a bonanza for U.S. farmers and ranchers.

Canada and Mexico are the top two export destinations for U.S. small and medium-size enterprises, more than 125,000 of which sold their goods and services in Canada and Mexico in 2016.

In the critical agricultural trade, NAFTA has promoted trade specialization where each country maximizes the benefits of its own agricultural production advantages, benefitting consumers in all of North America.

- U.S. exports are concentrated in grains, meat and oilseeds, produced efficiently by highly-automated U.S. farms, accounting for 50% of agricultural exports to Mexico
- Nearly 50% of Mexico's agricultural exports to the U.S. are fruits and vegetables, products that are labor-intensive to grow and harvest and are therefore well-suited to Mexico's labor market

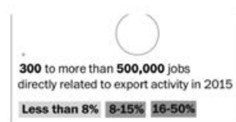


Source: Ken Smith Ramos presentation, Secretaria de Economia Mexico, May 2017 (USDOC. Agricultural products include chapters 1-24 HS

Interruption of this crucial NAFTA benefit would especially harm rural counties across America where U.S. agricultural and food exports sustain producers and rural communities.

The map below shows how dependent U.S. counties are on NAFTA-enabled trade expressing U.S. exports as a proportion of the local county economy. Rural agricultural and Midwest manufacturing counties, in addition to the border state counties, are the most dependent on NAFTA as a portion of their local economy.

Source: The Washington Post, "The places in America most exposed to a trade war" 2/7/2017



As U.S. Commerce Secretary Wilbur Ross observed at the June 6, 2017 U.S.-Mexico CEO Dialogue in Washington, D.C., there are "blameless" and "blameful" contributors to trade deficits. "Blameless" contributors to a trade deficit are those commodities that flow as imports due to a natural disadvantage or inability of the importing country to produce competitively. "Blameful" contributors are those that cause imports or prevent exports due to unfair trade practices, unfair tariffs, subsidies, or other governmental practices that disadvantage one country to another.

This distinction is very important and Secretary Ross' observation of it, very astute. In NAFTA modernization, the U.S. must focus on the "blameful" contributors to trade practices while holding harmless the "blameless" contributors to trade deficits, especially for agricultural and food trade.

High Level U.S. Negotiation Objectives

Because NAFTA has been crucial to growing U.S. trade, particularly for agriculture and small U.S. businesses, I have joined 31 other CEOs of major U.S. companies in a letter to President Trump (attached) outlining our support for the Administration's efforts to modernize the Agreement. In that letter, we offer to work with the Administration to promote free and fair trade with Canada and Mexico, ensure a level playing field, and spur economic growth and job creation for American workers, farmers, and businesses.

I join these other U.S. business leaders in offering the following high-level objectives for the United States' strategic approach to updating NAFTA:

First, U.S. negotiators should build on the elements of our trading relationship that are already working well. They should enhance the job-sustaining flow of trade across our borders, which has reached $1.3 trillion annually. Returning to the high tariffs and other trade barriers that preceded NAFTA is not in the interests of U.S. workers, farmers, and exporters.

Second, as Secretary Ross and others have pledged, the administration's pursuit of negotiations following the procedures established in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, known as TPA, will provide a more predictable environment for business. Pursuing the TPA statute's negotiating objectives and following its consultation procedures will build broader support in Congress and the U.S. business and agriculture communities for this effort.

Third, it is in the U.S.'s interest for the Administration to proceed quickly and trilaterally. Uncertainty about the future of America's terms of trade with Canada and Mexico would suppress economic growth and may cause political reactions that undermine U.S. exporters and their significant growth opportunities in these markets. Further, maintaining NAFTA's three-party framework is critical to ensure a strong, profitable market for U.S. exports and to avoid disrupting the substantial existing flow of commerce and the American jobs that depend on it.

Finally, to the extent possible, U.S. negotiators should try to achieve trilateral uniformity for Customs and Border Control, Agricultural, and other border crossing procedures to further improve the fluidity and security of freight moving across the U.S. and Canadian and Mexican borders. More specifically, KCS would strongly support the harmonization and mutual recognition of rail regulations at the southern border as has been done at the northern border. The ability for citizens of the United States and Mexico to operate trains across the southern border similar to what is allowed at the northern border with citizens of the United States, Canada is very important for future capacity, fluidity, security, and growth in U.S. exports to Mexico. Coordination of operational protocols between U.S. CBP and Mexico SAT that includes unified cargo processing and investment in new technologies that maintain security at the southern border while also allowing for the increased fluidity of trade can be done in the near term and is important to U.S. export markets.

Preserving Chapter 11 and ISDS: Critical for U.S. Foreign Investment; Most Important to Retain in NAFTA

Retaining NAFTA's investment protections is critical for U.S. companies with foreign investment like KCS. Under NAFTA, the governments of Canada and Mexico agreed to investment rules that guarantee U.S. investments will not be subject to discriminatory treatment and will be compensated in the unlikely event of expropriation. Enforcement of these obligations through Chapter 11's investor-state dispute settlement (ISDS) provisions is critical to establishing a neutral set of arbiters to uphold these provisions agreed to under the Agreement.

The Chapter 11 investment protections are consistent with the due process protections guaranteed in the U.S. Constitution. Decisions that result from investment arbitration cannot overturn the policy decisions, laws, or regulations of any country. All such decisions can do is award compensation when a government expropriates property or otherwise tramples on the rule of law. Under trade or investment agreements the United States has entered into with 54 countries, just 13 disputes have been brought against the United States and decided over the past half century, and the United States has not lost a single one.

ISDS protects U.S. companies from foreign governments' arbitrary actions. It has been invaluable to U.S. companies and their predominantly U.S.-based shareholders who otherwise would have been subjected to expropriation or discriminatory treatment simply on the basis of their nationality. U.S. firms have won compensation under ISDS in disputes from Venezuela to Canada. Attempts by NAFTA partners to eliminate or change ISDS and its investment protections would deny an important mechanism for settling investment disputes and benefit no one but foreign governments engaging in discriminatory practices against U.S. companies.

Foreign investment protection and ISDS have earned strong congressional support through their inclusion in the TPA. In fact, an attempt to alter this particular congressional priority by amendment was soundly defeated in the Senate by a vote of 39-60.

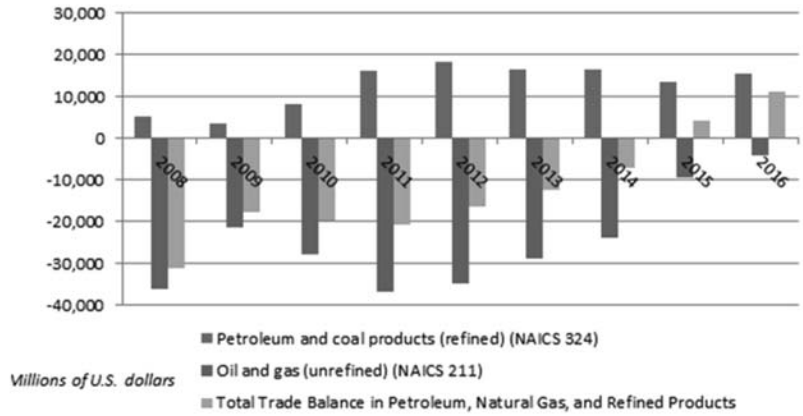
U.S. negotiators must protect U.S. foreign investment in production because production needs to be proximate to consumer markets and because U.S. investment in foreign transportation infrastructure facilitates U.S. exports.

Over the 20 years that KCS has been invested in its Mexican concession, it has invested over $4.5 billion to make sure that rail network is reliable and efficient, prepared to deliver U.S. exports to Mexico and service growing Mexican industry. This investment is critical if the U.S. is to continue to grow its exports to Mexico. Any loss of foreign investment protections provided by NAFTA could be devastating to existing U.S. foreign direct investment in Mexico, would chill any future investment and would prevent full realization of the Mexican market for U.S. exports.

Existing U.S. Agricultural, Petroleum, and Plastics Export Opportunities Turn Trade Deficit into Surplus

KCS believes there are very significant and growing opportunities to increase U.S. agricultural, energy, petrochemical and plastics exports to Mexico. Surging petroleum, refined petroleum products and natural gas product exports to Mexico have turned a previous trade deficit with Mexico in these promising products to a trade surplus. Mexico's ambitious reforms to liberalize its energy sector provide the U.S. great growth opportunity in energy and finished petroleum product exports. In the U.S. Gulf region alone, there has been investment of $169 billion in ethylene and plastics plants, where new U.S. job creation from U.S. refined petroleum exports to Mexico is significant.

The U.S. trade balance with Mexico in petroleum, gas and refined products has gone from deficit to surplus in less than ten years. As the chart below demonstrates, the shift from deficit to surplus in energy-related trade with Mexico has, alone, caused a net reduction of nearly $45 Billion in the total trade deficit with Mexico.



This surplus is expected to continue to grow in the near future, creating a huge opportunity for U.S. energy products to completely reverse the future balance of trade between the U.S. and Mexico. The Energy Information Administration reports that the U.S. is the source for most of Mexico's refined petroleum product imports, while at the same time being the destination for most of Mexico's crude oil exports.

Recognizing that it lacked the refinery infrastructure necessary to meet its growing demand for refined energy products, Mexico developed legislation that put into motion a process that will culminate by 2018 in the country's energy markets being fully open to foreign investment. The importation of refined energy products, including gasoline and diesel badly needed in Mexico and which the U.S. will supply, is made possible through this investment.

To facilitate this export growth, KCS joined its partners Watco and WTC Industrial in November 2016 to announce a joint venture investment in Mexico which will facilitate and expand the exportation of liquid fuels from the United States to Mexico. The joint venture comes as a direct result of energy reform legislation passed in Mexico in 2013.

The joint venture partners will invest approximately $45 million in the first phase of the project, which is expected to be completed in the second quarter of 2017. It is projected that the terminal project will eventually include a storage facility that would provide for the efficient movement of dedicated, "unit train" quantities of refined products from U.S. Gulf Coast refineries to meet the needs of the large and growing industrial and consumer markets in Central Mexico.

Without the past and future investment in Mexican rail infrastructure, these opportunities could not be realized because these U.S. products could not get to Mexican consumption markets. Without Chapter 11 under NAFTA, future investment in this vital export infrastructure would be uncertain. Chapter 11 and ISDS are critical to this investment. Investment protection is the most important need to retain in NAFTA.

CONCLUSION

NAFTA was negotiated 25 years ago. That alone gives rise to reviewing the Agreement and updating it for today's economy. The Agreement has been generally good for the U.S. and North America's competitiveness in the world; however, it can be made stronger, modernized and more inclusive of economic activity than it was 25 years.

KCS supports the Administration's notice of intent to enter into negotiation with Canada and Mexico to update and amend the Agreement, but modernization cannot come at the expense of disrupting the trade flows that are vital to U.S. exporters, most notably U.S. agricultural exporters. To do so would impose a severe penalty on the 14 million American jobs that depend on the Agreement and the livelihoods of American families who depend on those jobs. This is especially true in rural America.

We urge the Administration to approach negotiations with our North American partners with a positive attitude, focused on expanding trade, especially exports from the U.S. including petroleum and plastics.

We believe the focus should be on enhancing the job-sustaining flow of trade across our borders; avoiding the high tariffs and other trade barriers that preceded NAFTA; following the procedures established in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015; and proceeding quickly and trilaterally. U.S. negotiators should be careful to do no harm to the critical trade among the NAFTA trading partners that is so vital to U.S. exporters today, especially U.S. agricultural and food products exporters.

We believe U.S. negotiators should try to achieve trilateral uniformity for Customs and Border Control, Agricultural, and other border crossing procedures to improve further the fluidity and security of freight moving across the U.S. and Canadian and Mexican borders.

Finally, we believe preserving Chapter 11 and ISDS are critical for U.S. foreign investment. Retaining the NAFTA's investment protections is critical for U.S. companies with foreign investment like KCS, whose investments are essential to facilitation of existing, new, and growing U.S. exports.

Chairman REICHERT. Mr. Arriola, you are recognized for five minutes.

STATEMENT OF DENNIS ARRIOLA, EXECUTIVE VICE PRESIDENT, CORPORATE STRATEGY AND EXTERNAL AFFAIRS, SEMPRA ENERGY

Mr. ARRIOLA. Chairman Reichert, Ranking Member Pascrell, and Members of the Subcommittee, thank you for this opportunity to testify. My name is Dennis Arriola, and I am the executive vice president of corporate strategy and external affairs for Sempra Energy.

Sempra is a San Diego-based, Fortune 500 energy company with revenues of over $10 billion, and a market capitalization of approximately 28 billion. Our more than 16,000 employees serve approximately 32 million consumers, worldwide, and we do business in the U.S., Mexico, Chile, and Peru.

In Mexico, our business includes IEnova, one of the largest private energy companies in the country. We own and operate natural gas and liquids infrastructure, as well as renewable generation. We are the largest private natural gas pipeline company in Mexico, delivering much of the U.S. gas in Mexico. And as of 2016, we have invested more than $7 billion in Mexico.

On both sides of the border, these investments have generated hundreds of new jobs, good-paying jobs for engineers, operators, accountants, IT professionals, and others. And these investments have also improved the environment in both countries.

NAFTA has been a big win for the U.S. energy sector. It has helped create a robust, integrated North American energy market that supports U.S. jobs and strengthens our energy security. U.S. trade with Canada and Mexico and energy commodities, including electricity, liquid fuels, and natural gas exceeds $140 billion annually. And last year, the U.S. enjoyed a trade surplus in energy with Mexico of more than $11 billion. The United States exported more than 20 billion in energy commodities to Mexico, and imported less than 9 billion. And of the 20 billion in U.S. exports, natural gas accounted for nearly 4 billion.

Mexico accounts for nearly 60 percent of all U.S. natural gas exports, and we are just at the beginning to tap the potential of the U.S.-Mexico energy trade. Mexico's natural gas imports, for example, are expected to double in just the next five years. And per capita electricity consumption in Mexico is expected to double during the next 25 years.

Energy investments in Mexico, like ours, support many U.S. jobs, both directly and through U.S. shale energy development. And by enabling cross-border transmission, these investments also support domestic electric grid reliability among both borders. They also reduce greenhouse gas emissions, and they meet other local pollution challenges in Mexico.

And a growing energy trade partnership is a win-win outcome for both the U.S. and Mexico and Canada. It increases jobs and investments in all countries. And as you prepare to modernize NAFTA, we urge Congress and the Administration to follow this basic guiding principle: maintain the existing benefits of NAFTA while improving it in ways that expand trade and investment.

My written testimony highlights four critical benefits that we believe must be maintained. But right now I want to focus on just one in particular: strong investment protection for cross-border projects and investments, enforceable by investor-state dispute settlement, or ISDS.

Now, why is this important to a U.S. company? Our projects require Sempra to invest hundreds of millions of dollars, often in countries where the legal regimes are not as developed as the U.S. We need confidence that our company and our investments will be treated fairly over the long term. The investment protections in NAFTA and other U.S. free trade agreements enable us to mitigate this risk, expand our business, and compete for global customers.

ISDS provides a neutral forum to hear claims for the breach of the agreement. And even if ISDS is never used, it serves as an important insurance policy. The investment protections in NAFTA and other FTAs provide U.S. investors with the same substantive rights in foreign markets that foreign investors enjoy in the U.S. under federal law.

In addition to maintaining existing benefits, we offer four recommendations to further strengthen NAFTA.

First, we urge that the text of the NAFTA be amended to reflect the current level of market openness. As you will recall, the energy markets were not open to U.S. and foreign investors in 1994. So we need to make sure that we lock in this new and improved level of market access.

Secondly, NAFTA's investment protection should be expanded to cover so-called investment agreements consistent with other U.S. free trade agreements.

Thirdly, NAFTA should include a so-called tale of investment protection if the agreement were ever terminated.

And fourthly, NAFTA should be modernized to increase regulatory coordination in the energy sector, particularly with respect to cross-border infrastructure investments.

In conclusion, Mr. Chairman, NAFTA has been an enormous benefit to the U.S. energy industry. If negotiations can preserve these benefits while finding consensus to modernize and improve the agreement, North America will become an even more integrated and powerful energy market in the years to come, and this is going to benefit U.S. workers, our economy, the environment, and consumers.

Thank you very much.

Chairman REICHERT. Thank you.

[The prepared statement of Mr. Arriola follows:]

Testimony of Dennis Arriola, Executive Vice President, Sempra Energy
Before the Ways and Means Subcommittee on Trade
Hearing on "Modernization of the North American Free Trade Agreement (NAFTA)"
July 18, 2017

Chairman Reichert, Ranking Member Pascrell, thank you for this opportunity to testify about the upcoming renegotiation of the North American Free Trade Agreement. My name is Dennis Arriola, and I am Executive Vice President, Corporate Strategy and External Affairs, for Sempra Energy.

Sempra Energy, based in San Diego, is a Fortune 500 energy services holding company with 2016 revenues of over $10 billion. The Sempra Energy companies' more than 16,000 employees serve approximately 32 million consumers worldwide. Sempra Energy is organized into two operating groups: Sempra Utilities and Sempra Infrastructure.

Sempra Utilities includes Southern California Gas Company (SoCalGas), San Diego Gas & Electric (SDG&E) and two South American electric utilities. SoCalGas has the largest customer base of any U.S. natural gas distribution utility, providing safe, reliable and affordable service to about 22 million consumers. SDG&E is an electric and gas utility that provides safe and reliable energy to more than 3.5 million consumers in San Diego and southern Orange Counties.

Sempra Infrastructure includes Sempra Mexico, Sempra LNG & Midstream and Sempra Renewables. Sempra LNG & Midstream develops and builds liquefied natural gas facilities, midstream natural gas infrastructure and natural gas storage. Sempra Renewables is a leading U.S. developer and operator of renewable energy with joint or solo ventures holding nearly 2,400 megawatts of solar and wind capacity nationwide.

Sempra Mexico includes IEnova, one of the largest private energy companies in Mexico. IEnova's footprint in Mexico spans several lines of business: natural gas transportation, distribution, and storage; electricity generation (natural gas, wind and solar); and liquids storage and transportation. IEnova is the largest private natural gas pipeline company in Mexico, facilitating most of the U.S. gas deliveries into Mexico. As of 2016, we have almost 900 employees working there and we have invested more than $7 billion dollars.

Our investments in Mexico have made excellent business sense for Sempra Energy. Our expansion of investment in energy infrastructure in Mexico is one of the key contributing factors to an approximate 45 percent increase in Sempra Energy's market capitalization over the past four years – from approximately $19 billion to $28 billion. This has translated to hundreds of new jobs on both sides of the border---good paying jobs for engineers, operators, accountants, lawyers and others.

Investing in Mexico has also been a natural geographic extension of our business. Our San Diego operations share a border with Mexico. We are tied together economically, environmentally and culturally. We built the region's first cross-border energy ties in 1983. We installed air-quality monitoring equipment to establish a clean air baseline for our region. We enabled the conversion of Mexican power plants near our border to run on cleaner-burning natural gas instead of heavy fuel oils. Also, in 1995, we earned the first license awarded to a private company to build and operate local natural gas distribution utilities. Sempra's dynamic growth has been fueled, in part, by NAFTA, and we are glad that the Subcommittee has included a focus on cross-border energy in this hearing.

NAFTA and Energy

NAFTA has been a big win for the U.S. energy sector. It has helped to create a robust and integrated North American energy market that supports U.S. jobs and strengthens our energy security. U.S. trade with Canada and Mexico in energy commodities, including electricity, liquid fuels, and natural gas, exceeds $140 billion annually.

As Sempra operates in the U.S. and Mexico, I will focus my comments on the importance of NAFTA to energy trade between these two partners. Last year, the U.S. enjoyed a trade surplus in energy commodities with Mexico of more than $11 billion, with more than $20 billion in U.S. exports to Mexico and less than $9 billion in U.S. imports from Mexico. Of the $20 billion in U.S. exports, natural gas accounted for $3.7 billion, and was accounting for nearly 60 percent of all U.S. natural gas exports.

As impressive as these numbers are, however, we are just beginning to tap the potential of U.S.-Mexico energy trade. Mexico's natural gas imports, for example, are expected to double in just the next five years. Mexico's per capita electricity consumption, which is only one-third the OECD average, is projected to double during the next 25 years. With respect to renewables, Mexico has a target of 35 percent of electricity generation from clean energy by 2024.

Sempra's investments in Mexico through IEnova support many U.S. jobs, both directly and more broadly through U.S. shale energy development. These investments have supported domestic electric grid reliability in both California and Texas. And our investments help address greenhouse gas and local pollution challenges in Mexico by using clean natural gas for electric generation, and introducing more solar and wind resources. A growing energy trade partnership is a win-win outcome for both the U.S. and Mexico.

Sempra and other U.S. energy companies are well positioned to meet Mexico's rising demand for energy. As the two countries prepare to re-open NAFTA, we urge Congress and the Administration to follow this guiding principle: maintain the existing benefits of NAFTA while improving it in ways that expand trade and investment.

Maintain Existing NAFTA Benefits

For Sempra and other energy companies, four critical benefits must be maintained:

- zero tariffs on all energy goods, including electricity and natural gas;

- open markets and non-discriminatory treatment for energy services and investment, including power generation and transmission;
- strong investment protections for cross-border projects, enforceable by Investor-State Dispute Settlement (ISDS); and
- a provision that locks in market opening reforms, including in the energy sector, that Mexico has enacted since NAFTA was signed, known as "the ratchet."

Let me take a moment to focus on the last two points, beginning with investment protection. For our U.S. LNG business, Sempra serves foreign markets by investing in the construction of U.S. pipelines and U.S. liquefaction facilities and exporting U.S. natural gas. But for our international electricity and natural gas businesses, like the ones we have in Mexico, we can serve foreign markets only if we are present in those markets. We must go where the resources and markets are located, build the generation, transmission, and distribution facilities, and supply electricity and natural gas to local customers. This is not about transferring jobs from the U.S. to Mexico, this is about growing investment that benefits the economies of both countries.

Such projects require Sempra to invest hundreds of millions of dollars, often in countries where the legal regimes are not as developed as the U.S. The investment protections in NAFTA and other U.S. free trade agreements enable us to mitigate this risk, expand our business and compete for global customers. They provide Sempra and other U.S. investors with reciprocal rights in foreign markets that foreign investors enjoy in the United States under federal law: non-discriminatory treatment, compensation in the event of expropriation, and due process.

ISDS provides a neutral forum and an impartial arbitral tribunal to hear claims for breach of the agreement. Even if a company never files a claim, the existence of these protections, and the availability of ISDS, is an essential insurance policy. That is why we strongly urge that they be maintained.

I also mentioned the so-called ratchet mechanism. This is a technical provision, but very important. It states that if a party opens its market after NAFTA enters into force, then the party's NAFTA commitment "ratchets up" to this new level of market openness. If the party subsequently restricts such access, it would be in breach of its NAFTA commitments.

When NAFTA was negotiated in the early 1990s, much of the Mexican energy sector was effectively closed to U.S. and other foreign companies. In 2013, however, Mexico amended its constitution and enacted legislation to reform the energy sector and welcome increased foreign investment. The ratchet mechanism captures these reforms and affords protection against them being reversed.

Modernize NAFTA in Ways that Expand Trade and Investment

In addition to maintaining existing benefits, the NAFTA renegotiation affords an opportunity to strengthen and improve the agreement. In this regard, we offer four recommendations.

First, while the ratchet mechanism captures Mexico's reforms, the text of the agreement should be amended to reflect the current level of market openness. In particular, Mexico's broad exception for energy should be removed and replaced with a short and specific list of exceptions for those areas of energy law that remain inconsistent with the NAFTA obligations. As compared to the ratchet alone, a specific list of exceptions defines more precisely the scope of Mexico's obligations and provides a roadmap for further liberalization.

Second, NAFTA should be amended to cover so-called investment agreements, consistent with other U.S. free-trade agreements. An investment agreement is a type of contract between investors and the host government, such as a contract to develop natural resources or supply services to the public, such as power generation or distribution. The investor may bring a claim in ISDS for simple breach of contract, even if the action would not constitute a breach of standards of treatment in the free-trade agreement itself.

Third, the Administration could strengthen NAFTA by adding a so-called "tail" of investment protection if the agreement were ever terminated. Most free-trade agreements include such a provision that continues to apply the terms of the chapter for a period of time (usually ten years) after the agreement is terminated. This assures investors that the legal protections and enforcement mechanisms that might have been an important factor in their deciding whether to invest will not be suddenly withdrawn.

Fourth, the Administration could strengthen NAFTA by increasing regulatory coordination in the energy sector, particularly with respect to the cross-border infrastructure process. While each of the NAFTA parties may reserve the right to approve such projects, they could agree on guidelines for decision-making criteria, consultation procedures, and standard timelines. From our own experience with both cross-border transmission and gas pipeline infrastructure, we believe more North American energy integration from pipelines and transmission lines is mutually beneficial to all three countries.

Conclusion

Mr. Chairman, NAFTA has been an enormous benefit to the U.S. energy industry. If negotiators can preserve these benefits, while finding consensus to modernize and improve the agreement, North America will become an even more integrated and powerful energy market in the years to come. And this will benefit U.S. workers, our economy and the environment.

Thank you for this opportunity to testify, and I look forward to your questions.

Chairman REICHERT. Ms. Drake, you are recognized.

STATEMENT OF CELESTE DRAKE, TRADE AND GLOBALIZATION POLICY SPECIALIST, AFL–CIO

Ms. DRAKE. Thank you. Good morning, Chairman Reichert, Ranking Member Pascrell, Members of the Committee. I am pleased to testify about NAFTA on behalf of the American Federation of Labor and the Congress of Industrial Organizations, representing 12.5 million working people in every sector of our economy, from mining to retail, agriculture, manufacturing, transportation, and construction.

While CEOs and global corporations have generally benefitted from NAFTA, it has failed the working people of North America. While it has increased the amount of trade between the U.S., Canada, and Mexico, it has also cost jobs, depressed wages, weakened worker negotiating power, and destabilized communities in all three countries.

Trade deals will always be disruptive, both creating and destroying jobs. But NAFTA's rules have redistributed income upwards, providing rewards to the wealthiest and the most powerful, while making it tougher for the rest of us to succeed. Trade does not inevitably have to redistribute income in this manner. So if we change the rules, we can change the outcomes. And that is why today's hearing is so important.

All working families in North America will benefit from a NAFTA that puts more jobs, higher wages, a clean environment, and a stronger democracy at its core. There is risk here. Renegotiating NAFTA in the wrong way could make the largest Wall Street firms, the biggest pharmaceutical companies, and those who profit from abusing immigrant labor even more powerful. The wrong rules could make it harder for working families to rise.

But there is a great opportunity, as well. An open, democratic, and participatory negotiating process could create a continent-wide foundation for inclusive and sustainable growth that uplifts families through rewarding and secure jobs.

The AFL–CIO submitted nearly 50 pages of comments on NAFTA renegotiations to USTR, and I will highlight some of the most critical recommendations here, and note that the objectives published yesterday lack both the ambition and the specificity that we had hoped for.

First, eliminate the private justice system for foreign investors known as investor-to-state dispute settlement. ISDS allows foreign investors to challenge local state and federal laws before private panels of corporate lawyers. This private justice puts corporate rights ahead of our democracy, and amounts to little more than crony capitalism. It is a subsidy for companies that choose to offshore, paid for by North American families, whose taxes fund the lawyers, arbitrators, and winnings awarded. Scrapping ISDS will help level the playing field for small, domestic firms and their employees, while leaving those who want to invest abroad free to do so.

Next, replace NAFTA's labor and environment side deals with effective, binding rules in the core text. NAFTA's side agreements were not designed to raise standards. They were hastily patched together to quiet critics. They do nothing to ensure monitoring or enforcement, and they have not raised wages, benefits, or standards for North American families.

We learned last month just how ineffective these provisions are when even the CAFTA labor provisions—supposedly a step up from NAFTA—could not protect working people from anti-firings abuse and assassinations.

Specifically, NAFTA should permit cross-border negotiations, establish floor wages, and allow border adjustments to prevent environmental degradation and human exploitation to be used for trade advantage. Enforcement must be automatic, and violators must be subject to trade sanctions when necessary, not to punish, but to raise standards and to trade fairly.

Thirdly, NAFTA must address currency manipulation and misalignment by creating binding rules subject to enforcement and sanctions. Fair trade cannot exist in the absence of fair currency rules.

Fourthly, we must upgrade NAFTA's rules of origin, particularly on auto and auto parts, to reinforce auto sector jobs in North America. NAFTA's rules allow nearly 40 percent of a car to be made in China, Thailand, or other countries that have no obligations to the U.S. under NAFTA. NAFTA must increase North American content requirements and eliminate loopholes in how the content is counted.

Fifthly, NAFTA should delete procurement obligations that undermine Buy American rules and deter responsible bidding criteria. NAFTA should not be used to discourage procurement policies that create jobs, raise wages, and protect natural resources.

Finally, NAFTA's negotiators should think bigger. Rules that facilitate trade and investment must also put in place safeguards against tax dodging and other abuses. The new NAFTA must include new rules to combat tax avoidance and promote infrastructure investments. Without such rules we will continue to disinvest in the U.S. economy in ways that undermine productivity and the middle class.

There are many other important changes that should be made to improve NAFTA for working families, but I will stop here. I am happy to answer any questions you may have.

[The prepared statement of Ms. Drake follows:]

BEFORE THE HOUSE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS

HEARING ON

"MODERNIZATION OF THE NORTH AMERICAN
FREE TRADE AGREEMENT (NAFTA)"

TESTIMONY OF

CELESTE DRAKE
AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

JULY 18, 2017

Introduction

On behalf of its 55 affiliates representing more than 12 and a half million working families, the AFL-CIO appreciates the opportunity to testify about how to improve NAFTA for working families. The AFL-CIO represents working people in every sector of the economy, from energy to health to manufacturing to retail. We provide a voice to these families, advocating for policies that will help create high quality jobs and ensure working people have the freedom to join together to negotiate for better wages and working conditions.

The AFL-CIO appreciates the attention the Ways and Means Committee is paying to this opportunity for NAFTA renegotiation. Repeatedly, over many decades, America's workers have made recommendations for improving trade policies—only to find the bulk of our recommendations left out of final deals. Our criticism is not against "trade" per se: it is about the rules governing trade. We look forward to working with Congress to advance a new set of trade rules that promote good jobs, high wages, and sustainable and responsible economic growth that protects our environment and respects human dignity.

Background: Why We Need a New NAFTA

Under NAFTA, U.S. firms and workers lost more than 850,000 jobs.[1] A much more widespread impact, though less frequently discussed, is the wage suppression that affects about two-thirds of America's workers—those who lack a college degree. As the Economic Policy Institute's Jeff Faux explains:

> "[t]he inevitable result was to undercut workers' living standards all across North America. Wages and benefits have fallen behind worker productivity in all three countries. Moreover, despite declining wages in the United States, the gap between the typical American and typical Mexican worker in manufacturing remains the same. Even after adjusting for differences in living costs, Mexican workers continue to make about 30% of the wages of workers in the United States. Thus, NAFTA is both symbol and substance of the global 'race to the bottom.'"[2]

As explained at length in the AFL-CIO publication "NAFTA at 20," NAFTA and subsequent U.S. trade deals facilitate higher volumes of trade, but contain no measures to ensure that increased trade flows will be reciprocal or that any gains are widely shared. Many of the provisions—including investor-to-state dispute settlement and limitations on financial services and food safety rules—actively hinder or deter social policies that would foster equitable development. While there have been modifications to the language in subsequent agreements, the fundamental architecture that promotes broad investor rights while restricting governments' regulatory autonomy remains in place. On the whole, NAFTA-style agreements have proved to be

[1] Scott, Robert E., "The effects of NAFTA on US trade, jobs, and investment, 1993–2013," Review of Keynesian Economics, Vol. 2 No. 4, Winter 2014, pp. 429–441. *Available at:* www.elgaronline.com/view/journals/roke/2-4/roke.2014.04.02.xml.

[2] *See* Faux, Jeff, "NAFTA's Impact on U.S. Workers," EPI Working Economics Blog, Dec. 9, 2013. *Available at:* www.epi.org/blog/naftas-impact-workers/.

primarily a vehicle to increase corporate profits at the expense of workers, consumers, farmers, communities, the environment and even democracy itself.[3]

Trade policy should never be a question of "free trade" versus "protectionism." Our recommended frame for NAFTA renegotiation is "How should the U.S. structure international trade rules so that they promote good, family-wage jobs, sustainable growth, dynamic economies, smart natural resource conservation, and the realization of human rights and dignity globally?" We believe that using a more complex frame of this nature will lead to better trade policy choices, and better outcomes for working families.

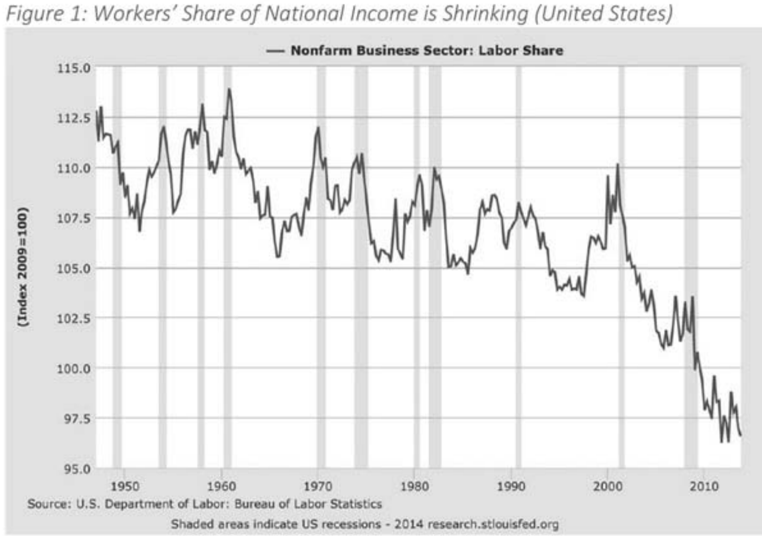
As Josh Bivens explains in his 2017 piece *Adding Insult to Injury*, this complex frame is what has been missing from U.S. trade policy, which seems to have been based on a misunderstanding of who benefits from trade. An extended excerpt is warranted:

> "When people say that economics teaches that expanded trade is a 'win-win' proposition, this means only that trade is 'win-win' for total national income in each partner country. But textbook economics does *not* predict that expanded trade will be a win-win for all groups within those countries. . . .
> "Because it can be shown that the sum of capital's gains exceeds labor's losses, globalization remains "win-win" at the country level. *Within* the U.S., however, there is nothing "win-win" about it; labor loses not just in *relative* terms, but can suffer *absolute* income losses as well.
>
> "Importantly, these losses are not the damage stemming from the adjustment cost of manufacturing workers' temporary unemployment spell[s] . . . . Rather, the big damage is the *permanent* wage loss resulting from America's new pattern of specialization that requires less labor and more capital. Further, this wage loss is not just suffered by workers in tradeable goods sectors who are displaced by imports; it's suffered by *all* workers who resemble these workers in terms of credentials and labor market characteristics. A simple way to say this is that while landscapers may not be displaced by imports, their wages suffer from having to compete with apparel (and auto, and steel) workers who have been displaced by imports."[4]

The following charts show the impact of this model of trade—and other neoliberal economic policies—on U.S. wages and the share of U.S. national income going to working people.

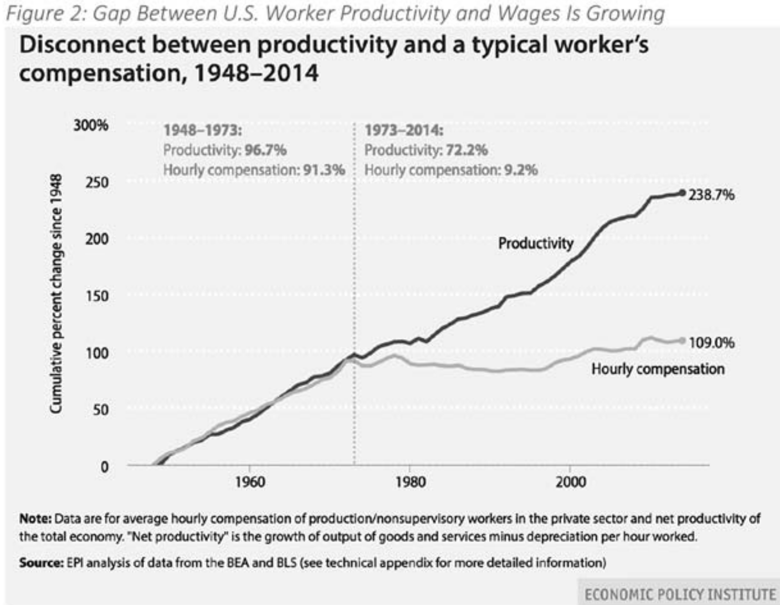
[3] For more detail, see "NAFTA at 20," AFL-CIO Report, March 2014. *Available at:* https://aflcio.org/reports/nafta-20.
[4] Bivens, Josh, "Adding Insult to Injury: How bad policy decisions have amplified globalization's costs for American workers," Economic Policy Institute, Jul. 11, 2017. *Available at:* http://www.epi.org/publication/adding-insult-to-injury-how-bad-policy-decisions-have-amplified-globalizations-costs-for-american-workers/.

Figure 1: Workers' Share of National Income is Shrinking (United States)



Source: Created with the FRED Economic Data Tool of the St. Louis Federal Reserve Bank. Available at: https://fred.stlouisfed.org/.

Figure 2: Gap Between U.S. Worker Productivity and Wages Is Growing



The debates over NAFTA and subsequent trade deals sometimes discussed the need for some kind of compensation to those harmed by such deals, but the only policy solution every offered was the meager Trade Adjustment Assistance program, which offers training and enhanced unemployment benefits to qualifying workers, but nothing at all to the two-thirds of America's workers who suffer wage impacts. Even this modest program has been endangered in recent years, subject to partisan bickering that threatens its funding and its very existence. Effective policy solutions to NAFTA's wage effects are nowhere on the horizon.

To make any new NAFTA successful, the administration and Congress must ensure that its rules incorporate changes that provide different incentives. In other words, the structure of the new NAFTA must recognize that trade and globalization have pushed wages down and weakened worker negotiating power—and build in counterbalancing incentives and tools to raise wages and empower working people. In addition, in conjunction with the deal itself, Congress should enact a broad set of domestic industrial and economic policies to rebuild, repair and modernize U.S. infrastructure; support research, development and advanced manufacturing; and provide working people with state of the art skills. Absent these investments, a new NAFTA seems poised to continue to leave workers behind.

We also caution against viewing NAFTA renegotiation as an effective growth strategy in and of itself. Given the already low levels of tariffs worldwide, the opportunities for large efficiency gains due to trade are largely exhausted.[5] We should improve NAFTA because NAFTA needs improving—not as a substitute for a purposeful growth policy. For example, the U.S. could achieve far greater growth, far faster, by investing in our own economy. As the International Monetary Fund has demonstrated, an infrastructure investment of 1% of GDP will result in an increase in GDP of almost 3% a mere four years after the investment.[6] This outcome is six times the projected outcome of the failed Trans-Pacific Partnership and would occur more than four times more quickly. In addition, according to economic modeling results by Ozlem Onaran of the University of Greenwich for the L20 in 2014, the U.S. could achieve a growth rate as high as 9.84% over five years by coordinating a 1% of GDP infrastructure investment with wage-led growth policies.[7]

[5] *See, e.g.*, Krugman, Paul, "A Protectionist Moment?," The Conscience of a Liberal (Column), *The New York Times*, Mar. 9, 2016. *Available at*: https://krugman.blogs.nytimes.com/2016/03/09/a-protectionist-moment/; Amiti, Mary and Mandel, Benjamin, "Will the United States Benefit from the Trans-Pacific Partnership?," Liberty Street Economics Blog, Federal Reserve Bank of New York, May 16, 2014. *Available at*: http://libertystreeteconomics.newyorkfed.org/2014/05/will-the-united-states-benefit-from-the-trans-pacific-partnership.html#.Vr4TO_krLcv.

[6] "Chapter 3: Is It Time for an Infrastructure Push? The Macroeconomic Effects of Public Investment," in World Economic Outlook, International Monetary Fund, Oct. 2014. *Available at*: https://www.imf.org/external/pubs/ft/weo/2014/02/pdf/c3.pdf. See especially p. 83 ("[A] debt-financed public investment shock of 1 percentage point of GDP increases the level of output by about 0.9 percent in the same year and by 2.9 percent four years after the shock . . ."); Larry Summers, "Why public investment really is a free lunch: The IMF finds that a dollar of spending increases output by nearly $3," Larry Summers Blog, Oct. 7, 2014. *Available at*: http://larrysummers.com/2014/10/07/why-public-investment-really-is-a-free-lunch/#sthash.5fkH0nJ6.dpuf.

[7] Ozlem Onaran, "The Case for a Coordinated Policy Mix of Wage-led Recovery and Public Investment in the G20, L20 in partnership with ITUC, TUAC, and the Council of Global Unions, Jun. 2014. Available at: http://www.ituc-csi.org/IMG/pdf/modeling.pdf

By putting the U.S., Canada, and Mexico into competition for investment without ensuring that each country not only had high standards on paper but an effective enforcement regime for worker and environmental protections, and that NAFTA put brakes in place to avoid a "race to the bottom" in taxes and regulations, NAFTA acted as an anchor, dragging down taxes, wages and environmental standards, not just in the U.S., but in all three NAFTA countries. Because of the competitive incentives imposed by NAFTA and similar trade policies, income distributions became more unequal as global companies captured an ever-larger share and workers an ever-smaller share.[8]

Those who advocate trade policies that drive wages ever lower in the relentless pursuit of quarterly profits and "competitiveness" ignore the fact that workers also are consumers. Consumers drive the demand necessary to support the global economy. This one-sided vision of competitiveness has left jobs and development opportunities on the table and limited the potential for U.S. exports. Indeed, wage suppression in Mexico means that there are even more Mexican living in poverty than before NAFTA, that immigration push-factors have not abated, and that Mexico has become an increasingly attractive investment target, with recent and planned productions shifts by companies including Mondelez, Carrier, and Ford.

The AFL-CIO's recommendations are comprehensive, and include changes not just to the labor provisions, but to most chapters of NAFTA, as well as to domestic policies. The 2016 elections showed that America's working people are not satisfied with the status quo. They've heard promises about the benefits of trade—but seen those benefits accrue to global corporations and economic elites. It is imperative that Congress provide a comprehensive response that improves trade and related policies. NAFTA renegotiation can't be just mere tweaks or the importation of rules from the failed TPP. Working people are ready to support beneficial changes, and will oppose any NAFTA that's new in name only.

Recommendations[9]

The AFL-CIO recommends the following specific changes to NAFTA:

1. Democratize the Renegotiation Process

The TPP negotiations demonstrated that secrecy breeds contempt. NAFTA renegotiation must be transparent, democratic and participatory, with more access for Congress and the public to proposals and negotiating texts. There must be opportunities for public comment, periodic congressional hearings to review progress and more inclusive trade advisory committees.

The following reforms are critical:

[8] See Capaldo, Jeronim et al., "Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement," Global Development and Environment Institute Working Paper No. 16–01, January 2016, at pp. 12–13. *Available at:* www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf.

[9] For an expanded explanation of the AFL-CIO's NAFTA renegotiation recommendations, please see our submission to the U.S. Trade Policy Staff Committee, "How to Make NAFTA Work for Working People," available at: https://aflcio.org/statements/written-comments-how-make-nafta-work-working-people.

- With the full participation of the public and Congress, develop negotiating objectives that are specific to NAFTA, rather than generic;
- Review and revise past practices that have resulted in the overclassification of trade policy documents, including textual proposals, working negotiating texts and offers tabled by other parties;
- Increase access to U.S. trade policy making, U.S. trade proposals and negotiating texts for Congress, congressional staff and members of the public, including by publishing draft textual proposals in the Federal Register with adequate time for public comment before tabling them;
- Expand and balance membership in the existing trade advisory committees, ensuring adequate participation in all committees by academics, small domestic firms and family farms, labor unions, public interest advocates, and state and local officials;
- Ensure that trade advisory committees have the opportunity to meaningfully advise and consult on proposals ***before*** securing interagency approval on texts, at which point it is often too late for revisions; and
- Congress should hold periodic oversight hearings, by all committees whose jurisdictions include issues covered by NAFTA, on the negotiations at the outset, midstream, and once negotiations are complete in order to understand the legal implications of the NAFTA revisions.

2. Add Strong Labor Rules with Swift and Certain Enforcement.
To help raise wages and improve working conditions, NAFTA must ensure all working people can exercise fundamental labor rights reflected in International Labor Organization (ILO) labor conventions, including the bedrock right to form unions and bargain collectively. NAFTA must embed strong labor obligations in the text and establish an independent enforcer with innovative tools and penalties to overcome entrenched indifference to worker rights. This is all the more important given the panel decision in the labor case against Guatemala, which provides strong evidence that the existing framework is not only ineffective, but wholly inadequate.

When workers lack the freedom to speak up about workplace conditions and negotiate together to improve their lives and livelihoods, it keeps wages, benefits and job safety lower than they would otherwise be. This race to the bottom has led to a global weakness in demand that hampers gross domestic product (GDP) growth and exacerbates inequality. Even the IMF has recognized a link between the decline in unionization and the dramatic increase in inequality worldwide.[10] If the new NAFTA fails to establish a level playing field for workers, it will continue to drive wages down and breed doubt that trade and globalization can be fair.

Mexico, like other popular offshoring destinations, promises low wages, no unions (or company-dominated unions) and substandard workplaces. Unfortunately, Mexican workers can face grave consequences for attempting to exercise their basic human rights. This is because, with few exceptions, Mexican labor unions are undemocratic and aligned more with employers or local political elites than with workers. These employer-dominated unions often sign contracts without any participation or input from workers for the sole purpose of interfering with the right to form

[10] Jaumotte, Florence, and Buitron, Carolina Osorio, "Power from the People," Finance & Development, Vol. 52, No. 1, International Monetary Fund, March 2015. *Available at:* www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm.

effective, worker-directed unions. The cumulative effect of these bogus unions is to lower wages and working conditions in Mexico.[11] Improving wages will reduce the ability of employers to use NAFTA as a tool of arbitrage that pushes wages down across North America. Higher wages in Mexico not only are good for Mexico's working families, they are a required outcome of beneficial trade policy. In fact, raising wages in Mexico should be one of the most important goals of NAFTA renegotiation.

Key Recommendations:

a. To improve compliance and enforceability, include in the agreement explicit references to the eight core ILO Labor Conventions and others where appropriate;
b. To protect workers, raise wages and level the playing field among NAFTA countries, require that Parties not waive or derogate from any of their labor laws—regardless of the sector in which the breach occurred;
c. To level the playing field among NAFTA countries, define "acceptable conditions of work" to include such concepts as payment of all wages and benefits legally owed and compensation in cases of occupational injuries and illnesses;
d. To increase compliance, include commitments aimed at ensuring effective labor inspections;
e. To level the playing field among NAFTA countries, do not include any requirement that violations must be in a "manner affecting trade or investment between the parties," or that violations must be "sustained or recurring," both of which add unnecessary barriers to enforcement;
f. To prevent worker exploitation, agree that workers should be paid a floor wage that provides a decent standard of living, and include provisions to prevent social dumping of goods made by workers paid less than floor wages or inadequate enforcement of workers' rights;
g. To prevent forced labor and the worst forms of child labor, prohibit trade in goods made with forced labor and the worst forms of child labor;
h. To prevent a spiral to the bottom in wages and working conditions, ensure migrant workers receive the same rights and remedies as a country's nationals;
i. To prevent human trafficking and forced labor, establish enforceable rules for international labor recruiters and employers of foreign labor;
j. To ensure timely enforcement and reduce unwarranted delays, establish clear, universal timelines for consideration of and action upon labor complaints;
k. To help raise standards across the region, create an *independent* labor secretariat (not controlled by the Parties) to research emerging issues, report on best practices, provide technical assistance when necessary, investigate alleged violations, recommend remediation and, in the absence of remediation, bring cases to dispute settlement;
l. To make enforcement more effective and to reduce the ability to delay or ignore labor complaints, require the Secretariat to pursue meritorious complaints until the defects have been remedied;
m. To ensure comprehensive analysis of the effects of NAFTA on working people, establish a Wages and Standards Working Group to oversee the Secretariat, recommend remedial responses and policies to aid workers, families and communities negatively impacted by

[11] *See* NAFTA at 20, *supra* note 3.

NAFTA, and provide recommendations for improving NAFTA and national laws in ways that benefit working families;

n. To ensure that enforcement occurs, include enhanced enforcement tools, such as social dumping tariffs, additional duties for persistent labor violations, and private rights of action where the Secretariat or Parties refuse to enforce obligations;
o. To level the playing field, allow workers to form transnational union organizations to negotiate with employers that operate in two or more NAFTA countries; and
p. To maximize the potential for wages in Mexico to rise, continue to pursue constitutional and legal reforms already begun in Mexico as of 2016.

3. Eliminate Investor-to-State Dispute Settlement and Minimum Standard of Treatment

Simply put, investor-to-state dispute settlement (ISDS) is a separate justice system for foreign investors for which there is no legal or moral justification. It discriminates against U.S.-located firms by providing extraordinary procedural and substantive rights to foreign-based firms. According to the Cato Institute, "It is effectively a subsidy that mitigates risk for U.S. multinational corporations and enables foreign MNCs [multinational corporations] to circumvent U.S. courts when lodging complaints about U.S. policies."[12] Eliminating ISDS will protect democracy, Article III of the Constitution and America's rich jurisprudence while eliminating a handout to companies that choose to produce abroad.

Rule of law requires that the law—including the system of justice—apply to everyone equally. ISDS violates this bedrock principle of democracy. Moreover, by offering additional legal protections beyond those that exist under U.S. law or other countries' national courts, ISDS makes it more attractive to send production and investment overseas. NAFTA must not include provisions that promote the further offshoring of jobs—particularly good, middle-class jobs. Furthermore, ISDS disadvantages U.S. companies that only produce in the United States (e.g., micro- and small- to medium-sized companies) because they have fewer rights than their foreign competitors.

As one of the lawyers who brought a case against the United States on behalf of a Canadian company explained, "[The ISDS provision in] NAFTA does clearly create some rights for foreign investors that local citizens and companies don't have. But that's the whole purpose of it."[13]

Finally, the vague and overbroad minimum standard of treatment (MST) obligation should be eliminated. The MST obligation goes far beyond the property rights available under domestic property law and is ripe for abuse.[14]

[12] Ikenson, Daniel J., "A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement," Cato Institute's Free Trade Bulletin No. 57, March 4, 2014. *Available at:* www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state.

[13] Greider, William, "The Right and US Trade Law: Invalidating the 20th Century: How the right is using trade law to overturn American democracy," The Nation, Nov. 17, 2001. *Available at:* www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#.

[14] Even the staunchly free trade Cato Institute's Simon Lester calls the minimum standard of treatment a "poorly written" provision. Lester, Simon, "Responding to the White House Response on ISDS," Cato at Liberty Blog, Feb. 27, 2015. *Available at:* www.cato.org/blog/responding-white-house-defense-investor-state-dispute-settlement.

4. *Create Jobs by Adding Enforceable Currency Rules*

NAFTA must include enforceable currency disciplines subject to trade sanctions in the text of the agreement.[15] NAFTA parties also should commit to coordinating enforcement efforts with respect to the currency manipulation by non-NAFTA countries. The goal of both provisions would be to reduce the unsustainable U.S. trade deficit by addressing issues of trade and exchange rates. Currency realignment would create 2.3 million to 5.8 million jobs over the next three years.[16]

5. *Strengthen Rules of Origin*

In general, "rules of origin" should be set such that domestic producers and workers in the NAFTA signatory countries are the primary beneficiaries of market access commitments, not third-party countries that take on no trade obligations in the deal. This goal can be advanced through the following specific recommendations:

a. Auto Regional Value Content (RVC) should rise above the current 62.5%, with a phase-in period to allow manufacturers to adjust supply chains.
b. Auto Parts RVC also should increase from current levels; otherwise, the actual auto content will lag far behind its nominal value.
c. Current producers could be granted additional time to comply with the new, higher auto and auto parts RVCs dependent on the degree to which their hourly compensation of employees exceeds the median wage in the industry in the country in which they operate, and to which the enterprise observes all applicable workers' rights standards in NAFTA. Additional analysis on this topic, and a specific proposal, is being prepared that would ensure workers are the real beneficiaries of the NAFTA renegotiation.
d. Abolish "deeming" and instead require auto parts to actually meet the nominal content requirement.
e. For the class of green/energy-efficient parts identified by the International Association of Machinists, UAW and United Steelworkers in a joint Trans-Pacific Partnership safeguard proposal, require these parts to be made in the United States to count toward the RVC for vehicles sold into the United States. Although this would be a deviation from the typical NAFTA-region sourcing rules, the Labor Advisory Committee on Trade Negotiations and Trade Policy (LAC) understands that these high-value parts are not presently made in Mexico or Canada. This recommendation is aimed to promote the retention and growth of manufacturing in the particular class of parts here in the United States for utilization in vehicles sold here.
f. Eliminate tariff preference level exceptions (TPLs), which undermine the yarn-forward rule.
g. Close other rule-of-origin loopholes that minimize the domestic content through roll-up and other provisions.

[15] There are many ways to establish such enforceable provisions against currency manipulation and misalignment. During the TPP negotiations, for example, two useful proposals included a test promoted by the American Automotive Policy Council and the incorporation of the International Monetary Fund's seven factor guidelines.
[16] Scott, Robert E., "Stop Currency Manipulation and Create Millions of Jobs, With Gains across States and Congressional Districts," EPI Briefing Paper #372, Economic Policy Institute, Feb. 26, 2014. *Available at:* www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/

h. Rules of origin relating to the production of steel must require that, to be considered for tariff preferences, the steel must be melted and poured in the NAFTA region. A similar standard should be adopted for other materials (e.g., aluminum), to ensure the entire process relating to the production of the materials occurs in the NAFTA region.

A strong rule of origin (ROO) promotes production in the NAFTA countries, rather than rewarding outsourcing to third-party countries. In addition, a strong rule of origin supports production and jobs. If the NAFTA renegotiations also include stronger rules to raise wages and environmental protections in Mexico, thus leveling the playing field, strong ROOs could promote more jobs in the United States, as well as in Mexico. Strong rules of origin will provide an incentive to produce in North America as opposed to China, Vietnam and other export platforms that exploit workers, and the incorporation of labor and other reforms suggested elsewhere in this document will ensure workers in *all three* NAFTA countries can benefit.

6. Protect Responsible Government Purchasing and Buy American Policies

NAFTA should support domestic job creation efforts by eliminating procurement commitments and promoting responsible bidding standards.[17] Currently, NAFTA gives bidders from all NAFTA countries expansive access to U.S. goods, services and construction contracts. These provisions can undermine not only domestic preferences, but also responsible bidding criteria (such as requirements that a bidder have no outstanding environmental cleanup obligations or the implementation of a system that awards bonus points for bidders with better safety records or that source from local farms). Arbitrary procurement commitments curtail efforts to ensure bidders—from any NAFTA Party—are not unfairly undercut by unscrupulous competitors, which is a further reason to eliminate procurement commitments.

The United States' trade obligations open far more U.S. procurement (by dollar amount and by percentage) to foreign bidders than any other large economy.[18] As detailed in a February 2017 Government Accountability Office (GAO) report, there is no evidence that the United States' procurement commitments, at the WTO or in regional trade deals like NAFTA, create more jobs for U.S. workers than they cede to workers elsewhere.[19] To the extent that procurement commitments like NAFTA's Chapter 10 drive down wages in a race to be the lowest bidder,[20] they already have harmed untold numbers of U.S. workers.

[17] Although there is room for additional study of the impacts of existing procurement deals (e.g., an analysis of the job and wage effects of the reciprocal agreement between the United States and Canada that was adopted for the expenditure of American Recovery and Reinvestment Act funds and an analysis of U.S. procurement contracts won by multinational versus domestic-only firms), to date, there is simply no evidence to support maintaining Chapter 10 commitments that require the U.S. government to treat foreign bidders with the same preferences as U.S.-based bidders.

[18] U.S. Government Accountability Office, "Government Procurement: United States Reported Opening More Opportunities to Foreign Firms than Other Countries, but Better Data Are Needed," February 2017, Fig. 2, p. 12. *Available at:* www.gao.gov/products/GAO-17-168.

[19] *Id.* In 2014 the Obama administration agreed to amend the World Trade Organization Government Procurement Agreement to delete the requirement that parties provide statistics on the country of origin of products and services purchased by covered government entities, ensuring that future studies will be stymied in efforts to document the effectiveness (or lack thereof) of procurement commitments as "job creation" tools.

[20] *See, e.g.*, Richard B. Du Boff, "Globalization and Wages: The Down Escalator," in Dollars & Sense. *Available at:* www.dollarsandsense.org/archives/1997/0997duboff.html.

NAFTA Parties should work to develop transparent, multilingual bidding systems and responsible employer standards that will benefit enterprises and workers located within North America, while leaving our democracies the freedom to choose when domestic preferences are necessary and appropriate, and when other considerations should prevail. A critical provision in Chapter 10 that should be maintained is its prohibition on offsets.

7. Eliminate Chapter 19 Obstacles to Effective Trade Enforcement

Chapter 19 should be eliminated and replaced with a mechanism for government cooperation to ensure effective enforcement against unfairly traded products from non-NAFTA countries

8. Combat Tax Dodging

NAFTA and subsequent NAFTA-style trade and globalization rules have had a negative long-term impact on tax rates and public investment. In addition, through a variety of legal and illegal tax avoidance schemes, tax revenues have fallen for jurisdictions around the world, regardless of tax rates. The OECD and G-20 both have recognized and developed recommendations to address this troubling trend, which undermines the social contract and inhibits robust public investment in infrastructure and human capital. Without efforts to address base erosion and tax avoidance, it is unlikely that the U.S. will be able to address its infrastructure needs or cultivate public support for international trade. The new NAFTA should incorporate at least the following commitments to combat tax dodging:

Specifically, the renegotiated NAFTA must include at least the following obligations:

a. *Country-by-Country Reporting:* Each Party shall require all multinational enterprises (MNEs) with prior year revenues of $850,000,000 or more to report annually and for each tax jurisdiction in which they do business the information set out in the OECD/G20 Base Erosion and Profit Shifting Action 13 Guidance.[21] Require that such reporting be made public, e.g., through the Department of the Treasury.
b. *No Secret Tax Deals:* To ensure equal footing for all enterprises, each Party shall prohibit secret tax deals and shall instead create a public database to report tax abatements, tax holidays and the like.
c. *Improve Enforcement Against Transfer Mispricing Schemes:* The Parties shall make available to customs officers of each Party a database of typical prices for imported items, using the harmonized tariff schedule. Customs officers shall use the database to refer for further investigation those shipments whose invoice prices are grossly misaligned with comparative prices as recorded in the database.

9. Remove Rules That Undermine Protections for Workers, Consumers and the Environment

NAFTA must not limit, undermine or inhibit public interest standards or regulations. NAFTA must ensure that North America's democracies retain the freedom to develop, advance and implement commonsense protections, including country-of-origin labeling, free from the threat of trade challenges. For this reason, NAFTA must not expand any commitments in Chapters 7, 9, 11, 12 or 14 that have the effect of limiting, undermining or inhibiting public interest standards

[21] *See* "Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13," Organisation for Economic Co-operation and Development (OECD), last updated April 6, 2017. *Available at:* www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm.

or regulations. The renegotiated NAFTA must contain no negative lists, no ratchet clauses and no "Regulatory Impact Analysis" requirements. Negative list commitments in NAFTA must be rewritten into positive list commitments to ensure that North American democracies retain to right to advance commonsense rules relevant to newly developed services, free from the threat of trade challenges. In addition, Article 2101, which currently provides a wholly ineffective general exception, must be rewritten.

While the AFL-CIO agrees that, under the right circumstances, regulatory cooperation can increase trade and efficiency in ways that benefit workers and consumers, we also caution against blunt efforts to use NAFTA renegotiation as a back-door route to attack important worker, consumer, environmental, health and food safety protections. Deregulation via international negotiations is inherently undemocratic, reducing trust in both trade and the democratic system because it undermines standards that citizens struggled to enact (such as "COOL" labeling).

10. Add Commitments to Invest in Infrastructure

Investing in infrastructure drives long-term, broadly shared growth, but is hard to do when global companies are driving a race to the bottom. Adding an infrastructure commitment will help balance the incentives of prior trade deals that have depressed public investment.

Specifically, NAFTA must include a new chapter in which each Party commits itself to investing a minimum of 3% of GDP annually on public infrastructure construction, repair and maintenance. The commitment must ensure that preferences for domestic procurement are allowable. Parties shall determine their respective infrastructure priorities with public input, and all public construction, repair and maintenance investments (transit, aviation, bridges, roads, ports, water, sewer, electricity, communications, schools, parks, other public facilities, etc.) shall count toward the minimum. The idea behind this provision is simple: set a reasonable target[22] for public infrastructure spending and require Parties to report their actual spending annually. The public reporting aspect will assist local, state and federal policy makers in evaluating their respective investments and helping their economies to grow.

Separately, and in addition, the NAFTA implementing bill must contain one-time mandatory funding for specific trade-related projects in the United States, to enhance the benefits working families can reap from North American trade, including but not limited to:

- New and improved land border crossings and ICC border commercial zones with Mexico and Canada;
- Ports, airports, roadways and waterways;
- New and improved rail corridors, including high-speed rail; and
- Broadband infrastructure, including in rural communities.

[22] According to the Congressional Budget Office, public spending on transportation and water infrastructure alone "over the past three decades has hovered at about 2.4 percent," "Public Spending on Transportation and Water Infrastructure, 1956 to 2014," CBO, March 2015. *Available at:* www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49910-Infrastructure.pdf.

11. **Protect Consumers and Ensure Financial Stability**
NAFTA should protect the ability to engage in fair and nondiscriminatory application of capital controls and other measures to ensure the stability of the financial system. The WTO's General Agreement on Trade in Services (GATS) and NAFTA's existing text already provide sufficient market opening for financial services providers. Further liberalization in financial services trade not only is unnecessary, it is likely to be harmful to working families given the role that financial services globalization played in creating and exacerbating the Great Crisis.

As Philip R. Lane explains in his paper, "Financial Globalization and the Crisis," financial globalization enabled the scaling-up of the U.S. "securitization boom" that triggered the crisis and was a key factor in the rise of large credit growth differences and current account imbalances that propelled the crisis across countries.[23] NAFTA Parties must incorporate the lessons learned from the aggressive financial deregulation of the 1990s and resist the entreaties of Wall Street and Canadian banks to use NAFTA renegotiation to ease financial services regulation.

To achieve these ends, NAFTA must not expand any commitments in Chapter 14, nor insert any new provisions that have the effect of limiting, undermining or inhibiting financial services regulations. Moreover, Article 1109.4 must be amended to ensure that under specified conditions, Parties may prevent the transfer of capital through the equitable, nondiscriminatory and good faith application of laws relating to unpaid obligations to employees and safeguarding the safety and soundness of the financial system.

12. Promote Transportation Safety
The new NAFTA must ensure that all Parties may enforce domestic highway safety, labor protections and environmental standards on foreign trucks, rail and buses. In addition, NAFTA should continue its existing policy of broadly excluding water and air transportation services from coverage. This includes maintaining existing Annex I and Annex II reservations covering the Jones Act, laws respecting ownership and control of airlines, and the like.

13. Protect Intellectual Property While Ensuring the Right to Affordable Medicines
For copyright: NAFTA should retain strong provisions to protect creative and innovative workers (including actors, writers, musicians and others) whose income, standard of living, and health and retirement benefits rely upon residuals, royalties and other payments tied to international copyright protection.

For patents and related protections: NAFTA must balance innovation with affordability of health care. The administration must work to ensure NAFTA's patent provisions do not become a corporate welfare program for brand-name pharmaceutical and medical device companies. Nor should NAFTA undermine democratic choices about how to ensure prescription drugs and medical devices provided through public programs are affordable for taxpayers and beneficiaries. Reproducing TPP provisions on patents, exclusivity and so-called "transparency and procedural fairness" into a renegotiated NAFTA would be a step backward for the health of working families in the United States, Canada and Mexico, and is unacceptable.

[23] Lane, Philip R., "Financial Globalisation and the Crisis," Prepared for the 11th BIS Annual Conference on The Future of Financial Globalisation, Lucerne, June 21–22, 2012.

14. Prohibit Global Corporations from Using NAFTA to Capture Public Services for Profit
NAFTA renegotiation must expand the public services exception in Annex II so that public services are fully carved out, or protected, from the agreement. The current NAFTA text leaves out a number of important public services, including energy, postal, water and sewer, sanitation, immigration and public transportation services from its Annex II reservation. This shortcoming must be rectified to protect the full spectrum of democratic decision making regarding the provision of public services.

15. Add Strong Environmental Rules with Swift and Certain Enforcement
NAFTA must be reformed to include strong environmental standards that will be enforced. NAFTA must require adoption of and compliance with key multilateral environmental agreements; prohibit illegal trade of timber and wildlife; promote responsible fisheries; and ensure countries cannot gain an unfair trade advantage by allowing highly polluting practices. This should be done in a manner akin to the recommendations for labor obligations.

16. Improve Screening for Foreign Domestic Investment
Congress and the administration should work together to enhance the powers of the Committee on Foreign Investment in the United States to be sure the U.S. can review greenfield investments and use a "net economic benefit test" to measure more impacts on our working people as a whole. In addition, NAFTA should be updated to accommodate this domestic policy change.

17. Improve Trade Enforcement as Part of a Robust Manufacturing Policy
Trade rules are only as good as their enforcement. Enforcement tools must be expanded and used promptly. Rules crafted to create a fair and level playing field and promote good jobs in growing industries will support employment and wage growth in all three NAFTA countries. This will be a significant improvement over the current rules and practices, which reward low-road practices, harming businesses, farms and working families across the region.

18. Improve the ITC's Economic Modeling
The United States International Trade Commission (ITC) is responsible for projecting the economic outcomes of proposed U.S. trade and investment negotiations. The ITC uses a model called the computable general equilibrium (CGE). The CGE has a number of limitations. It focuses almost exclusively on tariff reduction. The ITC report typically supplements its CGE results with an explanation that benefits likely are underestimated for the trade deal in question because CGE does not account adequately for the efficiencies gained through reduced regulation or enhanced intellectual property protection. The CGE model does not adequately address such issues as mercantilist trade policies, currency manipulation, long-term wage stagnation or inefficiencies that result from trade deal-caused deregulation, privatization, market concentration or deunionization.

Not only have the ITC's past projections been *overly* rather than *underly* optimistic,[24] the CGE method is particularly ill suited to NAFTA renegotiations, as tariffs for nearly all traded goods

[24] *See*, e.g., Drake, Celeste, on behalf of the AFL-CIO, Oral Testimony on "Investigation No. TPA-105-001, Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," Before the U.S. International Trade Commission, Jan. 13, 2016. *Available at*: www.usitc.gov/press_room/documents/testimony/105_001_005.pdf.

already are at zero. The LAC recommends that the ITC expand its methodology to include economic analyses that can compensate for some of the limitations of the CGE, including:

- Currency misalignment;
- Mercantilist trade behavior;
- Social welfare losses due to weakened regulations;
- Income inequality;
- Wage suppression;
- Enhanced corporate influence, which can drive government revenues down and undermine the ability of governments to invest in infrastructure and market-correcting mechanisms; and
- Variable impacts of strong versus weak enforcement approaches.

Chairman REICHERT. Thank you all for your testimony. And we will now enter into the question and answer session. And I will begin with Mr. Linebarger.

In your written statement and testimony, you note that the Brookings Institute recently cited Columbus, Indiana as the single-most trade-dependent community in the United States. My home state of Washington is probably the most dependent state in the Union, as it relates to trade: 40 percent of our jobs are directly related to trade in Washington State. So I very much understand the point that you are making and the types of issues that you have raised in your comments.

One concern that I continue to hear from my constituents has to do with the need to eliminate burdensome customs procedures and regulations. One of the examples I often hear about is the need for streamlined customs processes, including electronic forms, signatures, authentication, as well as the need to eliminate duplicative and unnecessary regulations throughout the NAFTA zone.

So, what are your thoughts related to this red tape? And then, more specifically, what are the challenges that you faced with your company? And hopefully you have some thoughts on some provisions we might be able to include that would streamline this, and eliminate some of the regulation's red tape.

Mr. LINEBARGER. Thank you for your question, Chairman Reichert. I would just say a couple things.

First is that one of the reasons Columbus, Indiana I think has become such an important—that international trade has been so important to Columbus is because our growth and hiring has depended so much on being able to access customers outside the United States.

The cost of participating in the commercial engine business is high, in terms of R&D. We have to spend a lot of money on R&D, typically around $700 million a year. And therefore, to be able to pay back that R&D, we need to be able to sell a lot of units. That is just—you need scale in our business to succeed. And it just turns out there are not enough customers in the United States, even if we occupy a reasonably strong market share, to afford to do all the investment we need to do to succeed.

And much of that investment, by the way, has been what has helped us fulfill the requirements of the Clean Air Act, in terms of the emissions from trucks and construction equipment over the last 15 or 20 years, which has been quite beneficial, I think, to communities. So that need to be able to invest is one of the reasons we need to develop scale and, therefore, be able to access foreign markets. So trade agreements have been a very important part of that.

With regard to your second question about duties and—or customs rules, there is no question that by streamlining regulations and customs and other what I would call sort of the small tactics on how NAFTA performs across our region we can improve our economic activity in all three countries.

Often times, the big elements of a trade deal get all of the attention, and it is the small parts like lines at the borders, where trucks get stuck for hours and hours or days at a time, that actually stop the economy from moving. So that is one of the emphases we put at the business roundtable, where I participate, is how do we work out some of the smaller issues that—these things that seem smaller—that could actually add to our economy with no cost to either—to any of the sides, by just being more efficient.

So there are significant opportunities there, using technology, as you mentioned, to reduce the burden on all sides and improve economic activity across the three regions. And I think that should be a clear follow-on from whatever NAFTA agreement is finally reached.

Chairman REICHERT. Could you mention a couple of the thoughts that you might have on specific solutions to some of the small tactics that you talked about? I mean even taking a look at the long lines at the border, having trucks sit and wait——

Mr. LINEBARGER. There is no question that using technology instead of older, manual process would be—one, standardizing agreements. I heard in your opening statement talking about health standards, and making sure we are using science-based standards. Science-based standards, standard agreements between the countries, and then using technology wherever possible, transparency in the rules, so everybody knows what the rules are and who is responsible for them, these are just a few of the areas that we have been emphasizing to try to make these regulations more efficient and effective.

Chairman REICHERT. Okay, great. I yield. Mr. Pascrell.

Mr. PASCRELL. Mr. Chairman, we are not going to be suckered into the whole of it's the traders versus the isolationists. I don't know anybody on this panel up here that is an isolationist. So we believe in trade, and we want it to be fair.

So let me ask you this question, Ms. Drake. The President has promised to bring jobs to the United States by renegotiating this disaster trade agreement. You represent the workers, AFL–CIO. Would you say that the USTR's negotiating principles and objectives just released represents a radical transformation of our trade policy?

And Part B of that question, do you see anything in their objectives that would create jobs here in the United States of America?

Ms. DRAKE. Thank you for the question. The objectives are not a radical, retransformation of NAFTA. They essentially look like tweaking around the edges. And much of it seems wholly adopted from the trade negotiating objectives from the TPP, which is something that the President himself said was a failed agreement and withdrew from.

I think the one sort of bright spot in the objectives is really the trade remedies section, but trade remedies can't create jobs. They can only defend jobs that are being attacked by unfair trade practices. So we would have liked to have seen more clarity, more specificity, and, frankly, a higher ambition, in terms of the objectives.

Mr. PASCRELL. Now, you have identified raising wages in Mexico as one of the most important goals of NAFTA renegotiation. Now I want you to talk some more about why you think wages in Mexico are so critical, both for Mexico and the United States. Try that one first.

Ms. DRAKE. It is really critical because the low wages in Mexico and the ease with which bad actor employers can exploit and abuse Mexican workers is one of the pull factors inducing investment in

Mexico. And the side agreements in NAFTA for labor just haven't done the job to protect workers. And we don't——

Mr. PASCRELL. And we have proof of that, don't we?

Ms. DRAKE. We absolutely have proof of that. There have been 39 cases filed over the years under the NAFTA labor side agreement, and none of them resulted in new workers being organized or having their wages raised in Mexico. So we have got to try something radically different, not tweaking around the edges. And there has got to be an enforcement mechanism that is not just slow and cumbersome and wholly discretionary, but swift, automatic, and something that workers can depend on.

And we have to tweak the other provisions—not tweak, change the other provisions of NAFTA, as well, so that we are providing different incentives. When—you mentioned earlier the President had said jobs are being sucked out of the United States. They are not being sucked out by Mexico's workers. They are being sucked out by decisions made by corporate CEOs to relocate production. And we have got to use NAFTA to change the incentives on those CEOs, so that they have more incentives to invest both in the U.S. and in Mexico. And when we raise wages in Mexico, we are going to have more exports to Mexico, because we are growing a middle class there, and really developing——

Mr. PASCRELL. Yes, the guy that is working in Pueblo is not the enemy. And we have made him the enemy.

But we have had some changes in law in Mexico since 2016. Could you really be specific about how that helps the cause of fairness here? Fairness. I mean it is a simple word.

Ms. DRAKE. So, the labor boards in Mexico have been really corrupt and used to attack independent trade unions in Mexico, and really promote these—what are called protection unions, or yellow unions, that simply have the same interests as the employers, in many cases.

So the changes from 2016 in Mexico are really important, but they are not enough. We still need to see laws and regulations enacting them and implementing them, and then we need to see enforcement, and see how they are being implemented in practice, because workers have a long experience of changes on paper not translating into reality.

Mr. PASCRELL. Thank you, Ms. Drake.

Mr. CHAIRMAN.

Chairman REICHERT. Thank you, Mr. Pascrell.

Ms. Jenkins, you are recognized for five minutes.

Ms. JENKINS. Thank you, Mr. Chairman. And I thank the members on the panel this morning for being here.

Foreign investment is a critical tool that allows American manufacturing services and agriculture industries to grow and to thrive, allowing producers in my district, such as those in and around Atchison and Topeka in the northeast, or Pittsburg in the southeast of my district, to reach the 95 percent of consumers that exist outside of the U.S. borders. And boosting income, they contribute to our economy.

In fact, U.S. economy is—that invest overseas are responsible for the majority of U.S. exports, as well as the majority of the U.S.-based research and development, both of which support high-paying jobs. This investment is typically about reaching foreign consumers or participating in foreign infrastructure, energy, or resource, or—projects.

While all investors in the U.S., domestic and foreign, benefit from protections based and baked into our Constitution and our strong legal system such as basic protections against discrimination, foreign seizure, or other forms of unfair action are not always available overseas. Investor-state dispute settlement mechanisms are one of the most important U.S. negotiating objectives under trade promotion authority, and the Administration has been very clear that it plans to follow TPA on modernizing NAFTA.

Mr. Ottensmeyer, perhaps you could respond on behalf of my constituents in Kansas. How has the legal protection provided by ISDS been important in your investment decisions for the overall benefit of products grown or manufactured in Kansas?

Mr. OTTENSMEYER. Thank you for the question. As I mentioned in my testimony, over the last 20 years, since we have been doing business in Mexico, we have invested $4.5 billion with the initial investment, as well as capacity enhancements to our rail network in Mexico.

We operate roughly a 6,000-mile rail network in U.S. and Mexico, split pretty evenly: 3,000 miles in the U.S. and 3,000 miles in Mexico. We are the only North American railroad that owns and controls rail networks on both sides of the border.

And agriculture is, obviously, important to you. It is important to us. If you look at our cross-border trade flows, 60 percent of our cross-border movement of freight is export, is south-bound. And the vast majority, the largest single commodity by a long margin, is grain.

Mexico is the second largest importer of corn in the world. We move about 35 to 40 percent of all Mexican grain in—mostly yellow corn imports move on our railroad. And if you visualize a map of our rail network from St. Louis to Kansas City, down through Shreveport, Houston, across Laredo, into the heart of Mexico, we are a perfect pipeline for moving U.S. agriculture, food products, grain, corn, soybeans from the major producing regions down into Mexico.

And I would say that, without the investment that we have made building the capacity on our cross-border network, those products couldn't move in the quantities that they move today. Truck and other means of transportation, large bulk commodities, rail is really the best and most efficient way to move, and I think we have been critical to open up those markets for your constituents and those in the Midwestern states into Mexico.

I would like to add, as we look at the future, we see two of our largest cross-border opportunities are also export-oriented. And they are in the form of refined petroleum products moving from the U.S. Gulf Coast into Mexico, which is happening today, and we are investing to support that movement, and petro-chemicals, petroleum derivatives, natural gas derivatives, plastic pellets that make everything from auto parts to water bottles to electronic casings. Those two opportunities, we think, are going to be very substantial export opportunities from the U.S. to Mexico.

Ms. JENKINS. Thank you.

Mr. Chairman, I yield back.

Chairman REICHERT. Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. I want to thank our panelists for your testimony here today. And, Mr. Chairman, I am glad we are moving forward with this hearing. I think it is desperate that this Congress leans in now to try to get trade back on the rails, in light of the dysfunction and the conversation that took place in last year's presidential campaign, and the start that we have so far this year. And hopefully, this will tee up some additional hearings, so we can continue to get feedback and also hold this discussion of how we can get back in the game.

And I am all for NAFTA renegotiation, and try to modernizing—bringing it into the 21st century, in light of the deficiencies of the current agreement. But, you know, these renegotiations, these one-off bilaterals, only get you so far. You know, it is in the multi-lateral context, where you have certain synergies and tradeoffs that you normally don't get in bilateral negotiations.

And that is why, at a previous hearing not so long ago in this Committee, I said that our rejection of trying to find a path forward with the Trans-Pacific Partnership trade agreement will go down as one of the great strategic mistakes that we made as a country in the 21st century. And how we get back in that tent, in the fastest-growing economic region of the global economy, the Pacific Rim, is going to be very, very important for our own economic well-being, but also diplomatically, and the national security interests that we have in that region, as well.

Mr. Linebarger, I am glad to hear that, as a major corporation in this country, you too embrace the need for us to have enhanced labor and environmental standards and protections in any NAFTA renegotiation. I couldn't agree with you more. And I have had the opportunity to visit a Cummins plant in Mineral Point, Wisconsin, in the southern part of my district, with exhaust emission technology that is taking us to that next generation of where we need to go, environmentally, too, with the products that is being made, including a Black River Falls plant.

And these are good-paying jobs with benefits in rural western Wisconsin that we are talking about. And Wisconsin, overall, we export 60 percent of our products to either Mexico or to Canada. So these two countries are vital to our economic well-being.

And just a quarter of a mile down the road from your Cummins plant in Mineral Point is a 220-head dairy farm. In Mexico right now is the greatest dairy export market that we have.

So, my advice to the new Trump trade team was, first, no trade wars. That is only going to hurt all of us here in the Western Hemisphere. And secondly, let's try to take what was accomplished in the TPP agreement and build upon that. And it seems as if they are starting to embrace that concept of not trying to recreate the wheel, seeing what these countries have already agreed to do in the context of TPP, which was also embracing core labor and environmental standards in the body of the agreement, fully enforceable, like anything else that is in the agreement, and go from there. And I think that would be a wise approach.

But Mr. Linebarger, just to get your reaction to this, you might understand the skepticism that some of us have on this side of the dais with an Administration that appears very hostile to worker rights, very hostile to collective bargaining rights in this country, and yet they are trying to move forward on a NAFTA renegotiation that takes May 10th and builds upon that by including labor and environmental standards. Why do you think this is important in any NAFTA renegotiation?

Mr. LINEBARGER. Thank you very much for your question, Congressman. I couldn't agree more with the disappointment with TPP, as you know. I spent a lot of effort on that.

But I would just say that I think the labor and environment standards are important to keep strengthening over time. Many of these countries are starting from a place that the U.S. was many, many years ago. And just like we want with economic development, when we operate in other countries what we are trying to do is bring the communities in there up to a better standard of living, better benefits, better for their families, just as we are trying to do in the United States.

So, as a company, we feel an obligation to all stakeholders. It is not just shareholders, it is employees, it is communities and families. That is the way Cummins was founded. That is the principles by which we operate. It is the values that we all share. So everywhere we go we want to do that.

But we are starting from where we are starting from. And what we are trying to figure out is how to make sure that we move up through economic development and through raising standards.

And I think just trying to establish those standards and then enforce them—I do agree with the panelists that I share the table with, that enforcement is important with whatever standard we put in there. I think we did miss some beats on all of our standards, where—our trade agreements——

Mr. KIND. Well, and I——

Mr. LINEBARGER. We didn't enforce enough of what we had——

Mr. KIND. And I want to commend you, because you have been consistent on that message, with the visits that we have had, the conversations that took place on the Hill and off, and that is important.

But—and I want any trade agreement, whether it is a renegotiation or a future one, to be elevating standards up to where we are so we start to level the playing field, you know, for our workers, for our businesses, for our farmers that is fully enforceable, that can expand the opportunities on a global basis. And hopefully, that will be a shared goal that we have with the Administration when it comes to NAFTA renegotiation.

Thank you, Mr. Chairman.

Chairman REICHERT. Thank you.

Mr. Paulsen.

Mr. PAULSEN. Thank you, Mr. Chairman, and thanks, everyone, for being here today.

I do believe it is absolutely necessary and critical that strong digital trade provisions also be included in any NAFTA modernization to better reflect the realities of the economy today, including issues that are related to the digital economy.

In fact, today—I co-chair the Digital Trade Caucus and, in fact, today my co-chair, Suzan DelBene, and I are going to be sending a letter to the Administration, outlining some of the areas of digital trade that we think should be prioritized in the negotiations. This includes everything from promoting cross-border data flows, eliminating data localization requirements to streamlining customs procedures, and, of course, prohibiting unnecessary regulation of digital services.

Mr. Linebarger, you spoke a little bit about adding thousands of new high-quality jobs being added at Cummins exclusively because of access to international markets. And NAFTA and other trade agreements have been a big part of that.

And last fall I remember visiting the facility of Cummins in Fridley, Minnesota, had a chance to visit with some of the 1,200 employees that are there, seeing the power generators, seeing the exports that are going right out the door to other markets.

From your perspective at Cummins, and the work you do with your supply chain and with other American business leaders, can you talk a little bit about how important it is for digital trade for the success of your business, for American businesses, and how important is it that we include digital trade provisions in a NAFTA modernization?

Mr. LINEBARGER. Thank you for the question, Congressman. I would just say that in today's economy digital is a critical element in every business. All of us in business, in whatever field, are having more and more information and digital-related activities where—and so that is just part of the economy. To not have it in a trade agreement is just ignoring the—where the economy has gone. So we definitely have to have it there.

Just in our case, in Cummins's specific case, we now have telematics on all of our engines that go in trucks, and also in other equipment, which allows us to gather information to give customers more proactivity with their equipment. This is now required by nearly every producer. And I think it will be the basis of competition in the future, even more than some of the sort of manufactured goods that we make today.

So, as things move forward, this digital area is going to get more and more important. Our ability to compete freely, and to be able—and not be restricted by where we have to keep data, how we have to gather data, these kind of things will become more and more important. And every manufacturer—it is not just going to be computer companies or banks that are going to be worried about that. Every one of us is going to be concerned about this, and it is going to be a major source of income and competitiveness.

So I would just say that, without having it, we are ignoring where the economy is. And, for Cummins, it will be a critical element of the value that we sell to customers.

Mr. PAULSEN. You know, this is interesting, because a lot of people think of digital trade only involving IT companies or high-tech companies. And actually, it is about manufacturing, it is about e-commerce, it is about making sure you are selling your products throughout your supply chain. It—just all that integration.

Mr. Ottensmeyer, maybe—any other thoughts or feedback on the same topic?

Mr. OTTENSMEYER. I would agree that the digital economy has advanced, you know, just tremendously in the last few years, and the pace is picking up. It is important to us, in terms of safety, security, efficiency of border crossing. I would say, more importantly, it is important to our customers, in terms of being able to track and trace and have information that allows their supply chains to operate at an optimal level.

But just going back—and again, the Chairman's question about efficiency of border crossing—we are working on some, I think, very important and potentially break-through initiatives at the border to improve the way trains cross.

I mentioned earlier, if you look at the nature of our business, we handle large bulk commodities. Opportunities like refined products are going to require a more efficient border crossing process. And it is a lot easier to change processes and use technology to enhance capacity to allow for larger U.S. exports of products like gasoline and diesel than to build new bridges. Bridges are very, very expensive, and very hard to get permits and to build. So changing the processes that we currently use to move trains across the border is going to be necessary to take advantage of the export opportunities that we see in our business and we see for the country.

Mr. PAULSEN. Thank you, Mr. Chairman.

Chairman REICHERT. Mr. Doggett.

Mr. DOGGETT. Thank you very much, Mr. Chairman, and thanks to each of our witnesses.

We, of course, know that, regardless of the subject, President Trump has little interest in cooperating or collaborating with Democrats in trying to find solutions to the problems that our country faces.

But listening to the comments this morning of my Republican colleagues about the many advantages of NAFTA and all that it has done that has been good for our country, I have some difficulty in reconciling that with what President Trump is saying about it being the worst trade deal in the history of the country, about it being a disaster. And I wonder if he is even collaborating with our Republican colleagues in designing new trade policy.

I represent the City of San Antonio, in which NAFTA was signed. And for San Antonio and Central Texas, NAFTA has not been a disaster. It has, overall, been a benefit. It has been a disaster for the women who worked at the Levi plant in San Antonio, and it has been a disaster for some other parts of the country. But, on the whole, in our area there have been a number of economic benefits from NAFTA.

Some people say that, given the total inconsistency between President Trump, not only—and our Republican colleagues here today—but they point to the inconsistency between him and his own advisors. Yesterday's announcement of the NAFTA objectives appears to demonstrate, again, that total inconsistency, because it sounds like the objectives are kind of a warmed-over TPP, which he has already rejected, that that is the place that he wants to begin.

And others have speculated that he will discover that trade policy, not unlike health care policy, is complicated, something all of you knew, and that perhaps his response will be the same as we are hearing today: Let's just forget it and repeal it all.

Mr. Linebarger, I found a lot of merit in your testimony, the emphasis on the integrated supply chains, which I see for some of our companies there in San Antonio and throughout Texas. What would be the effect of just saying we have had enough, it is too complicated, Republicans can't agree among themselves, as on health care, and just terminating NAFTA? Could it really be done, given 20 years of integrating the supply chains? And what would the impact be on American business and American workers?

Mr. LINEBARGER. I think the impact would be significant and very detrimental, and not only to large companies, by the way. There is no question that large companies like ours would have not only higher costs and less competitiveness, but we would have lower sales and, therefore, we would have to reduce our workforce. That is my true belief.

I also think, though, for small companies. Cummins has more than 2,500 U.S. suppliers. Many of them are small and medium-sized companies. These companies are now very sophisticated in how they participate with Cummins in international trade. Many of them started off as just a few hundred people in one small town in the Midwest or some other part of the country, and then, because they have started to supply Cummins, they have grown. And many of them have even opened overseas offices, things they couldn't have imagined years ago, and have added employees at home now to sustain business they have outside of the U.S.

So small, medium-sized, and large companies all benefit as part of this regional supply chain that NAFTA has created. So I am very convinced that terminating NAFTA would have a very, very detrimental effect on the U.S. economy——

Mr. DOGGETT. Thank you. I appreciate the fact that you also advocate enforcing environmental and labor conditions, and find it, again, totally inconsistent with what President Trump has said, that he is proposing to cut not just by a little, but by 80 percent, a bureau in the Labor Department that is focused on monitoring the treatment of foreign workers, and that that has been condemned by a number of American businesses, along with the AFL–CIO, and that the White House has no explanation of why it would reduce the enforcement by 80 percent.

Ms. Drake, you have focused on the investor-state protection, which is something that has concerned me, along with the failure to enforce environmental and labor regulations. Is there any reason, particularly with Canada, why we can't rely on a mature court system to adjust any differences that we might have? Don't American businesses deal in the Canadian courts all the time?

Ms. DRAKE. I have seen no evidence that we can't trust Canadian courts. And I have been having this debate with folks who support ISDS for quite a long time. And it is really when businesses ask for certainty upon investment, there shouldn't be any guarantee of profits or certainty of profits. And it is workers who often don't have any certainty under trade agreements.

Mr. DOGGETT. Thank you. Thank you all.

Chairman REICHERT. Thank you.

Mr. Kelly, we are going to go two to one now. So Mr. Meehan will follow Mr. Kelly, and then we will go to Mr. Levin. Mr. Kelly.

Mr. KELLY. Thank you, Chairman. Thank you all for being here.

Just to kind of look at what we are talking about so far, I think it is pretty hard to look at six months of the Trump Administration and come up with some kind of a definitive idea that they haven't gotten things done yet. That is kind of amazing to me, after sitting here for 8 years and watching the erosion of jobs across the board, 5 million jobs, 70,000 plant closures, and saying, "You know what? This Trump needs to really get on the ball, he just hasn't acted fast enough." So I appreciate my colleagues weighing in, and we are getting ready for the 2018 elections, so I guess we start the campaign now.

Let me just say this, though. I am really concerned with you all being here today because a lot of the things that we have talked about, a lot of the jobs we have lost, have not been because of trade agreements. A lot of them have been because of tax policy and regulation policy. People aren't leaving the country because they don't like America. They are leaving the country because they find it is too hard to stay profitable in the global economy.

But one thing I will say about NAFTA. NAFTA has been very good in a lot of cases, has it not? Some of us would look at that. I know in Pennsylvania it has been important, especially to the ag people.

So, for the record, Mr. Chairman, I would like to submit a letter by Mr. Smucker and also Mr. Kind and myself, and co-signed by 45 other Members, kind of a do no harm. We talked to Ambassador Lighthizer to make sure that we are doing the right things when it comes to NAFTA.

Chairman REICHERT. Without objection.

Congress of the United States
Washington, DC 20515
June 29, 2017

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

Dear Ambassador Lighthizer,

Our nation's agricultural industry plays a vital role in providing our nation's food supply as well as the global food chain. An integral part of the domestic economy, the agricultural sector supports more than 21 million American jobs. Therefore, as the United States begins to renegotiate the North American Free Trade Agreement (NAFTA) with Canada and Mexico, we strongly urge you to prioritize the interests of the U.S. agricultural industry.

Since the implementation of NAFTA, U.S. agricultural exports have more than quadrupled from $8.9 billion in 1993 to $38 billion in 2015. The growth in U.S. agricultural exports is largely attributable to the removal of significant trade barriers among NAFTA countries allowing American farmers to more easily reach new markets resulting in increased U.S. revenue. For instance, the U.S. cattle industry has benefited from expanded market access through the development of two $1 billion export markets in Canada and Mexico for American beef products.

Largely small business owners, U.S. farmers often lack the financial resources to anticipate and respond to harmful government policies that negatively impact their farming operations. Recently, for example, American dairy and poultry producers have been threatened by Canada's trade-distorting non-tariff policies, as well as steep tariffs and quotas on U.S. dairy and poultry products. These protectionist policies have threatened the vitality of America's dairy and poultry industries across the country.

We, therefore, welcome the opportunity to renegotiate NAFTA in order to address these discrepancies and other harmful trade policies in order to improve the competitiveness of the U.S. agricultural industry. Concomitantly, it is equally imperative that we preserve all the relative trade gains NAFTA has provided to American farmers' and ranchers' during the renegotiation process to allow for the U.S. agricultural sector to compete globally on a level playing field.

Thank you, in advance, for recognizing the importance of trade to the economic security of our agricultural industry as you begin the renegotiation process of NAFTA. Our farmers and the local communities they support will depend on a new trade deal that prioritizes the interests of U.S. agricultural producers while seeking to further expand U.S. market share in both Canada and Mexico.

Sincerely,

Lloyd Smucker
Member of Congress

Ron Kind
Member of Congress

Mike Kelly
Member of Congress

F. James Sensenbrenner, Jr. Member of Congress	David Young Member of Congress
Paul Mitchell Member of Congress	Bob Goodlatte Member of Congress
Trent Kelly Member of Congress	Sean P. Duffy Member of Congress
Frank Lucas Member of Congress	Tom Rice Member of Congress
Mike Bishop Member of Congress	Devin Nunes Member of Congress
Jason Lewis Member of Congress	Jeff Fortenberry Member of Congress
Mac Thornberry Member of Congress	Rod Blum Member of Congress
Ryan Costello Member of Congress	Kristi Noem Member of Congress

Scott Perry
Member of Congress

Joe Courtney
Member of Congress

Ron Estes
Member of Congress

Terri A. Sewell
Member of Congress

Glenn 'GT' Thompson
Member of Congress

Suzan DelBene
Member of Congress

Dwight Evans
Member of Congress

Austin Scott
Member of Congress

Steve King
Member of Congress

Ralph Abraham, MD
Member of Congress

Raul Labrador
Member of Congress

Patrick Meehan
Member of Congress

Lynn Jenkins, CPA
Member of Congress

Vicky Hartzler
Member of Congress

Darin LaHood
Member of Congress

Jack Bergman
Member of Congress

Dave Reichert
Member of Congress

Earl L. 'Buddy' Carter
Member of Congress

Rick W. Allen
Member of Congress

Tom Marino
Member of Congress

Dave Loebsack
Member of Congress

Adrian Smith
Member of Congress

Ted S. Yoho, D.V.M.
Member of Congress

Mike Gallagher
Member of Congress

Don Bacon
Member of Congress

Kevin Cramer
Member of Congress

Keith J. Rothfus
Member of Congress

Kevin Yoder
Member of Congress

Mr. KELLY. Is there any of you that would disagree with the fact that a 23-year-old trade agreement shouldn't probably be looked at to see is it operating under the current world that we live in? Is there anybody that disagrees that we should not take a look at that?

[No response.]

Mr. KELLY. You have all offered suggestions of what should be in that new trade agreement, right? Okay. I just wanted to make sure we are on the same page with this, because I really sometimes get baffled as to where we are going with these questions.

But for all of you to come in here—I am an automobile dealer. I sell Chevrolets, I sell Cadillacs, I sell Hyundais, and I sell Kias. Of all of those products, there is not one that is just made solely in the United States. It is impossible to do. So, as we have changed and gone to a global supply chain, how would we now change back, and how quickly could that be done?

Mr. Linebarger, I know what you are talking about, and I know that if I were to bring out Monroney labels right now—and, by the way, the Monroney labels are the stickers that are on the windows of cars and trucks that are produced—and if you go to the far right-hand corner, and down in the left-hand side, it says "supply content." It would be very hard for somebody to differentiate between which car was made in America, the Hyundai Elantra or the Chevrolet Silverado, because the Hyundai Elantra is actually built in Montgomery, Alabama, and the Chevrolet Silverado is built in Mexico, has about 38 percent U.S./Canadian—by the way—parts supplied. The rest of it comes from Mexico.

So how do you re-engineer that? How do you, in a—in six months, re-engineer that, and how do you get 70,000 plants to re-open, and 5 million jobs to come back? And, from your perspective, from your perspective looking at NAFTA, if you all go right down the line, please tell me, if you can—and I know it is hard to do, it is hard to articulate—what you would like to see in that new agreement, or what should we be concentrating on that grow American jobs and make it safer for workers all around the world.

But more importantly, with the clout that we have, with the clout that we have, we should be able to drive bargains that come far more favorable to us.

So, Mr. Linebarger, if you would start, and if you would all right go down the line, I would appreciate just hearing from you.

Mr. LINEBARGER. Yes, again, my strong recommendation for modernizing the agreement is add more parts of the economy to it. The U.S. is incredibly competitive in services, in IT, in technical areas, and there just are not enough protections in the old agreement for those areas.

We talked about IP protection, we talked about making sure there is fair trade and where you need to keep your technology and your IT. I think having more of those modernizing things is really important.

As I mentioned, I also think it is important to have enforceable labor and environment standards, because we are all trying to move the standards up.

Mr. KELLY. Absolutely.

Mr. LINEBARGER. That is an important thing to do. That is where I would focus my attention, is on the parts that modernize the agreement, and the parts that make sure we add in standards that keep us all raising them up.

Mr. KELLY. Yes. Mr. Ottensmeyer, there is nothing like a steel wheel and a steel rail. That creates an awful lot of jobs, and really supports Social Security. We need to get more people in the workforce.

Mr. OTTENSMEYER. I would agree with what my colleague just said, expand it, look at—and again, I think that there are opportunities in front of us today in the form of energy markets—Mr. Arriola can talk more about those—that I think could be substantially opportunities to improve exports, increase exports.

Infrastructure is going to be needed, so we will do our part and invest in infrastructure on both sides of the border. But I also think some of the regulatory relief that is taking place, particularly in energy markets, is going to make it easier for U.S. producers to tape those markets.

Mr. ARRIOLA. Congressman, as you said, a lot has changed in the last nearly 25 years. The energy markets were not open 25 years ago.

Mr. KELLY. Absolutely.

Mr. ARRIOLA. Today Mexico is one of our best trading partners. And, as I mentioned, we have a trade surplus because of the natural gas and liquid fuels that we send to Mexico. So making sure that the new, modernized NAFTA agreement recognizes those new open markets so that it is codified in the agreement we think is very important.

Secondly, ISDS is not theoretical. It is not academic. It is for real. For companies like ours and industries like ours, that invest and put infrastructure in the ground that is there for 20, 30, 40 years, it is for real.

We had an experience in Argentina where, overnight, the government changed the rules and regulations. American companies need to be treated fairly, and need to have access to a tribunal that can think fairly.

Chairman REICHERT. Thank you, Mr. Arriola.

Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman. And I thank the panel for your insights into the broad spectrum of issues that are impacted by the purported agreement, and the opportunity for us to go back and revisit some areas.

But significantly—and I think Mr. Linebarger put his hand on it the most—we are growing in certain areas that were never part of the original agreements. And my colleague, Mr. Paulsen from Canada—from Minnesota——

[Laughter.]

Mr. MEEHAN. Hey, he is a pretty good hockey player, so I always think that he is from—focused on intellectual property protection, the cross-border data flow, and other important protections.

I think one of the things that is often misunderstood when we talk about e-commerce is the tremendous growth that is taking place in this, and services that are provided. In addition to the mechanics, so to speak, that are part of the materials that you send over, the digital information that is in the actual engines and things which need to be able to operate across borders, the United States has actually had a surplus of $159 billion in terms of services that are provided, but it requires that we have got protections in three critical areas.

One is cross-border data flow to enable, as you have identified, Mr. Linebarger. The second is that we can't then inhibit that by virtue of creating responsibilities for you to localize data in a particular nation. And then, third is when you do have information that is being traded, and that you have got certain kinds of intellectual property, that we have got appropriate protections that recognize and protect against the inappropriate use of that.

Can you speak, Mr. Linebarger, to how significant it is that we not only look at this in terms of assuring that both Canada and Mexico—that we visit areas, some of which—Canada, for example—does look at localization in some areas, intellectual property protection is not quite what it has right here—how it is important that—not only that we work through those areas so that we modernize an agreement, but, as significantly, that we look at this as a paradigm that, if we can work through these issues to actually enhance some of the discussion that took place during TPP, that we may be able to create the kind of a model that we can replicate, globally.

Mr. LINEBARGER. Thanks for the question. And I really agree with that. I think it is important. Congressman Kind mentioned it, too, that what we—when there are—when there is access to customers and there are a set of rules that are reasonably standardized, American companies can win. We have an incredibly capable workforce, we have talented people here, and we can win in other markets when the playing field is even close to level, is my opinion.

So, some rules to live by. And the ones that you are mentioning are the ones that we want to begin to standardize and codify and get more countries to adopt, because those are the rules of the modern economy. And when the rules are there, we can win. So I would strongly agree that trying to push into areas, the new areas of the economy, make sure there is a standard set of rules that we can adopt in other trade agreements, bilateral or multilateral, is a really important thing that we need to do.

I was hoping we would get it with the TPP, but now—we didn't, but now we have more opportunities, I think, to do that with NAFTA.

Same was true with labor and environment, by the way. All these standards are areas where, if we get them in, we have them codified, and we can then move on from there and continue to raise our standards and improve the way that the international trade works, and so there are not so many violators, and it is not so easy to violate. That is, I think, what is going to help good, responsible companies to do well.

The other two areas you didn't mention I would highlight would be state-owned enterprises. There are still many operations where state-owned enterprises are in. Sometimes that is an okay thing to do. But if they are not operating in an economic way, in a fair competition way, that can essentially exclude U.S. companies from participating anywhere near that industry.

And the last is national preference rules, which seem advantageous, as long as you are the nation putting them in. But the problem is when the other nation puts them in, it essentially excludes you from those industries. And I would just mention that some of the most competitive industries we have—banking, insurance, other IT-related industries—are areas that other countries like to put national preference standards. So if we have them, they are going to put those in, and——

Mr. MEEHAN. Because that stifles not only innovation, but when we have products that are innovations that can have an impact on their markets, it prevents the access to those markets——

Mr. LINEBARGER. Right, correct.

Mr. MEEHAN [continuing]. And prevents that kind of growth of what we are talking about has actually been a surplus, when we have been able to deliver those kinds of services and innovation to foreign markets.

Boy, I have got a lot of other questions, but the time has run out, and I appreciate your answers.

And, Mr. Chairman, I yield back.

Chairman REICHERT. Thank you.

Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. And I think this panel—perhaps it hasn't been planned that way—has really helped us get to the nub of the issue. If you look at the—all of you except for Ms. Drake and the others on behalf of business are testifying that NAFTA has been a plus. Well, the President has said the opposite.

If you look at the surplus and deficit figures, they tell the story. There is, with Mexico, a substantial surplus in services. In goods there is a deficit of over $55 billion last year. And that has happened—it is no surprise.

The big issue in NAFTA, what we fought over, were labor and environmental standards. We had already seen considerable parts of American industry move to Mexico. The maquila dynamic, it was already there. And what was done in NAFTA was not only to have a side agreement, so called, over our objection, but it was totally unenforceable.

So, what happened is what we predicted, and that was that more industry would move to Mexico. And that happened in a number of industries, including the automotive industry: a dramatic shift of production from the United States to Mexico. And the differential was not automation, it was labor costs, predominantly.

So, today the Mexican auto worker receives 14 percent of what is paid in Michigan and other places, about $2.40 an hour. And Mexican manufacturing productivity has increased 80 percent, while compensation for workers there has slid 20 percent.

So, we are going to have to address that problem, or else there is going to be more and more slippage of production to Mexico and more jobs lost. One can argue whether it is two million, a million. You can also argue how much the impact has been on lowering wages in the U.S. I think undoubtedly the two-tier structure in the UAW plants resulted from the shift to production to Mexico.

And so, while I don't agree with the super-populism of this President for one second, I do think there is a real issue here.

Mr. Linebarger, you said—and that is why I think this is a useful hearing—you said, "We believe that NAFTA's environmental and labor standards should be strengthened and incorporated into the updated agreement itself." The only way that is going to happen is if Mexico dramatically changes its laws and practices. And if they don't do that before we vote, there is never going to be an assurance that it will ever happen.

And so, I think we need to ask you in the business community who say that, as well as those in the labor community. And those of us who care about worker wages in the U.S. and the impact competing with Mexico workers who are getting a fifth or a sixth in the auto parts industry—it is even a smaller percentage in the auto parts industry; they are making a buck an hour in some cases—and more and more companies have moved their parts production to Mexico.

So this Administration, all of us, need to get serious. And the only way that we are not going to continue to lose production to Mexico in autos and beyond, and continue to lose jobs, is if steps are taken that auto workers in Mexico who today have zero rights will be able to have their international basic rights. That is the nub of this issue, in terms of the deficit in goods.

Chairman REICHERT. Mr. Reed.

Mr. REED. Thank you, Mr. Chairman, and thank you to our panel here today. I wanted to focus in a little bit—and I appreciate the efforts the Administration is doing in modernizing NAFTA and bringing it up to current standards.

I mean over 22 years this agreement—for example, take the energy sector. I want to focus there a little bit and then touch upon how that impacts U.S. manufacturing, because I am a firm believer in U.S. manufacturing. On the—when they started on NAFTA, the Mexican energy market was essentially off limits. And as you noted in your testimony, that has been opened up a little bit.

But I was wondering, Mr. Arriola, from an energy perspective, what provision should we be focusing on? How can we strengthen access to that marketplace? And what will that do to the overall cost for manufacturers, in your opinion?

And then I will go to Mr. Linebarger as a manufacturer—proudly, in my district—with 1,500 folks working there in Jamestown, New York, and we appreciate his efforts.

So maybe expand a little bit on the energy sector and what we need to focus on there.

Mr. ARRIOLA. Sure. Thank you for the question, Congressman, and thank you for your letter to Ambassador Lighthizer, talking about the importance of free-flowing energy across all borders.

One of the things I would touch on is the importance of cross-border infrastructure processes. And when you look at what has been happening in the energy world, the developments, especially on the electric side, have been very beneficial, both to the United States, as well as Mexico and Canada, from a grid reliability standpoint.

So, as you know, these projects take a lot of time. And certainty is important to know what the schedule is, what the approvals are required. So what we would like to see in a modernized NAFTA is to have additional rules set in place, how the coordination is going to take place, not taking away the sovereignty of approvals from each country, but laying out a process so that companies like ours and sectors like ours know what to expect and how to manage the process, and how each country is going to be dealing with it.

We think that that helps a lot with getting the investment done in a timely basis, which actually helps to produce additional jobs here in the United States, as well.

Mr. REED. I appreciate it. And in regards to U.S. manufacturing, Cummins being a great example of a great U.S. manufacturer, how would that energy policy equate to your position in the world marketplace?

Mr. LINEBARGER. Yes, it is a great point. I mean, obviously, lower energy costs will benefit us significantly, especially if they can be done in a sustainable way. And so, being able to operate energy markets more efficiently and have more scale there will benefit—even—especially as technology changes occur. It is definitely beneficial.

The other thing is that, you know, that Mexico began to restructure its own energy industry, because it has the enterprise there. They were very restrictive to buying from U.S. companies. Now they buy equipment from U.S. companies. They have just started restructuring that, though. So I would just encourage those participating in the NAFTA renegotiating process to continue to push them to continue restructuring, don't go backwards. Because it is politically challenging for them to restructure that sector of their economy. So we want to encourage them to do so.

And I think that is one of the real benefits of a thing like NAFTA. If we want to restructure Mexico's economy, be it labor standards or energy restrictions, the economic activity represented by NAFTA is the way to drive them to do it. We can't just decree that they raise labor standards or that they open their energy sector. It is only the benefits they receive from economic activity with the U.S. that drives them to do it.

So we should continue to push Mexico to raise standards, open markets. And I think, through renegotiating NAFTA, and through the benefits from NAFTA, we can do it.

Mr. REED. I appreciate that. With that, Mr. Chairman, I will yield back.

Chairman REICHERT. Thank you.

Mrs. Noem.

Mr. Holding.

Mr. HOLDING. Thank you, Mr. Chairman. The—as the very happy owner of a pair of Cummins engines, I am always watching the innovation and new technologies that come out of Cummins, with their new engines. So I would ask Mr. Linebarger how important is being able to access customers outside of the United States in Mexico, Canada, and elsewhere for Cummins's ability to keep innovating and coming up with new technologies and more sophisticated engines.

Mr. LINEBARGER. Thank you for that, Congressman. And in your segment that you mention is a perfect example. We are in the marine engine segment. It is a relatively small segment. So, in order to produce the technologies relevant for the marine segment, we have to invest a lot of money, because that segment has changed a lot in technology, both in electrification and cleaner energies—cleaner technologies to clean up air and, of course, not pollute in the water.

So there has been a lot of technology spent—again, we spent $700 million in a year in R&D. And in order to participate in sectors of that size, you need economies of scale. It is really important that we can access consumers around the world.

And, by the way, there are companies who compete with us based in all those countries who have decided that they need to compete with us and beat us in the United States. So, in order to compete, we need to continually invest, and continue to build economies of scale through sales.

So accessing those customers is important. And again, through my examples like Seymour, Indiana, Rocky Mountain, North Carolina, and Columbus, Indiana, we can compete. Our plants can compete.

I heard some stories about how, after NAFTA went in, plants closed and moved to Mexico. But, in fact, what we did was we closed our engine assembly plant in Mexico and moved it to Jamestown, New York. And the reason we did that is we had very large scale in Jamestown, New York. And, despite labor differences, we are more competitive producing engines in Jamestown than we were in producing a very small number in Mexico.

We make other products in Mexico that we produce at high volume, and they are quite competitive there. So, while labor cost is a factor, it is a relatively small factor of our total cost relative to R&D, capital investment, and other flows. So we feel like we can compete very well from the U.S. when we have access to customers abroad.

Mr. HOLDING. Well, let's use a specific example. So, of course, your favorite facility—my favorite facility is in Rocky Mount, the——

Mr. LINEBARGER. That is a good one.

Mr. HOLDING. And so, if you could think about Rocky Mount, and tell me how market access helps create and retain jobs in your Rocky Mount facility.

Mr. LINEBARGER. So Rocky Mount, North Carolina, produces our mid-range engines for the entire North and South America region. It produces engines for nearly every sector. It is one of the only plants where we export to China. We export natural gas engines for buses to China from Rocky Mount, North Carolina.

That plant, in the downturn in the U.S., our production dropped by nearly 40 percent. And at the lowest point we were down almost two-thirds of our production, because the economy was so weak in the U.S. right after the financial crisis. And it was our growth and business outside the U.S. that allowed us to continue to maintain reasonable levels of employment in that plant, and then hire back from that very devastating downturn.

So we find that the international business not only allows us to grow our business, to reach economies of scale, but also protects us against economic cycles that we have in the U.S.

Mr. HOLDING. Staying on the topic of innovation and new technologies, you know, I do have some concern that both Canada and Mexico have too often fallen a bit short in respect to intellectual property enforcement. And, of course, this was reflected in the special 301 report the USTR issued just earlier this year.

So, Mr. Linebarger, you are nodding your head. Do you have any comment on that, any experience that you would like to share with us?

Mr. LINEBARGER. I do think that—like we were talking before, we haven't had enough focus on IP in our agreements, nor have we been as quick to enforce rules that we should be enforcing. And yes, we have had situations—more in Mexico than in Canada—where intellectual property has been—where people have essentially copied products or taken brand names and used them on other products. So we do feel like it is important.

We also think it is in the interest of both those countries. Both of their—the companies that operate there would like to see IP enforcement for their own benefit. So I think both countries would also benefit from having strong IP rules and having enforcement. So I think it is an area, again, where everybody wins if we have strong standards and then continue to enforce them.

Mr. HOLDING. Thank you.

Mr. Chairman, I yield back.

Chairman REICHERT. Mr. Davis, you are recognized.

Mr. DAVIS. Thank you very much, Mr. Chairman. And I thank you for calling the hearing. I also thank all of our witnesses for being here.

It is indeed a very interesting discussion, and I think of the title, which talks about the need to modernize NAFTA. And so I think that it is often much easier to talk about what than it is to talk about how. Just as I often hear a great deal, after all is said and done—somebody said, well, more is often said than done.

And so the whole question of how do we change situations—Ms. Drake, let me ask you. You indicate that we have lost, oh, 850,000 jobs under NAFTA. Could you tell us what kind of jobs those are? And is there any way to reclaim, recoup, or get any of them back?

Ms. DRAKE. Thank you. So the job losses are in many sectors, but you can find concentrations in the auto sector and electronics, in textiles, and other manufactured goods.

The goal of the American labor movement is not to turn back the clock or go back to the past, but it is to set up different and more balanced incentives, so that the U.S. can capture a larger share of new investment. And that is why we talk about it is really important to raise wages in Mexico, so we can level the playing field of competition, so that, as companies say, "We are growing, we are going to invest in new plants," that they might make that decision to invest in the U.S. or Canada as much as they might make the decision to invest in Mexico.

They have to think about all things, including labor costs, but it is really important not just to get wages up in Mexico, but to look at other structures that take away worker negotiating power and give additional power to, you know, the employer class. So we want to really get those incentives right.

Mr. DAVIS. When we talk about influencing the behavior of other countries, are we talking reality, or are we talking something that is so far fetched until people cannot even imagine it?

There used to be a Zenith plant, oh, I guess about a mile from where I lived. And, of course, all of that shifted from Austin Boulevard in Chicago to Mexico. What do we have to do if we are going to influence other countries' behavior as we negotiate with them for trade relations?

Ms. DRAKE. Well, it is about influencing the behavior of other countries, but it is also about influencing the behavior of global corporations, which are powerful actors in the trade space.

So, to influence the behavior of Mexico, we need to offer them something that they want, that they are willing to say, "We are going to raise our labor standards towards international levels and enforce them." In exchange, what are they going to get? Additional access to the U.S. market, additional assurances about how trade is done, trade facilitation—we have to look at what they are interested in.

And certainly, then the U.S. has to say, "Before we give you these additional things that you want, we are going to make sure that you have changed your laws and your practices, and you are implementing those promises." And when you are looking at the global corporations, we need to make sure that the incentives to invest offshore, whether it is tax advantages, trade advantages, ease of exploitation of people and the environment, are really balanced by other incentives.

So we change our rules to minimize tax avoidance. We change our rules to say we are going to invest more in infrastructure so we are a more desirable place to invest. And we can do that, we just really need to think big.

Mr. DAVIS. Thank you very much.

And, Mr. Chairman, I yield back.

Chairman REICHERT. Thank you, Mr. Davis.

Mr. Rice.

Mr. RICE. As we said at the inception of this meeting, 95 percent of the world's population lives outside of this country. And that fact alone makes it patently clear that our companies need to have access to other countries if they are going to compete.

We have a very open market here, in the United States. And because of that, companies in other countries don't necessarily need trade agreements to compete on our soil. But other countries are not so open, so our companies have to have trade agreements to compete on their soil. And I understand that very clearly.

I will—I do believe that NAFTA has been a net plus for our country, because it has lowered barriers that existed in Canada and Mexico. I also believe NAFTA has been bad for my district, because we were overly invested, maybe, in low-tech industries like textiles. We also had tobacco. And so we were hit very hard. Some of the rural areas in my district were hit very hard with NAFTA and what has happened with tobacco, and we still haven't recovered.

So, on the one hand, we need to protect your access. You know, in the train business, in the energy production and provision business, we need to make sure your access is protected. On the other hand, I don't want to do anything to incentivize more American jobs, Ms. Drake, to go overseas. So this is a delicate balancing act.

And in—you know, we hear—I hear your concerns about labor standards in Mexico, regulatory structures in other countries, intellectual property protection, and currency manipulation. I understand all those things. And giving you—those are things that are important to give you access. But my primary concern is what we can do here to make it so competitive in this country that other companies don't want to move overseas.

I think that, you know, we have divorced tax reform from this discussion, but I think perhaps that is the most important thing we can do for trade, and making our companies more competitive.

Ambassador Lighthizer was here a couple of weeks ago, and I asked him, in renegotiating NAFTA, Mexico has a 16 percent border adjustment through a VAT. So how, in renegotiating NAFTA with Mexico, are you going to account for that? How can Cummins engine, when they are making a decision about where to locate their new plant, if we have free trade with Mexico—which I certainly want—how are you going to offset that 16 percent border adjustment tax?

And he answered me by saying, you know, that is a real problem. That is not a very satisfactory answer.

So, I think that certainly renegotiating NAFTA is important. I think my district has suffered because of it. I want to see NAFTA renegotiated to make it fair for American companies. But I also want to see us working other areas to make our country competitive, so that we are not moving jobs overseas.

Mr. Linebarger, do you—first of all, I appreciate your factory in Charleston, South Carolina. My wife was a line manager for Cummins Engine Company when I met her in 1982. So I very much appreciate Cummins.

You said you closed a facility in—well, 2010, I guess. It was a low-volume facility. What facilities do you maintain in Mexico now?

Mr. LINEBARGER. We have three facilities now in Mexico, two in San Luis Potosi, and one in Juarez. Our primary manufacturing operations in Mexico now are related to re-manufactured goods. These are goods where we have a product in service. It comes back after its life, and we basically repair and try to rehabilitate the product, and then we add some new parts to it, and then we sell it as, essentially, a replacement part with a warranty. And that is the primary business we do there.

We have a couple of other businesses. We make some filters there, and some other products, but the biggest——

Mr. RICE. Okay, so—I got 17 seconds left. This is my question.

Mr. LINEBARGER. Okay.

Mr. RICE. Between tax policy, regulatory policy—I mean I know we are not going to compete with Mexico on wages, and I don't even want to try. But I want to know what we can do, so that we make it impossible for you to decide to move these divisions to Mexico, where you want to be in the United States to be competitive in the world. What can we do?

Mr. LINEBARGER. Right. I—well, I would just like to emphasize a couple of things that you mentioned, and other panelists have mentioned. I do think tax reform is a big one, making the incentives that—keeping business and investment outside the U.S. is the wrong incentive.

So something that creates a more—a better tax policy that we are not taxing overseas profits and nobody else is, that is a really important part. And it lets people bring cash back to the U.S. And reducing the rate, that would be very important.

The second thing would be infrastructure, which was already mentioned. Infrastructure investment in the U.S. would also help make it more competitive. So those are the two—if—direct answers to your question that I would emphasize.

Chairman REICHERT. Thank you.

Mr. RICE. Thank you, sir.

Chairman REICHERT. Mrs. Noem.

Mrs. NOEM. Thank you, Mr. Chairman. Mr. Ottensmeyer, I wanted to ask you a question, because you talked about—specifically about efforts to do no harm as we go into this modernization effort. And I know that we often talk about this deal and how good it has been for American farmers. Sometimes we fail to mention exactly how important it is to industries that depend on farmers for business, such as your business.

Our Nation's best farm ground is in the heart of this country, and we rely on businesses like yours to get our commodities to market, and to get them so that they could be exported to foreign countries. And you have some details about how heavily reliant you are on agriculture commodities, which I think is not unique to just your rail business. We have got many rail industries that are heavily dependent on agriculture commodities.

But tell me a little bit about the significant impact that that has on your business, and what would happen if we had disruption in the kind of opportunities that we have.

Specifically, I will just speak to my state of South Dakota. We export to Canada and Mexico, since we have had NAFTA, over—it has increased over $1.2 billion worth of exports, 969 percent increase since NAFTA has gone into place in 1994. So it is significant for my state. But as your business is impacted, tell me what would happen if we saw a slowdown in what was able to be exported to other countries, just from agriculture alone.

Mr. OTTENSMEYER. I think it could potentially be devastating to a lot of communities in rural America, particularly in the Heartland. And I—we have used a graphic, a map, and actually are—my written testimony to the U.S. Trade Representative, I would be happy to provide, showing, by county, in the middle of the country, the percentage of the local economy that is based on international trade of agricultural products to two other countries.

And, you know, it puts a different light on the issue, because when you talk about just the shear number of jobs in rural Kansas, or South Dakota, or Iowa, Nebraska, the numbers aren't overwhelming, compared to Texas or Illinois or the East Coast or West Coast. But if you look at it as a percentage of the local economy, the percentage of local GDP in those counties that is related to international trade of agricultural products, it could potentially be devastating if those markets didn't remain open to those farmers.

And as I mentioned, you know, our largest cross-border commodity—in our case, our international trade is much more tied to Mexico. But the U.S. rail industry is very dependent on trade. And agriculture, I don't have the number off the top of my head as far as the percentage of U.S. railroad—North American railroad volumes and revenues that are tied to agriculture, but it is a very large number.

Mrs. NOEM. I think you have in your testimony that, according to a study done by AAR in March of this year, at least 42 percent of rail carloads in intermodal units and more than 35 percent of annual rail revenue is derived from international trade, which isn't specific to agriculture, but it highly impacts your industry and your business.

And what happens in agriculture so much—that maybe hasn't been discussed very much—is once we lose market share in another country, it is very difficult to get it back. We are already seeing that in some of the Asia-Pacific region countries, where we have lost market share because of different policies and changes and negotiations, and another country stepped in and filled that market share. And it is going to be even more difficult for us to get that back.

So, any disruption, we can't necessarily go back six months, a year later, and fix it and put it back to what it originally was, or helpful to make it grow. So thank you for being here today.

Mr. Chairman, I yield back.

Chairman REICHERT. Mr. Higgins.

Mr. HIGGINS. Thank you, Mr. Chairman. Obviously, the North American Free Trade Agreement is over two decades old. The United States is the richest country in the history of the world. We have 5 percent of the world's population and 23 percent of the world's economy.

After World War II we had about 45 percent of the world's economy. All the things that America used to make and sell to the rest of the world, now they make and sell to us. In the last two decades, we have lost six million manufacturing jobs. Over 60,000 factories, manufacturing plants in the United States have closed.

Obviously, the world wants to trade with the United States because not only are we the richest economy in the history of the world, but we are also 70 percent consumption. So we become the most attractive market in all the world.

I often hear that, you know, these trade agreements are negotiated, but there is not much enforcement going on. And while the enforcement is talked about with great exuberance, there is really no mechanism to do that.

We are told that the Trans-Pacific Partnership was a trade agreement that had to be negotiated in secret, and when it comes to Congress, you can vote on it but you just can't talk about it, or you can't change it. To me, that says watch out. You are probably going to lose a lot of jobs. You are probably going to lose your livelihood. And, for the American worker, you are probably going to lose your dignity.

And then we add language called the trade adjustment assistance, which basically says you are definitely going to lose your job, we are going to provide you with a little bit of money in the short term to get you by, and then, essentially, we are going to forget about you.

So, I think the United States—it is totally appropriate, after two decades, to review all trade agreements, including the North American Free Trade Agreement. But it has to focus on worker protection for two reasons.

One is the United States can compete with anybody on a fair playing field. We have embraced worker rights and environmental regulations because there is a societal benefit that comes with that. Others don't value those things as much as we do. So, while it is written in language, it is not enforceable in fact. So we need to do those kinds of things.

Ms. Drake, you had talked about in your testimony item number two, which I think is very important and speaks to this issue, and that is strong labor rules with swift and certain enforcement. Do you want to elaborate a little bit?

Ms. DRAKE. Absolutely. So no prior U.S. trade agreement, whether it was NAFTA, CAFTA, or something later, had enforcement that said, "Here is the timeline that must be adhered to. Let's consult for this amount of time, and if we haven't seen—if we have seen meaningful progress, great, let's keep doing it. If we haven't, let's move to the next step." Nor is there any sort of automatic enforcement, so that citizens could go and say, "Look, you have promised to enforce, you are not doing it, we want to make sure that you do so."

And so, one of the things that we recommended is how about an independent enforcement mechanism in a secretariate that isn't going to say, wow, I am subject to pressures from producers who don't want us to act on labor rights. It is going to be solely focused on what is good for workers and what is going to raise wages and standards. So that is one way to get at it.

Mr. HIGGINS. Yes.

Ms. DRAKE. I think there are a lot of ways to fix it, but we don't have the right answer yet.

Mr. HIGGINS. Yes. Can I just—a final thought on this. I mean the corporate representation here is very, very impressive. You have created a lot of jobs, you have embraced innovation into your technology to make your companies competitive. And it is admirable, and that is the American way.

And, you know, I hear a lot of people here whining about China, that they cheat on their currency, that they don't respect their people, that they don't respect their environment, and that is all true. But what you really need to do with China is stand up and compete with them. You know, China just invested $1 trillion in infrastructure to open up China to 27 brand new Asian markets to sell whatever they make to those new markets—$1 trillion in investment, infrastructure, roads and bridges to most efficiently do that.

And our response, in terms of a transportation bill, is seeking $1.6 billion to build a wall that we were told that we would never have to pay for. That is pathetic. That is pathetic and indicative of a country that seems to be capitulating, economically, to China, when we should be standing up and competing with them in a highly effective way.

Chairman REICHERT. Thank you, Mr. Higgins.

Well, thank you to the witnesses who have just testified and answered our questions. As you can see, there are a variety of opinions, thoughts, and ideas on the panel here.

But you can walk away with two things to feel good about. One, your testimony was excellent, and your answers to the questions, along with your testimony, very valuable to us. You heard that. And two, you created a moment of bipartisanship, as they all agreed the panel was excellent.

[Laughter.]

Chairman REICHERT. So thank you all, and I will welcome the next panel. And as they are walking up, please be advised that Members will have two weeks to submit written questions to the answers, and those answers—in writing. Those questions and your answers will be made a part of the formal hearing record. Your record—our record will remain open until August 1st, and I urge interested parties to submit statements to inform the Committee's consideration of the issues discussed today.

So our second panel is getting seated.

[Pause.]

Chairman REICHERT. I would like to welcome our second panel and ask them to step forward, which you have got—you have already done.

Our first witness is Mr. Stan Ryan, chief executive officer and president of Darigold, Incorporated. I am proud to welcome Mr. Ryan here today from Seattle, where Darigold is headquartered. Farmer-owned since 1918, Darigold produces products that are staples around the Pacific Northwest and the globe.

And thanks for joining us today.

Our second witness is Christine Bliss, president of the Coalition of Services Industries.

Our third witness is Ms. Althea Erickson, senior director of Global Advocacy and Policy of Etsy, Incorporated.

Our fourth witness is Mr. Jason Perdue, president of the York County, Nebraska Farm Bureau, and he is testifying on behalf of Mr. Steve Nelson, president of the Nebraska Farm Bureau.

Mr. Smith, did you have any comments on your fellow state resident?

Mr. SMITH OF NEBRASKA. Well, I am glad to have a constituent here today, and I appreciate the accommodation, and I wish him well. Thank you.

Chairman REICHERT. Finally, our fifth witness is Professor Susan Helper, Frank Tracy Carlton Professor of Economics from Case Western Reserve University.

Before recognizing our first witnesses, let me note again that our time is limited. So you should please limit your testimony to five minutes, and your written testimony will be made a part of the record. Members should keep their question to five minutes.

Mr. Ryan, you are recognized for five minutes.

STATEMENT OF STAN RYAN, CHIEF EXECUTIVE OFFICER AND PRESIDENT, DARIGOLD, INCORPORATED

Mr. RYAN. Thank you, Chairman Reichert. I appreciate the opportunity to address all of you today. I am Stan Ryan, president and CEO of Darigold, based out of Seattle, Washington. Prior to Darigold, I spent 25 years with Cargill, living in six different countries around the world, and working in agribusiness and global trade my entire career.

Darigold is a subsidiary of the Northwest Dairy Association, which is a cooperative spanning 486 dairy farms across the Pacific Northwest. It has annual sales ranging between 2 to $3 billion a year, depending on prevailing milk prices and the year. We produce over 800 high-quality dairy products, and sell over 40 percent of those internationally, or about $1 billion.

Just like the rest of U.S. agriculture, consistent market access and a level playing field is vital to our prosperity. Withdrawing from NAFTA would unwind significant progress. Even a status quo posture risks a setback, as our global competitors are emboldened and aggressively advancing their own trade agendas today, as recently seen by the alarming EU–Japan free trade agreement. We must lean forward into trade.

Over 95 percent of the world's consumers live outside the U.S., often where it does not make sense to grow many crops. The U.S., on the other hand, is one of the most competitive and sustainable agricultural systems in the world. Trade links these two together. Global consumers get quality products at better prices, which supports improved global food security. The U.S., in turn, gets economic prosperity and good jobs. Trade and U.S. agriculture are a perfect fit.

Our most natural trading partners, of course, in agriculture are our neighbors. In over 20 years, U.S. agricultural exports to Mexico and Canada have more than quadrupled, from 8.9 to $38.6 billion. Roughly 1 out of every 10 planted acres in the U.S. goes to Canada and Mexico.

Looking at dairy, we globally export 15 percent of the U.S. milk production today, or approximately $5 billion for a nearly a $4 billion trade surplus. And it is estimated to support 100,000 American jobs. It is a jobs multiplier.

The U.S. dairy industry is a global, low-cost producer with sustainable resources and practices. We have incredibly efficient dairy farms, immensely capable dairy farmers, and an overall agriculture ecosystem in the United States that sustains our competitiveness.

Mexico, in specific, is a $1.2 billion export market for U.S. dairy. And it is working quite well, frankly. We have a 73 percent share of Mexican imports. For Darigold, it is our single largest export destination out of about 20 countries we export to.

Mexico is also the largest skim milk powder importer in the world, and export competitors like New Zealand or Europe would love to grow there. We need to remove any ambiguity or uncertainty of our commitment to Mexico, reinforce our relationship, and cement our trade flows.

Canada, on the other hand, is more complex and challenging for dairy. NAFTA did not open up Canada the way it did Mexico, and today they maintain tariff rate quotas of up to 200 to 300 percent. Of primary importance today is Canada's new class seven pricing strategy that just came into effect. It essentially matches the lowest prices in the world for milk protein finished products, despite Canada having one of the world's highest raw milk farm gate prices, all operating under a state-controlled and state-protected system.

Common sense economics would tell you if it looks and feels like subsidized dumping, it probably is. This just started, and it will damage U.S. dairy export shares around the globe. We request that Congress work with the Administration to repeal that.

Of longer-term importance with Canada, we urge you to ensure that the Administration seek dairy access that is duty free, just like in Mexico, and pursue the same types of benefits.

In summary, our number-one priority should be to preserve NAFTA, at a minimum, while fixing the Canadian dairy situation. Furthermore, we also believe it is imperative to have a strong, overall agricultural trade policy agenda. We see every day that our competitors are expanding their markets, while we stand still at home. Besides NAFTA, we encourage you to engage countries such as Japan and Vietnam, and establish free trade agreements there, as well. Thank you.

Chairman REICHERT. Thank you.

[The prepared statement of Mr. Ryan follows:]

Written Testimony
By Stan Ryan
President & CEO of Darigold and Northwest Dairy Association

Ways and Means Trade Subcommittee Hearing on the North American Free Trade Agreement

July 18, 2017

I am Stan Ryan, President and CEO of Darigold Inc. (Darigold), the marketing and processing subsidiary of the Northwest Dairy Association (NDA), a farmer-owned cooperative. Darigold is headquartered in Seattle, Washington and manufactures high quality dairy products from the milk our dairy farmers produce in Washington, Oregon, Idaho and Montana. Through our membership in the National Milk Producers Federation and the U.S. Dairy Export Council, in addition to other dairy sector organizations, we work with our partners across the industry on topics of importance to our company and farmers, including trade-related ones.

I appreciate the opportunity to discuss with this subcommittee the importance of the North American Free Trade Agreement (NAFTA), its benefits to Darigold and our farmer owners, and key areas of needed improvement with our NAFTA partners.

Executive Summary of Testimony

NAFTA has been a tremendous benefit to the U.S. dairy industry, Darigold, and our farmer owners in light of the substantial liberalization it achieved in dairy trade between the United States and Mexico. Darigold and numerous other dairy companies have seen exports to Mexico climb over the years, to the benefit of American farmers who in turn experience stronger demand for their milk than would otherwise be the case. It is critical that this progress not be reversed and that our fully open access to the Mexican market remain in place.

At the same time, NAFTA left barriers on trade between the U.S. and Canada largely untouched. This unfinished business, particularly when coupled with Canada's latest actions to use pricing tools (i.e. Classes 6 and 7) to thwart imports and dump cut-rate milk powder onto global markets, is a ripe opportunity for modernization in the coming NAFTA discussions. In addition, the agreement would strongly benefit from improvements to certain rules areas including those related to geographical indications, sanitary and phytosanitary issues and dairy rules of origin.

Introduction and Company Details

Darigold produces a full line of dairy products for retail, foodservice, ingredient-commodity and specialty markets, and is one of the largest U.S. dairy processors. Darigold has total annual sales of $2-$3 billion, depending on the year and milk prices. Our company operates 11 processing plants throughout the Northwest to manufacture high-quality milk products. The sales from these plants support our roughly 500 dairy farm family owners and the jobs of over 1,400 direct Darigold employees.

In Washington State alone, Darigold accounts for over $1.3 billion in annual economic activity and is the 2nd largest privately-held company in the state. In 2013, Washington State University reported that the dairy industry in Washington contributes $5 billion-plus a year in combined total economic activity and is responsible for more than 18,000 jobs. According to the National Milk Producers Federation and the U.S. Dairy Export Council, Washington exports of skim milk powder (SMP) alone in 2016 accounted for approximately 5,000 jobs. Darigold also operates plants in Oregon, Idaho and Montana, helping to create jobs in those states as well.

We operate in a competitive global market and export more than 40% of our milk products outside the U.S. That makes global markets absolutely essential to our company, our farmer owners and the manufacturing jobs that produce the high-quality dairy products we sell all around the world.

Benefits of Trade and NAFTA to Our Dairy Industry

Darigold is at the leading edge of export-reliance, but trade is critical to the broader U.S. dairy sector as well. The equivalent of one day's worth of milk production each week now gets turned into products that are exported all around the world. The expansion of U.S. dairy exports since 2004 has increased our farmers' milk prices by an average of $1.25 a hundredweight. In other words, rising exports have increased farmers' milk sales income by roughly $36 billion over what they would have gotten in that period if exports had held steady from 2004.

Just as importantly, U.S. dairy exports support up to 100,000 American jobs and cover every state of the Union. Impairing these sales would therefore deliver a devastating employment hit not only to farmers, but also to workers in companies supplying inputs and services, and downstream processing plant jobs, as well as cities with large port facilities heavily dependent on trade.

As we look at how to ensure we can continue a positive track record of export sales supporting farms and good jobs back here at home, NAFTA, and the ongoing discussions pertaining to modernizing it, is essential to that goal. Mexico is by far the leading export market for U.S. dairy products while Canada clocks in at number two, although a sizable portion of U.S. product shipped to Canada is for further processing and ultimate re-export outside of Canada, including back to the United States.

Last year the U.S. shipped $1.2 billion worth of dairy products to Mexico, up from just $124 million in 1995. Mexico is likewise one of Darigold's top global markets.

For much, if not all, of this we have NAFTA to thank. Mexico now is the U.S.'s largest export customer, by far. Sales to Mexico are roughly triple those to China, our third largest export market, demonstrating just how irreplaceable the Mexican market is. For example, in 2016 Mexico accounted for 47% of US exports of nonfat dry milk, 31% of cheese, and 38% of butterfat. Before NAFTA and before Mexico joined the predecessor to the WTO (the GATT) the only dairy-related U.S. exports to Mexico were some non-fat dry milk shipments for government feeding programs and a small number of breeding cattle.

NAFTA has been the driving force behind this remarkable growth and is the reason the U.S. share of Mexico's total dairy imports is 73% today. Total U.S. dairy exports support some 100,000 jobs in the U.S. and our exports to Mexico support roughly a quarter of them. Preserving those sales is therefore essential not only to our farmers, but also to the workers in companies supplying inputs and services, and downstream processing plant jobs such as those at Darigold, as well as cities with large port facilities heavily dependent on trade such as Seattle. While particularly important in Darigold's West Coast neck of the woods, those jobs are in virtually every state in the country.

Without NAFTA, the duty-free access we enjoy into Mexico could evaporate and be replaced by WTO Most-Favored Nation (MFN) tariff levels. These are the rates that other major dairy exporters are currently required to pay. On an applied basis, Mexico's over-quota MFN tariffs can currently reach as much as 45% for skim milk powder and 60% for cheese (with even in-quota rates for cheese applied at 45%). Mexico has the right, however, to raise its MFN rates to considerably higher over-quota tariff levels of 125% for both powder and cheese.

Changes to that preferential tariff situation would dramatically undermine a core advantage of U.S. suppliers as the only major dairy supplier to Mexico currently benefiting from free trade. As we speak, Mexico is negotiating with the European Union (EU) which is actively working to secure its own preferential access to the Mexican market while New Zealand and Australia discuss with Mexico how to move forward with the Trans-Pacific Partnership with the remaining countries. Conceivably, all three of our major competitors could see improved access to the Mexican market in the coming years.

That is what makes NAFTA absolutely essential for our industry – it currently provides Darigold and other U.S. exporters with uniquely preferential access to the Mexican dairy market and looking forward is the vehicle the U.S. will need to ensure that we remain competitive in that market should Mexico decide to use its ongoing FTA discussions with major dairy exporting nations to open up new inroads to its market for them.

Because of NAFTA and Mexico's commitment to a mutually beneficial trading relationship, we currently have very few trade problems with Mexico in dairy – it is our goal to use these discussions to help keep it that way. NAFTA has enabled the development of a partnership with Mexico that's benefited not only the U.S. dairy industry, Darigold and its farmers and workers, but also the Mexican dairy sector.

Since 1994, Mexican milk production has increased by 58% which has helped meet the ever-increasing demand of Mexican consumers and visitors to Mexico while at the same time continuing to provide market opportunities for American producers as well. Together, Mexico and the U.S. have collectively grown consumption for a large variety of products offered at affordable prices for both the Mexican and U.S. consumer.

Areas for Improvement

NAFTA has accomplished a great deal over the past two-plus decades, but it has also been overtaken by new, unanticipated forms of trade and trade problems. Our industry looks forward to working with this Committee and with the Administration to explore ways to preserve and strengthen NAFTA to address those issues.

As noted above, NAFTA achieved substantial liberalization in dairy trade between the United States and Mexico, and our aim is to ensure that that open trade remains in place – both with respect to tariffs and nontariff measures. At the same time, NAFTA left sizable barriers on trade between the U.S. and Canada largely untouched. With Canada's restrictions already in place, reflected in much higher tariffs facing U.S. dairy exports, an imbalance in market access obligations in the sector has existed for over two decades. Moreover, Canada has taken additional steps over the years to limit imports whenever Canada's already highly restrictive import restrictions were deemed to be insufficiently limiting.

Here below, I would like to spotlight a few areas on our trading relationships with Mexico and Canada that would benefit from improvement as we update this critically important trade agreement.

- ***Canada: Removing Trade-Distorting Policies and Opening a Sheltered Market***

  Canada's exorbitant dairy tariffs are well known. Over-quota tariffs top the charts at 241% for fluid milk, 201% for skim milk powder, 298% for butter and 245% for cheese. Among the developed world, only the island nation of Japan in addition to countries such as Norway and Switzerland have maintained similar dairy fortress walls with the

U.S. Under NAFTA many are aware of the unfortunate fact that U.S. dairy exports are one of the very few sectors that do not enjoy duty-free access to the Canadian market.

What may be less well known by all members of this committee is a more recent threat that has emerged as a result of Canadian policies trialed in Ontario last spring and instituted across Canada this February: Classes 6 and 7 respectively. These classes are part of the new Canadian National Ingredients Pricing Strategy.

NAFTA modernization discussions are an unmissable opportunity to address just that type of unfinished business in order to truly open up the North American market and put our dairy exports to Canada on par with the vast majority of the rest of the U.S. economy.

Canada, as a high price country that has refused to enter into the global markets with milk prices at global levels, adopted a new pricing scheme (Class 7) to effectively subsidize protein commodity exports without compromising the internal farm price of milk.

These new pricing regulations and the broader Pricing Strategy have already negatively impacted bilateral trade with Canada. Most concerning, however, they are poised to unfairly take away the global markets that are our industry's and Darigold's lifeblood. As stated earlier, exports account for over 40% of the milk our farmers produce.

The new Canadian policies effectively subsidize exports and are already being used to undercut U.S. dairy exports of milk proteins not <u>just</u> to Canada but even more importantly to a number of other export markets around the world. Because Darigold's farmers, as well as thousands of other dairy farm families across the U.S., depend on a healthy global export market, Canada's strategy poses a very grave threat to America's dairy farmers, especially those in the Pacific Northwest, by unfairly underbidding world market prices.

The shift in Canadian pricing tools has been driven by an uptick in Canadian demand for butter and cream. Rather than meeting this new domestic-demand growth through imports in order to keep its so-called supply management system in balance, Canada has used its government-dictated milk production system to encourage more of its own milk production, therefore supplying more butterfat, while simultaneously creating a surplus of skim milk, as milk contains both products.

Since Canada had to find a way to "solve" this surplus problem of its own creation and rid itself of the excess milk proteins, it has been using its government-controlled system to keep domestic milk prices at almost double the world and comparable U.S. prices, while creating a new scheme to push surplus milk proteins onto world markets and push out competition in its domestic market.

Canada implemented the new Class 7 pricing system in February 2017. The Class 7 establishes a protein price based on the lowest of US, EU, and Oceania skim milk prices, and then subtracts a very generous processor margin. In recent months, this means that Canada has priced milk proteins available to its processors under Class 7 for export at approximately 15% less than what U.S. processors typically pay. That incentivizes processors to utilize subsidized Canadian milk proteins to modernize and expand their protein business.

Reports to date from various markets around the world indicate that product is being offered even below the lowest world market price. This below cost pricing avenue applies to the manufacture of skim milk powder (SMP), whole milk powder (WMP), milk protein concentrate (MPC), ultra-filtered milk (UFM) and similar dairy protein products.

This recently introduced provision of below market price milk to produce the listed dairy products provides an incentive to substitute those products for their imported counterparts in Canada while enabling the export of Canada's structural surplus of SMP at below the cost of production. It flies in the face of common sense that a country with one of the world's highest milk prices would be offering a commodity product at levels far below those offered by all other major dairy suppliers.

As a result, these pricing schemes have already harmed U.S. exports to Canada of ultra-filtered milk and have begun facilitating the dumping of milk powder onto the commercial global markets on which the U.S. so strongly relies. This is the latest in a series of narrowly targeted milk classes that have been created over the past few years specifically to displace imports, with the added harm of now also displacing U.S. exports to other markets.

Canada is not alone in having different classes for milk usage and the mere existence of milk classes is not an inherent problem. However, the way Canada has utilized its milk class system is unique and very problematic. Canada's milk class system is regularly evolving in order to constrain imports and – in the latest case – provide an incentive to export. The new Class 7 pricing allows processors of non-fluid domestic products to allocate or use a proportion of their milk protein to the new Class 7 pricing. That effectively ensures processors will now use some of the lower priced skim in lieu of imported U.S. milk proteins. We expect that the balance not used internally will likely be used to process a reduced-price exportable surplus of subsidized protein products such as skim milk powder and dried milk protein concentrates.

These special pricing classes are put in place by the Canadian Milk Supply Management Committee (CMSMC), whose voting members are provincial boards and provincial governments and which is responsible for policy determination and supervision of the provisions of the National Milk Marketing Plan. The way in which Canada is operating its milk class pricing system indicates a government policy intention to erect trade barriers and distort global markets.

The production and sales data underscore what a pressing concern this program poses to the international milk powder market that is so critical to U.S. dairy farmers and companies. The full size and scope of the threat to Darigold and the broader U.S. dairy industry is not reflected only in what Canada is doing today through its new pricing programs but rather is seen in the sharp surge in production, exports and utilization of the new Class 7 pricing scheme.

For years, Canada's milk production was relatively stable, a situation that should not be surprising for a country that claims to manage its supply to meet internal demand. From 2000 to 2010 for instance, Canadian milk production rose only 2.5% over that decade. However, a distinct upward trend line has more recently emerged with 4% growth per year over the last two years.

In some areas this has spiked even further: five leading provincial marketing boards in the East of Canada, working in concert, have collectively increased their government-dictated milk production quotas by an astronomical 12% between August 2016 and July 2017 with the latest hike this month being 5%. Were these responses to normal commercial market signals – as is the case in the U.S. and in most other major dairy producing countries – these may not be problematic.

In contrast to this, typical milk production growth in the U.S. is in a range of 1-2%, even in years with highest prices. In addition to its magnitude on a percentage basis, the dramatic Canadian expansion is so problematic because it is the direct result of government-run programs in a supply management system with some of the highest milk prices in the world.

Likewise, trade data demonstrates a large basis for concern as well. Canadian milk powder exports have surged in recent times. Canada's 2016 SMP exports set a record at approximately 24,000 MTs, a jump of roughly 75% over the prior year's total. (Reminder: Ontario's Class 6, effectively a pilot program for the national Class 7, was put in place in the spring of 2016.) The first five months of 2017 showed a further year-on-year increase in Canadian SMP exports of 271% to almost 20,000 MT with over 8,000 taking place in May alone – a new monthly record for Canada. Those SMP exports are going to various markets around the world including Algeria, Mexico, Egypt, Malaysia and Bangladesh, top markets for the U.S. dairy industry, including Darigold. In addition to the substantial increase in SMP exports, Canada is also seeing a spike in milk protein concentrate (MPC) exports with January to May 2017 sales of MPC up 48% over the same period in 2016.

Despite limited information provided by Canada about the Class 7 program, since the February 2017 implementation of the pricing scheme, the volume of high-priced milk used to make domestic non-fluid products has declined, whereas the volume of milk protein going into Class 7 has risen. During February – April 2017, Canada reported that 24% of the milk volume and 31% of the protein is now allocated to Class 7. Not surprisingly, the farm price of milk between last year and this year (since Class 7 has been implemented) dropped less than one percent despite that sizable shift towards the new lower-priced Class 7. That's because other prices under Canada's strict government-calculated class prices have been raised. This still works to the net benefit of Canada's dairy farmers given the surging milk quotas the government is granting (thereby permitting that 1% lower price to be paid on a much larger volume of milk and so generate greater total returns to farmers).

As a result of the new Class 7 pricing scheme and a 5% expansion in the milk production quota in 2017 to date, Canada is poised to create an even more significant exportable surplus of milk proteins than we've seen take place to date. Furthermore, taking into account not only Class 7's export disposal goal of moving the remaining excess protein product onto world markets at cut-rate prices, but also its twin goal of import substitution through the displacement of U.S. protein exports from its market, the total impact to the rest of the world's protein markets will be even greater still.

What is most concerning here is the trend line, with a harmful situation creating greater damage to our producers and a trend line expected to get even worse as time goes on. That's particularly the case if milk quotas continue to be permitted to similarly grow over time.

It is this escalating threat to global dairy markets that united 10 of the world's leading dairy associations from around the world last month to collectively write to their six respective Trade Ministers, including Ambassador Lighthizer, urging prompt action to exhaust all available options to put a stop to Class 6 & 7 in light of their violation of Canada's international commitments. As the joint industries letter noted: "Canada's increasingly protectionist policies are diverting trade with attendant global price-depressing impacts, and are in conflict with the principles of free markets and fair and transparent trade." (See attached.)

Examples cited in that letter of united international concern included the following:

- "In December of 2015 at Nairobi, Kenya, Canada became a signatory to the Export Competition Ministerial Decision, thereby undertaking to terminate all scheduled export subsidies by the end of 2020, maintain a quantity standstill at 2003-05 levels until then, and refrain from applying export subsidies to new products or new markets. The 2016 Canadian exports of 23.7 thousand tonnes, noted above, is an amount in excess of the Nairobi standstill agreement amount."

- "As part of the 2003 resolution of the WTO dispute settlement case brought by the United States and New Zealand against Canada's special milk class for exports, Canada agreed "that, for the marketing year beginning 1 August 2003, and thereafter, Canada's exports of dairy products for which export subsidies have been granted will not exceed the quantities and budgetary outlays specified in its WTO Schedule. The upward trend in Canada's exports of SMP, reported above, is rapidly approaching the 44.9 thousand tonnes Uruguay Round annual quantity commitment."

Canada's National Ingredient Strategy and Class 6/7 contravene the spirit of Canada's World Trade Organization and NAFTA trade commitments. After all, does it make sense that a high-priced milk producer with a closed domestic market using a government-sanctioned export program should take market share from countries with a commercially-based and lower cost of production, like the U.S.? The answer is no.

We must see a repeal of Classes 6 and 7 and steps taken to ensure similar programs do not spring up in their place. If Canada wishes to retain a government-run system of micro-managing its milk supply, that is its prerogative but that does not give it the right to use the high returns from that system to disrupt the commercial dairy markets on which Darigold and countless other good-faith competitors in the U.S. and elsewhere rely. If left unchecked, these Canadian programs will grow to become bigger and bigger threats to U.S. exports around the world.

These latest actions are most concerning because they represent a shift by Canada from using policy tools to impede imports into Canada to now also disrupting export markets. Altogether, however, Canada has for years intentionally tried to shirk its dairy commitments, using one policy or regulatory tool after another to chip away at access granted. Another example of this consistent trade-distorting pattern was Canada's decision in its FTA with the EU to impose new restrictions on the use of a number of generic cheese terms (i.e. asiago, feta, fontina, gorgonzola and muenster). Canada provided direct protection to a number of European GIs that have been common names (in order words, generic) in Canada and the United States for decades. By taking this action, Canada abandoned any pretense of due process and the integrity of its own intellectual property system. NAFTA would offer a prime chance to press Canada to hold

U.S. companies harmless from this unwarranted nontariff barrier on U.S. cheese exports.

Given Canada's deliberate creation of an environment of policy uncertainty, there can be no clarity on whether or not current dairy sales to Canada – nor new sales established under the NAFTA modernization process – will be allowed by Canada to take place in the future without addressing this underlying problem of Canada's habitual use of policy tools to distort trade.

- ***Mexico: Preventing New Barriers to Trade: Geographical Indications (GIs) and Common Names (CNs)***

  As I have stressed above, with respect to Mexico our charge is largely to do no harm to market access opportunities. That's relevant not only on the tariff side of the equation but particularly important on the nontariff barrier portions as well.

  The latter is a particularly timely concern given ongoing FTA extension negotiations between Mexico, the U.S.'s largest and most diverse cheese export market, and the EU. As it seeks to do through all its FTAs, the EU has been attempting to use that process to impose de facto barriers to trade and competition on various common name products that the EU falsely claims as GIs. That puts at risk the export of products such as the gouda cheese that Darigold makes in Sunnyside, Washington, as well as the sales of many other cheeses such as asiago, parmesan, feta and gorgonzola, in addition to numerous others that U.S. companies produce and that help generate returns that support farmers' milk prices back here at home. That's true whether they're in the Pacific Northwest where our farmers live or around the country.

  It is essential that ongoing engagement with Mexico and NAFTA modernization discussions make it clear that the U.S. is vehemently opposed to the imposition of any new restrictions on the market access opportunities for U.S. products relying on common names. We must require that Mexico uphold the letter and spirit of its NAFTA market access commitments in order to ensure it does not impair the value of its prior market concessions to the U.S.

  In parallel to these FTA negotiations, Mexico is also dealing with GIs that impact the use of common name products in other avenues as well such as through domestic legislation and ongoing court cases. Each of these venues is an important forum for shaping how Mexico will uphold its market access commitments to the United States.

- ***Mexico & Canada: Improving NAFTA Rules in Key Areas***

  - *Improving Upon the WTO-Plus Sanitary & Phytosanitary (SPS) Agreement*

    To ensure for predictability of trading conditions moving forward and a science-based approach to the development of new regulations impacting trade, NAFTA modernization efforts should incorporate work done in this area within TPP and build further upon that base of "WTO SPS-Plus" commitments. This is needed to guard against the prospect of future problems and also to ensure that the updated NAFTA text can serve as a strong model for future U.S. bilateral FTAs as well. This area was cited as a key Trade Promotion Authority (TPA) priority for negotiations and would help to address concerns by agricultural organizations across the board about spotlighting the importance of transparency, predictability and science-based decision-making on SPS matters.

  - *Establishing Fair Due Process Systems and Market Access Safeguards for Common Names Through Text on Geographical Indications (GIs)*

    As noted above, there are unique situations on GIs and Common Names issues with both Mexico and Canada that need to be dealt with appropriately on a bilateral basis. In addition to those efforts, however, NAFTA modernization efforts should incorporate text on the issue of GIs and common names, in keeping with the TPA directive to address this issue. In order to build upon the progress made to date with our trading partners on this issue, the Trans Pacific Partnership (TPP) text on GIs should be used as a starting point and further improved upon to effectively preserve U.S. market access opportunities for common name products despite foreign governments' efforts to misuse GIs to erect barriers to those products.

  - *Preserving Dairy Rules of Origin (ROO) Approach to Uphold Integrity of NAFTA Benefits*

    The driving goal in NAFTA dairy-specific ROO with Mexico for most dairy products was to seek to ensure that high dairy-content products traded under the agreement were being produced from milk from the exporting country. As such, for instance, the U.S. cannot import milk powder from Europe to make cheese and ship that to Mexico, and vice versa. Likewise, Mexico should not be able to import concentrated butterfat from outside the NAFTA region, add sugar or cocoa to it, and sell it into the US as a food preparation. The open trade is intended to be between and to benefit the dairy sectors that have opened their markets under the agreement – a goal that is particularly important for a product that is easily traded in various ingredient forms.

Given that the lines most clearly associated as dairy such as those for cheese, butter and yogurt, all require the product to be made from dairy from the exporting country, it is reasonable to insist that other processed food lines also should be subject to these same provisions in cases where they contain a very high level of dairy content. It is important to ensure that Mexico is not a platform for other major dairy exporters to ship butterfat simply as a conduit to inappropriately access the U.S. market. Based on customs rulings and trade data with Mexico and New Zealand this is a reasonable cause for concern.

In addition to the need for movement towards greater consistency in the dairy ROO, we would also encourage negotiators to examine how to improve the process for investigating potential ROO violations to make it easier to chase down potential violations of the ROO. In our view, these measures are a critical element of the agreement and ensuring that the effectiveness of the ROO in concentrating the agreement's benefits on its Parties that have chosen to open their markets to one another is a vital part of ensuring that NAFTA remains such a strongly successful FTA.

In Closing:

NAFTA is indisputably the most important U.S. FTA. An agreement that has done this much good and that supports tens of thousands of jobs in the dairy sector alone must be preserved. That is why we believe we must ensure that no new trade restrictions arise through the NAFTA modernization discussions and that talks are instead focused on pursuing improvements to the agreement that preserve our open trade relationship with Mexico and address Canada's flouting of its trade commitments.

Even as the U.S. negotiates improvements to this critical FTA, however, we believe it's also essential to move forward on other fronts as well. Our competitors are very active all around the world in negotiating their own agreement. This month's news of the EU-Japan agreement in principle is a fresh reminder that the world is not standing still. Given that, if the U.S. stands still we will slip behind.

We urgently need a proactive trade policy agenda with key agriculture-importing countries in Asia such as Japan, Vietnam and others in order to keep pace in that growing area of the world. In order to ensure that U.S. negotiating time is best concentrated on agreements likely to yield net agricultural benefits for the U.S. with ag-importing countries, we would also strongly caution against sinking scarce U.S. resources into negotiations with countries unlikely to lead to net dairy and agricultural export gains for the United States. There are only so many staff at our government agencies and only so much time in the day; we need to focus it where it can yield the most benefits to American agriculture.

As we stand poised to commence NAFTA modernization discussions in the very near future, Darigold, in collaboration with a united dairy industry, looks forward to working closely with this committee and with the Administration to make improvements to this beneficial FTA so that we can continue to deepen our trade relationships throughout North America.

Thank you for the opportunity to testify before this committee.

Chairman REICHERT. Ms. Bliss.

STATEMENT OF CHRISTINE BLISS, PRESIDENT, COALITION OF SERVICES INDUSTRIES

Ms. BLISS. Chairman Reichert, Ranking Member Pascrell, Members of the Subcommittee, I thank you for the opportunity to present the views of the Coalition of Services Industries. I appreciate the opportunity to appear before this Committee and to present the views of the Coalition of Services Industries on how best to modernize NAFTA to maximize the gains for American companies and workers.

I would also like to thank you, Mr. Chairman Reichert, as well as Congressman Marchant and Congressman Meeks, for your leadership of the Congressional Services Caucus, and for kicking off the caucus in the 115th Congress with your letter to USTR, highlighting the importance of services.

Turning to NAFTA benefits to U.S. services, NAFTA provides U.S. services companies guaranteed, non-discriminatory market access to Mexico and Canada, including the ability to provide services on a cross-border basis; investment opportunities; and strong investment protections; and the opportunity to compete for major foreign procurement—government procurement contracts. NAFTA is responsible for our tremendous services trade surplus with Mexico and Canada.

NAFTA has also provided substantial government procurement opportunities for U.S. services firms, which would not otherwise exist. Almost two-thirds of all Mexican Government employees are insured by a U.S. services supplier. U.S. firms also supply pensions, as well as property and casualty insurance directly to the Mexican Government. By contrast, Mexican and Canadian participation in the U.S. federal procurement market is negligible.

On digital trade, an area that I know has been highlighted this morning in the previous panel, it is important to remember that it is not just a priority solely for U.S. tech companies, but for companies across the spectrum of services, from financial services, media and entertainment, to retail and logistics. And also to manufacturing—and I would believe in agriculture, as well—you heard this morning, as well. I describe this in greater detail in my longer remarks for the record.

To ensure that these benefits to U.S. services continue, CSI recommends four overarching principles to govern NAFTA modernization: first, we must do no harm to NAFTA's existing benefits, including jobs supported by NAFTA; second, we must ensure NAFTA modernization is consistent with TPA; third, NAFTA should remain a trilateral agreement with common North American rules; and fourth, the process must be transparent and efficient, to minimize commercial uncertainty and facilitate trade and investment flows.

I would now like to highlight a number of CSI's proposed negotiating objectives.

With respect to services and investment market access, NAFTA modernization should ensure continued use of a negative list and a ratchet that binds new liberalization and non-conforming measures. These elements already exist in NAFTA, and must be preserved.

To ensure that the agreement accommodates market evolution and technology advances, NAFTA should also continue to cover any new services, and the U.S. should also reject any effort to exclude new services.

The U.S. should also oppose any effort to maintain Canada's cultural carve-out.

On e-commerce, we recommend modernizing NAFTA by including a comprehensive chapter on e-commerce and digital trade. CSI supports language in the—that the U.S. proposed in the TSA negotiations on data flows and forced data localization as a building block in the e-commerce and financial services chapter in a NAFTA modernization.

We also recommend provisions to address intermediary liability, safe harbors relating to third-party content in certain discreet contexts. Further, modernizing of customs procedures such as the use of electronic customs forms, electronic signature and authentication, and secure online payment are also recommended.

Regarding communications services, the NAFTA telecommunications chapter should be updated to ensure non-discriminatory market access, technology choice, and a level playing field. On financial services, we believe that there should be parity for investor-state coverage with respect to breaches of national treatment, MFN, for financial services. And electronic payment services commitments should also be covered. We also believe that express delivery services are a critical area to cover in the agreement.

On trade facilitation, we think there should be ambitious, high-standard custom policies, and they should be harmonized across Canada and Mexico, including a raising of the de minimi threshold for express and postal shipments. We also think customs procedures should be streamlined and expedited. We also think current reciprocal access under government procurement should be preserved.

And finally, on investment, we believe that it is critical to preserve and build on the existing NAFTA framework, and to provide the same scope of enforceable investor protections to all sectors, including financial services.

In conclusion, we thank you for your willingness to engage, and your knowledge on the issues. And I am happy to answer any questions from the panel.

Chairman REICHERT. Thank you.

[The prepared statement of Ms. Bliss follows:]

Testimony of Christine Bliss
President, Coalition of Services Industries (CSI)
House Ways and Means Subcommittee on Trade
Tuesday, July 18, 2017
10am

Chairman Reichert, Ranking Member Pascrell, members of the subcommittee—thank you for the opportunity to present the views of the Coalition of Services Industries (CSI) on how best to modernize NAFTA to maximize the gains for American companies and workers.

For more than three decades, CSI has been the leading industry association devotec exclusively to promoting the international objectives of U.S. services companies and associations. Our members include the vast array of U.S. companies that provide services and digitally enabled services, domestically and internationally, including information and communication technology services, financial services, express delivery and logistics, media and entertainment, and distribution and professional services.

Chairman Reichert, I'd also like to thank you for your leadership of the Congressional Services Caucus. Congressman Marchant, we welcome you as a co-chair of the Congressional Services Caucus; and we thank you both, along with Congressman Meeks, for kicking off the Caucus for the 115th Congress with the letter you sent to United States Trade Representative Lighthizer about the importance of services.

Thank you for your expertise on trade and advocacy for American workers and American services firms, both large and small.

NAFTA BENEFITS TO U.S. SERVICES

NAFTA provides U.S. services companies guaranteed, non-discriminatory market access to Mexico and Canada. This includes the ability to provide services on a cross-border basis, major investment opportunities and strong investment protections, and the opportunity to compete successfully for major government procurement contracts.

Under NAFTA, the United States has maintained a consistent trade surplus in services with both Canada and Mexico. The most recent data indicates that U.S. services exports to Canada totaled $56.4 billion and imports $29.0 billion, producing a $27.4 billion services surplus. Similarly, in Mexico, U.S. exports of services were an estimated $31.1 billion, while imports were $23.5 billion in 2016.

And something remarkable to note with NAFTA—since 1999, the United States has doubled its bilateral services trade surplus with Mexico and quadrupled its surplus with Canada.

In total, U.S. trade with both Canada and Mexico in services exports alone amounts to $88 billion as of 2015. This directly supports 587,000 American jobs, which are well paying jobs, too. Research has shown that jobs in the services sectors that are tradeable, which tend to be in professional services, have produced high skilled and high paying jobs.

NAFTA's rules and specific commitments are responsible for our tremendous services and investment growth in Mexico and Canada. These provisions include the guarantee of non-discriminatory treatment, transparency, and binding dispute settlement and investor-state dispute settlement. As of 2013, U.S. foreign affiliates in Mexico generated approximately $43 billion in sales and $128 billion in sales in Canada. These figures are important to note because while many services can be supplied on a cross-border basis, market penetration in some services sectors, such as financial services, can only be supplied through investing and establishing a commercial presence. At the same time, this foreign investment yields significant benefits back to the United States in the form of generating revenues and supporting U.S. jobs and operations.

NAFTA's investment provisions have also produced significant Canadian and Mexican investment in the U.S., which supports the American economy and its workers. As of 2014, Mexico had invested nearly $18 billion in the U.S. And as of 2015, the United States receives almost half of Canada's global foreign direct investment at $448 billion. The level of both inbound and outbound investment with Canada and Mexico is one of the primary drivers of the North American economic success of NAFTA.

NAFTA has also provided substantial government procurement opportunities for U.S. services firms which has created a "win-win" situation for the United States. For example, nearly two-thirds of all Mexican government employees are insured by a U.S. services supplier. In addition, U.S. firms supply pensions as well as property and casualty insurance directly to the Mexican government. Other major U.S. firms in the financial services and information technology sectors also have benefited from NAFTA's procurement provisions. By contrast, Mexican and Canadian participation in the U.S. Federal procurement system is negligible.

The U.S. is a significant beneficiary of NAFTA's procurement provisions. The Federal Procurement Data System confirms that, across the entire federal government, just two percent of all contracts were secured by foreign-headquartered companies in FY 2016, and these contracts were predominantly awarded to U.S. affiliates of British or European firms. Just one Canadian company showed up in the top 100 contractors to the U.S. Government; not a single Mexican company appeared on the list. NAFTA's procurement chapter provides an important institutional framework of transparency and open bidding procedures for all three countries, where American services providers have taken full advantage.

GENERAL PRINCIPLES

To ensure these benefits to U.S. services firms continue, CSI recommends that four overarching principles govern NAFTA modernization.

First, we must preserve the existing NAFTA framework—which provides a commercially stable and efficiently integrated environment for U.S. services suppliers—and make sure that we "do no harm" to the existing benefits and jobs supported by NAFTA. If the NAFTA negotiations (directly or indirectly), lead to even a one percent loss of U.S. services jobs, this would equate to a loss of 1 million American services jobs.

Second, we must ensure modernization of NAFTA is consistent with the negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). CSI strongly supports the Administration's statement in its notification letter to Congress that proper consultation will be conducted through TPA, ensuring that due account is given to the Congressionally mandated objectives for trade negotiations, particularly for services, investment, digital trade, transparency, regulatory cooperation, and enforcement. As you know, it is a Constitutional mandate that Congress regulate foreign commerce with the United States, and TPA is a key legislative manifestation of this responsibility.

Third, to preserve and enhance the benefits that NAFTA provides to the U.S. services sector, it should remain a trilateral agreement with common North American rules. This integration of the North American markets is fundamental to continue to reap the highest level of rewards that we can from NAFTA.

Fourth, we must continue to ensure that U.S. firms can continue to perform and compete to the best of their ability during the NAFTA modernization process. To guarantee this, the process must be carried out in a transparent and efficient manner that minimizes any commercial uncertainty and facilitates trade and investment flows.

NEGOTIATING OBJECTIVES

I will briefly highlight some of CSI's proposed negotiating objectives. As a general proposition, we urge improvements that will have cross-cutting effects to benefit as many American business sectors as possible, and that there be no carve-outs of sectors from any of the protections provided by the improved agreement.

Services and Investment Market Access

Any modernization of NAFTA should ensure continued use of a "negative list" approach and a "ratchet" for any non-conforming measures. These elements already exist in NAFTA and must be carried forward in any negotiation to safeguard U.S. services firms from the reintroduction of barriers in either Canada or Mexico since entry into force.

A modernized NAFTA should also ensure that services and services-related investment market access commitments meet or exceed those agreed to with Canada and Mexico in the Trans-Pacific Partnership (TPP), and/or adopted by Canada and Mexico since NAFTA.

NAFTA should continue to cover any new services that may emerge in the future and the United States must not accept carve-outs for "new" services. Innovative, new services should be protected against future discrimination, as trade agreements should not become obsolete as markets evolve and technology advances. Moreover, the U.S. should reject any effort to maintain Canada's cultural carve-out; NAFTA is the only U.S. FTA currently in force with such a carve-out, which is inconsistent with the principles of free and fair trade and erroneously suggests that cultural promotion and open markets are incompatible.

E-commerce

Modernization of NAFTA provides an ideal opportunity to update the agreement to reflect the digital trade ecosystem which did not exist when NAFTA was negotiated. Therefore, a chapter on e-commerce and digital trade should be added to NAFTA.

Data flows, the lifeblood of a modern economy, have grown by 45 times since 2005 and will have grown by another nine times by 2020. Though practically nonexistent just 15 years ago, data flows now hold more economic value than global goods trade.

Data flows are the foundation for technological advances, such as cloud computing, the Internet of Things, and Artificial Intelligence, all of which are cornerstones of the emerging "Fourth Industrial Revolution." Data flows provisions are also important for services companies outside of the tech sector, such as in financial services, as these services companies rely on their ability to move and store data on their global platforms. In 2015, U.S. global exports of potentially Information and Communication Technology (ICT)-enabled services (which are provided over ICT networks) alone totaled almost $400 billion. This amounted to a $161.5 billion surplus, and included exports of $27.1 billion to Canada and $8.7 billion to Mexico.

In 2016, after TPA-required consultations, the United States proposed strong data flow and forced data localization provisions in the Trade in Services Agreement (TiSA) negotiations for both services and financial services. CSI supports the use of this language as a building block in the e-commerce and financial services chapters in the NAFTA negotiations to set a high standard for the benefit of all services sectors.

A modernized NAFTA should also include provisions to address intermediary liability/safe harbors relating to third-party content. For matters other than intellectual property and criminal law, consistent with U.S. law, countries should not hold platforms and service suppliers legally responsible for third-party content in an unreasonable manner that prevents them from effectively facilitating transactions and communications among businesses and consumers. For intellectual property, the agreement should ensure that effective legal remedies are available to address online copyright infringement and provide conditional safe harbors for intermediaries. Limitations of liability should also include provisions such as a "good Samaritan" clause that facilitates intermediaries addressing and deterring illegal activity conducted over their networks and services.

Further, NAFTA must streamline and modernize customs processes, such as the use of electronic customs forms, electronic signature and authentication, and secure online payment, in addition to upgraded de minimis levels. CSI believes that these modifications will benefit micro-, small- and medium-sized businesses.

Communications Services

The modernization of NAFTA further provides an opportunity to address limitations on technology choice and disproportionately burdensome regulatory requirements that interfere with the ability of U.S. communications services providers to operate in Canada and Mexico. The NAFTA telecommunications chapter should be updated to ensure non-discriminatory market access, a level playing field, and a pro-investment, pro-competition environment. The chapter should also enable communications services firms to take advantage of opportunities in Canada and Mexico.

Financial services

The preservation of market access, and investment and procurement opportunities achieved under NAFTA are vital to financial services providers. The more that U.S. services firms, including financial services, grow their businesses in Canada and Mexico, the more they are able to use those dividends from foreign earnings and investments back in the U.S., further supporting and expanding American jobs and the American economy.

An area of importance for financial institutions is to ensure they receive the same coverage of investment protections as afforded to other sectors, including minimum standard of treatment, civil strife, and performance requirements. In addition, financial institutions should have access to investor state protections as afforded to other sectors. This includes access to investor-state dispute settlement (ISDS) for breaches of Most Favored Nation (MFN) and National Treatment. These modernizations would put financial services on par with all other sectors of the economy with significant investments in Canada and Mexico.

NAFTA modernization also presents the opportunity to address areas which have historically been overlooked, such as commitments on electronic payment services (EPS), where we must ensure the application of market access commitments to prohibit the imposition of numerical restrictions and a national treatment commitment to ensure non-discrimination with respect to the cross-border delivery of EPS.

Finally, we believe that the Financial Services Committee established under NAFTA should be updated into a more formalized, principles-based entity with an expanded scope to increase regulatory coordination.

Express delivery

For express delivery services providers, modernizing NAFTA means updating inefficient processes that affect the ability to transport American goods from the U.S. and through the North American region. In Mexico, this means addressing processes governing less-than-truckload (LTL) and express delivery services shipments, as well as the elimination of current discriminatory Mexican regulations regarding the operation of foreign-owned express delivery trucks on Mexican federal highways.

Trade facilitation

On trade facilitation, NAFTA must ensure that ambitious, high-standard customs policies are harmonized across Canada and Mexico to promote U.S. e-commerce exports and SME exporting opportunities. This includes substantial increases to Canada and Mexico's customs *de minimis* threshold for express and postal shipments.

Further, any chapter on SMEs in NAFTA should also include a Small Business Committee that reinforces the need to protect entrepreneurs from fraudulent business offerings.

Procurement

The United States must ensure that existing reciprocal market access commitments in government procurement, already provided through NAFTA, remain.

Investment

On investment, it is critical that negotiations preserve and build on the existing framework, and that the same scope of enforceable investor protections is provided for all sectors, including financial services.

CONCLUSION

Thank you again for the opportunity to present CSI's position on NAFTA modernization and the importance of preserving existing benefits to services suppliers under the agreement. Last, I would like to thank the subcommittee for your willingness to engage and your knowledge on our issues. With that, I am happy to answer any questions from the panel.

Chairman REICHERT. Ms. Erickson.

STATEMENT OF ALTHEA ERICKSON, SENIOR DIRECTOR, GLOBAL ADVOCACY AND POLICY, ETSY, INCORPORATED

Ms. ERICKSON. Thank you, Chairman Reichert, Ranking Member Pascrell, and Members of the Committee, for inviting me to speak to you today about opportunities to modernize NAFTA for the 21st century economy. My name is Althea Erickson, and I lead global policy at Etsy, an online marketplace where you can buy handmade and vintage goods from creative entrepreneurs around the world. Today we host 1.8 million active sellers who, together, sold $2.8 billion worth of goods, globally, in 2016.

Etsy's creative entrepreneurs aren't the stereotypical businesses you might imagine, when considering the exporters who would benefit from global trade agreements. The vast majority of Etsy sellers are businesses of one, working out of their homes. Fully 87 percent of our sellers are women, and 28 percent live in rural areas. In many ways, Etsy functions as an on-ramp to entrepreneurship. For 53 percent of our sellers, Etsy was the first place they sold their goods online. Nearly a third of our sellers operate their creative businesses as their sole occupation. And for the rest, it is an important source of supplemental income.

Etsy was founded in 2005, 9 years after NAFTA took effect. Since that time, the Internet has enabled creative entrepreneurs to use platforms like Etsy to connect with buyers around the world. Unfortunately, existing trade laws have not kept up with the growth of global e-commerce and the opportunities it provides to micro-businesses.

Many Etsy sellers began exporting goods from the moment they opened their shops. As of March 31, 2017, 32.1 percent of Etsy sales involved a buyer or a seller outside of the U.S. Forty-four percent of U.S. Etsy sellers export their goods. Unfortunately, the U.S. is the only Etsy key market where the majority of Etsy sellers do not ship internationally. For example, 88 percent of our Canadian sellers export their goods.

Most independent, creative businesses lack the infrastructure and information to navigate complicated international trade rules. Customs and duties vary by country, and credible information about each country's requirements can be difficult to find. Packages are often delayed at the border, or subject to unforseen import taxes that the buyer must pay before receiving their package. In the face of these challenges, buyers may reverse transactions or request refunds, the cost of which the seller often bears.

Historically, trade rules and regulations have enabled larger—or trade agreements have enabled larger, more established companies to bring their products to new markets. However, innovative programs like the Trusted Trader Program or the Single Window simply aren't relevant to a single person selling one item to another person in another country. We see an enormous opportunity to modernize NAFTA to foster digitally-enabled micro-business exports. By focusing on the needs of our smallest exporters, we could set new global standards for peer-to-peer trade around the world.

The single greatest opportunity to support micro-businesses would be to negotiate a higher de minimi customs exemption with our trading partners. Thanks to the Trade Facilitation and Trade Enforcement Act, the U.S. de minimi threshold is now $800, which eases burdens for U.S. micro-businesses processing returns and purchasing supplies. However, Canada and Mexico have some of the lowest de minimi thresholds in the world of $20 for Canada and, for Mexico, $50 for express and $300 for postal shipments.

As a result, low-value goods from U.S. exporters often end up subject to unexpected fees or delays at the border. The upcoming NAFTA negotiations provided an opportunity to alleviate this burden that disproportionately impacts U.S. micro exporters.

Additionally, e-commerce regulations vary widely between countries. Discrepancies in the categorization of goods, as well as consumer protection and privacy laws pose a challenge for individual sellers who must find relevant information on requirements for each country before shipping an item.

Unlike a traditional retailer who can research rules before deciding to enter a market, the typical e-commerce seller makes her product available to buyers worldwide, and begins researching the rules after the product is sold, when she is under considerable pressure to mail the goods quickly. Navigating the various Web sites and interfaces to find credible information is an administrative struggle for an Etsy seller who is hungry to comply with the rules. Currently, customs brokers have large exporters navigate these complexities, but a business of one exporting a $30 item simply doesn't have the means to engage those services.

We urge negotiators to create a far smaller, simpler set of harmonized tariff codes for low-value goods, and make information about all important export rules easy for third-party services to access, for example, through an open API.

We believe a modernized NAFTA agreement should include a small and micro-business chapter. Although TPP included such a chapter, the contents focused on opportunities to educate small business, rather than address the substantial barriers these exporters face to trade, such as an increased universal de minimi customs exemption.

Such a chapter might also enable negotiators to align around a shared definition of micro-business, paving the way for future programs that specifically address this constituency's needs.

Finally, enabling digital trade requires preserving the fundamental protections that enable intermediaries such as Etsy to operate in a global marketplace. In particular, we hope any new NAFTA agreement will preserve the intermediary liability protections and balanced approach to copyright that underpin online innovation in the U.S.

The changes we seek for our sellers may seem small, but they would have a huge impact on e-commerce and micro-businesses. We are confident that a modernized NAFTA can help Etsy sellers succeed in a global marketplace, and set the standard for future trade agreements.

Thank you for the opportunity to address you today.

Chairman REICHERT. Thank you.

[The prepared statement of Ms. Erickson follows:]

Etsy

Testimony to the U.S. House Committee on Ways and Means Subcommittee on Trade

Hearing on Modernization of the North American Free Trade Agreement (NAFTA)

Althea Erickson
Senior Director of Global Policy, Etsy, Inc.

July 18, 2017

My name is Althea Erickson, and I lead global advocacy and public policy at Etsy, an online marketplace where you can buy handmade and vintage goods from creative entrepreneurs around the world. I'd like to thank Chairman Reichert, Ranking Member Pascrell and members of the Committee for inviting me to speak with you today about opportunities to modernize NAFTA for the 21st century economy.

Etsy is a global creative commerce platform that builds markets, services, and economic opportunities for creative entrepreneurs. On Etsy, millions of people around the world connect, both online and offline, to make, sell, and buy handmade and vintage goods, as well as craft supplies. We host 1.8 million active sellers[1] around the world, who together sold $2.84B in 2016.

The creative entrepreneurs who sell on Etsy are not the stereotypical businesses you might imagine when considering the exporters who could benefit from global trade agreements. The vast majority of Etsy sellers at businesses of one, working out of their homes. Fully 87% of our sellers are women, and 28% live in rural areas, compared to just 17% of U.S. non-farm business owners.

In many ways, Etsy functions as an on-ramp to entrepreneurship. For 53% of our sellers, Etsy was the first place they sold their goods, a number that increases for young sellers and those with children at home. Nearly a third of our sellers operate their creative business as their sole occupation, and for the rest it's an important source of supplemental income, contributing an average of 13% of annual household income.[2] Nearly half of sellers use this income to pay for necessary household expenses, including utility bills and rent.

Etsy was founded in 2005, sixteen years after the North American Free Trade Agreement (NAFTA) took effect. Since the implementation of NAFTA, the internet has made it possible for creative entrepreneurs to use platforms like Etsy to connect with buyers around the world. Unfortunately, existing trade laws have not kept up with the growth of global e-commerce and the opportunities it provides to microbusinesses.

1 As of March 31, 2017.
2 Etsy. *Crafting the future of work: the big impact of microbusiness.* 2017.

Many Etsy sellers begin exporting goods from the moment they open their shops. As of March 31, 2017, 32.1% of gross merchandise sales on Etsy involve a buyer or a seller outside the United States. Fully 44% of Etsy sellers in the US are international exporters in their own right, and 55% of sellers who focus on their creative business as their sole occupation ship their wares internationally. Unfortunately, the US is the key only market where the majority of Etsy sellers do not ship their goods to other countries. For example, 88% of Canadian Etsy sellers ship internationally.

Most independent, creative businesses lack the infrastructure and information to navigate complicated international trade rules. Customs and duties vary by country, and credible information about each country's requirements can be difficult to find. Packages are often delayed in customs or subject to unforeseen import taxes that the buyer must pay before receiving their package. Package tracking often stops at the border, creating unnecessary friction in international transactions. In the face of these challenges, buyers may reverse transactions or request refunds, the cost of which the seller often bears.

Historically, trade rules and regulations have enabled larger, more established companies to bring their products to new markets. However, innovative programs that seek to streamline and simplify exporting like the trusted trader program or the Single Window simply aren't relevant to a single person selling one item to another person in another country. We see an enormous opportunity to modernize NAFTA to foster digitally-enabled, microbusinesses exports. By focusing on the needs of our smallest exporters, we could set new global standards for peer-to-peer trade around the world.

The single greatest opportunity to support microbusinesses would be to negotiate a higher low-value customs exemption with our trading partners. Thanks to the Trade Facilitation and Trade Enforcement Act of 2015, the US de minimis threshold is now $800, which eases burdens for US micro-businesses processing returns and purchasing supplies. However, Canada and Mexico have some of the lowest de minimis thresholds in the world of $20 and $50 respectively.[3] As a result, low value goods from US exporters often end up subject to unexpected fees or delays at the border. The upcoming NAFTA negotiations provide an opportunity to alleviate this burden that disproportionately impacts US micro-exporters.

In addition to burdensome customs and duties, e-commerce regulations vary widely between countries. Discrepancies in the categorization of goods, as well as consumer protection or privacy laws pose a challenge for individual sellers, who must find relevant information on requirements for each country before shipping an item. Unlike a traditional retailer, who can research rules before deciding to enter a market, the typical e-commerce seller makes her product available to buyers worldwide, and begins researching the rules after the product is sold, when she is under considerable pressure to mail the good quickly.

Navigating the various websites and interfaces to find credible information is an administrative struggle for an Etsy seller that is hungry to comply with the rules. Currently, customs brokers help larger exporters navigate these complexities, but a business of one exporting a $30 item simply doesn't have the means to engage those services. We urge negotiators to create a far smaller, simpler set of harmonized tariff codes for low-value goods, and make information about all import/export rules easy to access—for example, through an open API.

Finally, we believe a modernized NAFTA agreement should include a small and micro-business chapter. The TPP was the first trade agreement that included a small business chapter, but the contents of that chapter focused mainly on opportunities to educate small business, rather than address the substantial barriers these exporters face to trade, such as an increased, universal de minimis customs exemption. Such a chapter might also enable negotiators to align around a shared definition of micro-business - for example a business with fewer than 10 employees - paving the way for future programs that specifically address this constituency's needs.

The changes we seek for our sellers may seem small, but they would have a huge impact on e-commerce and the day-to-day operations of a microbusiness owner. We are confident that a newly negotiated NAFTA can help Etsy sellers succeed in the global marketplace, and set the standard for future trade deals. I thank you for the opportunity to address you today, and welcome any questions you may have.

3 The threshold in Canada is $20 CAD, and Mexico's threshold is $50 for express shipments and $300 for postal shipments.

Chairman REICHERT. Mr. Perdue.

STATEMENT OF JASON PERDUE, PRESIDENT OF THE YORK COUNTY, NEBRASKA FARM BUREAU, TESTIFYING ON BEHALF OF STEVE NELSON, PRESIDENT, NEBRASKA FARM BUREAU

Mr. PERDUE. Chairman Reichert, Ranking Member Pascrell, and Committee, thank you for the opportunity to be here today. My name is Jason Perdue, and I am a row crop farmer, cattle and poultry producer from York, Nebraska. I am testifying today in place of Steve Nelson, who had an unexpected family emergency yesterday morning.

I am currently the president of the York County Farm Bureau, and a member of the Nebraska Farm Bureau Young Farmers and Ranchers Committee, and I am testifying today on behalf of the American Farm Bureau Federation.

NAFTA has been beneficial for farmers, ranchers, and associated businesses all across the United States, Canada, and Mexico. For more than two decades, U.S. farmers and ranchers have benefitted from an increase in annual exports to Mexico and Canada from 8.9 billion in 1993 to 38.1 billion in 2016.

Nebraska alone exported more than 2.4 billion worth of products to Mexico and Canada in 2016, with agricultural products making up 1.5 billion, more than half of that total.

There are reasons to modernize NAFTA from agriculture's perspective. While the sector as a whole has been—has had a substantial benefit, there are individual commodities that have faced challenges. With Mexico, tomatoes and other fruits, vegetables, and sugar all have experienced issues. There are also challenges for dairy, specialty and row crops, wheat, lumber, and wine with Canada.

We believe negotiations should eliminate or reduce long-standing Canadian tariff barriers to dairy, poultry and eggs, as well as the relatively recent barriers to ultra-filtered milk exports. U.S. agricultural exports to Canada would grow if greater competition were allowed.

Remedies for our produce growers need to be strengthened. A timely trade dispute resolution process should be added that takes into account the perishability, seasonality, and regional production of fruit, vegetable, and horticultural products.

There are several areas where the NAFTA agreements could be modernized to improve trade in agricultural goods. It is critical that the modernization effort should recognize and build upon the strong gains achieved by the U.S. agriculture through tariff eliminations, regulatory improvements, and the development of integrated supply chains that have arisen due to the NAFTA agreement.

Trade agreements also provide the highest standard of trade rules, allowing the United States and its partner to be global leaders. We support science-based terms of trade and dispute resolution that will benefit the U.S. food and agriculture industry. We also recommend some additional and significant provisions on geographical indicators in biotechnology that would ensure that the revised NAFTA agreement could be used as a model for future trade agreements the United States may enter.

NAFTA must preserve U.S. market access opportunities for common-name products. The misuse of GI's is a constant and significant threat to maintaining and growing sales of high-value U.S. products in the United States within the markets of our NAFTA partners and in markets, worldwide.

We support adding in a new chapter on biotechnology to the NAFTA. The U.S. Government should, one, enter a mutual recognition agreement on the safety determination of biotech crops intended for food and feed; and two, develop a consistent approach to managing low-level presence of products that have undergone a complete safety assessment and are approved for use in third countries, but not yet approved by a NAFTA member.

We also oppose erecting new barriers to agriculture trade in NAFTA, including adding mandatory country of origin labeling for beef and pork products.

U.S. agriculture depends upon a growing, international economy that provides opportunities for farmers and ranchers to sell their products. Modernization of NAFTA will help expand market opportunities through the U.S. and Nebraska agriculture.

Thank you for the opportunity to testify today.

Chairman REICHERT. Thank you.

[The prepared statement of Mr. Perdue testifying on behalf of Steve Nelson follows:]

Statement of the American Farm Bureau Federation

TO THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS TRADE SUBCOMMITTEE HEARING ON:

"MODERNIZATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT"

July 18, 2017

Presented By:
Stephen D. Nelson
President, Nebraska Farm Bureau Federation
Board of Directors, American Farm Bureau Federation
American Farm Bureau Federation Trade Advisory Committee

600 Maryland Ave. SW | Suite 1000W | Washington, DC 20024 | p. 202.406.3600 | f. 202.406.3606 | www.fb.org

My name is Steve Nelson and I am President of the Nebraska Farm Bureau Federation (NEFB) and serve on the Board of Directors of the American Farm Bureau Federation (AFBF). I am a member of the American Farm Bureau Trade Advisory Committee as well as the newly formed Nebraska Governor's Council for International Relations. I am testifying today on behalf of the American Farm Bureau Federation.

The American Farm Bureau Federation is pleased to offer our objectives for the North American Free Trade Agreement (NAFTA) negotiations. AFBF and NEFB submitted comments on June 12 addressing the negotiating objectives for NAFTA.

Existing trade agreements have proven successful in reducing tariffs and tearing down non-tariff trade barriers that hinder U.S. farmers' and ranchers' competitiveness and prevent us from taking advantage of consumer demand for high-quality U.S. food and agricultural products throughout the world.

NAFTA has been overwhelmingly beneficial for the vast majority of farmers, ranchers and associated businesses in the United States, Canada and Mexico. U.S. farmers and ranchers across the nation have benefited from an increase in annual exports to Mexico and Canada from $8.9 billion in 1993 to $38.1 billion in 2016. Nebraska exported more than $2.4 billion worth of products to both Mexico and Canada in 2016 with agricultural products making up $1.5 billion—more than half—of that total. Mexico alone is Nebraska's second-largest trading partner with $1.3 billion dollars' worth of agricultural products being exported there, which supported nearly 1,200 Nebraska jobs.

Despite the clear and numerous benefits, there are reasons to update and reform NAFTA from agriculture's perspective. While the sector as a whole has seen substantial benefit, there are individual commodities that have faced challenges. With Mexico, tomatoes and other fruits, vegetables, and sugar all have experienced issues. There also are challenges for dairy, specialty and row crops, wheat, lumber, and wine with Canada.

We believe negotiations should at best eliminate, and at worst, reduce, longstanding Canadian tariff barriers to dairy, poultry and eggs, as well as the relatively recent barriers to ultra-filtered milk exports. U.S. agricultural exports to Canada would grow if greater competition were allowed.

Remedies for our produce growers need to be strengthened. A timely trade dispute resolution process should be added that takes into account the perishability, seasonality and regional production of fruit, vegetable and horticultural products.

While there clearly are several areas where the NAFTA agreement could be modernized to improve trade in agricultural goods, it is critical that the modernization effort recognize and build upon the strong gains achieved by U.S. agriculture through tariff eliminations, the recognition of equivalency of numerous regulatory issues, and the development of integrated supply chains that have arisen due to the NAFTA agreement.

Trade agreements also provide the highest standard of trade rules, allowing the United States and its partners to be global leaders in setting the foundation to establish market-driven and science-based terms of trade and dispute resolution that will directly benefit the U.S. food and agriculture industry.

We support adding to the NAFTA agreement the sanitary and phytosanitary (SPS) language negotiated as part of the Trans Pacific Partnership (TPP), which would strengthen the existing WTO SPS commitments.

We strongly support the inclusion of a rapid response tool, which will help to resolve shipment-specific issues. Cooperative Technical Consultations would allow agencies to find science-based solutions to SPS issues in a timely manner, which is particularly beneficial to growers of perishable products.

In addition to the TPP SPS text, we recommend some additional and significant provisions on Geographical Indicators (GI) and biotechnology that would ensure that the revised NAFTA agreement could be used as a model for future U.S. trade agreements.

We support the inclusion of the TPP text in order to preserve U.S. market access opportunities for common-name products. The misuse of GIs is a constant and significant threat to maintaining and growing sales of high value U.S. products within the markets of our NAFTA partners and in markets worldwide.

We support adding to NAFTA a new chapter on biotechnology. Under a modernized NAFTA, the U.S. government would 1) enter into a mutual recognition agreement on the safety determination of biotech crops intended for food and feed, and 2) develop a consistent approach to managing low-level presence of products that have undergone a complete safety assessment and are approved for use in third countries but not yet approved by a NAFTA member.

We oppose erecting new barriers to agricultural trade through NAFTA, including adding mandatory country of origin labeling for beef and pork products.

Trade in goods consists of not only final consumer products, but also intermediate inputs and raw materials as firms reorganize their activities around regional markets for both inputs and outputs, spurred in part by greater foreign direct investment.

This integration enables agricultural producers and consumers in the region to benefit more fully from their relative strengths and to respond more efficiently to changing economic conditions. The creation of a larger, single market has given producers access to cheaper supplies of inputs, which allows U.S. producers to be more price competitive domestically and abroad.

U.S. agriculture depends on a growing international economy that provides opportunities for farmers and ranchers to sell their products. Modernization of NAFTA will help expand market opportunities for U.S. and Nebraska agriculture.

Thank you for the opportunity to testify today.

Chairman REICHERT. Ms. Helper.

STATEMENT OF SUSAN HELPER, FRANK TRACY CARLTON PROFESSOR OF ECONOMICS, CASE WESTERN RESERVE UNIVERSITY

Ms. HELPER. Chairman Reichert, Ranking Member Pascrell, Members of the Committee, thank you for the opportunity to testify about NAFTA today.

As an economist focusing on supply chains, I have long followed this issue. Twenty years ago I visited plants making automotive wiring harnesses in Warren, Ohio. At that time, senior production workers earned middle-class union wages, owning houses and cars. I also visited their counterparts in Mexico, eager young women who lived in tarpaper shacks, using the plant's bathrooms to apply their makeup because their own homes lacked running water.

I am inspired by the hard-working people I met in both places, people who coax machines into producing tiny, perfect, plastic connectors, people who made sure that these connectors were so flawlessly joined to wiring that our cars rarely suffer electrical issues.

Today the plants in Warren are bulldozed or vacant, and middle-class jobs are largely gone. Mexican workers still have jobs, but their pay has not risen since NAFTA was signed in 1994. Is this the best we can do? Can't the power of global trade be leveraged to benefit everyone?

Appropriately designed, trade deals can set rules so that everyone shares in the gains. Trade deals should ensure that competition is based on technology and innovation, and not on other nations' willingness to exploit workers or the environment.

As other witnesses have discussed, key ways that NAFTA could move toward this goal include stronger protections for workers and the environment, and an end to special courts for investors. I would like to discuss an additional way: strengthening supply chains.

Some arguments against changing NAFTA are based on fear that changes would weaken U.S. supply chains. However, these arguments assume that supply chains are ideal as they are. They also assume that Mexican and Canadian supply chains complement U.S. supply chains, and do not substitute for them.

But in some cases, we have actually seen that foreign supply chains do substitute for U.S. suppliers. For example, in electronics, U.S. personal computer manufacturers started by off-shoring the assembly of printed circuit boards. Then they moved complete product assembly overseas. Then they moved supply chain management. And finally, design and innovation.

To prevent this atrophy of capabilities, it is important to identify clusters of industries that are at a tipping point, and bolster these ecosystems.

For example, it may be that North American auto parts cluster is approaching such a tipping point. Since NAFTA came into force in 1994, Canada has lost 4 auto assembly plants, the U.S. has lost 10, even as Mexico has gained 8 plants.

As more auto assembly occurs in Mexico, more suppliers will find that costs of shipping and of coordinating engineering changes fall as critical mass is reached. These firms may thus find it profitable to relocate to Mexico from the U.S. As each of these firms moves, it creates additional reasons for other firms in the network to leave, as well.

The North American industry could benefit from careful examination and management of these trends, assurances that changes are based on fair competition and promotion of investment and fuel efficient, innovative vehicles.

Thus, a concern for U.S. supply chains should not preclude renegotiation of NAFTA. Instead, U.S. supply chains would greatly benefit from actions such as, first, better data and analysis; second, convening stakeholders, including business, unions, consumers, and environmental groups, across the U.S., Mexico, and Canada to develop industry-specific strategies; third, it is important to adopt non-trade policies to strengthen supply chains within the U.S.

U.S. manufacturing supply chains are characterized by a heavy presence of small, isolated firms. Forty percent of manufacturing workers are in firms of fewer than 500 employees. And these firms struggle to do the innovation on which most U.S. comparative advantage is based. We could strengthen U.S. supply chains by making more robust efforts to train workers and managers; by including in sourcing decisions the benefits of supplier innovation, not just of cheap labor; by promoting collaboration within supply chains; and by continuing to fund the manufacturing extension partnership.

The fourth issue, I think, is to review NAFTA rules of origin. But I would note that, to the extent that the production moves from low-wage nations, production may well go to Mexico, not the U.S. And thus, the impact of this policy on U.S. employment and wages depends critically on having policies that—suggested above on labor and environmental rights.

A thoughtful renegotiation of NAFTA could make good on the promise of a prosperous, innovative, sustainable North America, in particular by strengthening its supply chains.

[The prepared statement of Ms. Helper follows:]

Testimony before the House Ways and Means Subcommittee on Trade Hearing on Modernization of the North American Free Trade Agreement (NAFTA)

July 18, 2017

by Susan Helper

Carlton Professor of Economics. Case Western Reserve University, Cleveland, Ohio
formerly Chief Economist, U.S. Department of Commerce

Thank you for the opportunity to testify today. As an economist with supply chains as my primary research focus, and as a long-time Ohio resident, I have followed the implementation of NAFTA for many years.

As an economist, I believe that increased competition has many benefits, for example allowing companies with better products to grow and profit by better serving consumers. While increased trade in general has the potential to make everyone better off, this has not been the case with NAFTA, as President Trump and others have noted.

Economic studies have found only small overall increases in welfare for the U.S., Canada, or Mexico as a result of the agreement.[1] While some groups have benefited, especially large corporations, others have lost ground. A careful study by Hakobyan and McLaren (2016) shows that NAFTA has caused significantly slower wage growth in both U.S. industries and regions affected by tariff reductions in the agreement. The slower wage growth affected not just manufacturing workers, but also service workers, as those who lost manufacturing jobs tried to find new jobs in sectors like restaurants and retail, even as loss of these good-paying jobs reduced demand for such services. In Mexico as well, wages have stagnated even as productivity has increased; overall real wages rose just 2.3% between 1994 and 2012 (Weisbrot et. al, 2014). Mexican manufacturing wages remain well under 20% of US manufacturing wages (Blecker, 2014).

Appropriately designed, trade deals can set rules so that everyone shares in the resulting gains. For instance, we should negotiate trade deals to ensure competition is based on technology and innovation — rather than on other nations' willingness to exploit workers or the environment. However, NAFTA's current rules allow companies to compete based on who can exploit workers or the environment more, undercutting firms that would like to compete on innovation.

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[1] Romalis (2007) found no net benefit of NAFTA for aggregate welfare in the US; Caliendo and Parro (2015) find very small increases in aggregate welfare for each NAFTA country.

In my testimony, I will discuss four ways in which the agreement could be improved: increasing worker protections, increasing environmental protections, eliminating or reforming special courts for foreign investors, and strengthening supply chains. I will address the first three briefly, and then discuss supply chains in somewhat more detail.

If implemented, these changes would go a long way toward making the agreement work for ordinary citizens not just in the US, but in Mexico and Canada as well.

1. **Increasing worker protections.** As discussed above, a strong argument can be made that NAFTA has contributed to the reduced bargaining power experienced by workers in both the US and Mexico. Poorly designed rules can aggravate inequities. Under NAFTA, for example, the worst penalty that can be imposed for sweatshop conditions is that countries can call for "consultations" with the offending country's labor ministers — consultations with no enforcement mechanisms. As discussed below, investors have far stronger protections available to them. Several groups have made detailed recommendations about how to ensure that workers share in gains from trade, including the AFL-CIO (2017) and the Roosevelt Institute (Tucker, 2017).[2]

2. **Increasing environmental protections**. Like the worker protections, environmental protections in NAFTA are vague and contained in a side agreement with no enforcement provisions. As a result, the post-NAFTA period has been characterized by environmental issues such as deforestation, increased use of fossil fuels, and environmentally-destructive mining. Leading environmental groups (in addition to the sources above) have provided detailed recommendations for improvement. (350.org et. al, 2017)

3. **Reform or eliminate special courts for investors.** Firms' decisions to leave the U.S. are eased by provisions in trade agreements such as NAFTA, which set up special courts in which firms can challenge government policies that affect their investments. These "investor-state dispute settlement" (ISDS) mechanisms undermine national sovereignty. ISDS also undercuts the U.S. advantage in having a reliable legal system by helping ensure companies against potential expropriation by countries with weaker institutions. Countries have lost lawsuits over policies ranging from financial stabilization to environmental clean-up and even criminal prosecutions. (Hamby, 2016; Tucker 2017.)

[2] More recent trade agreements have gone beyond NAFTA in creating enforceable labor standards, but recent evidence suggests that even these do not go far enough to truly create equity between worker and investor interests. For example, last month, an arbitral panel released the first ever ruling under the labor rights provisions of the U.S.-Central America Free Trade Agreement (CAFTA). While siding with the U.S. that Guatemala had violated workers' rights, the panel found that it did not do so in a manner sufficiently affecting cross-border trade. This trade nexus requirement - also included in the proposed Trans-Pacific Partnership - is difficult to meet and limits the utility of these provisions for working families. Negotiators should consider a simpler formulation that makes clear high labor standards must be enforced (and enforceable under NAFTA) across the economy as a whole (Tucker 2017).

More generally, institutions of global governance should focus less on facilitating multinationals' ability to pit countries against each other to win investment and more on genuinely global issues. For example, international trade agreements should tackle issues of international tax evasion and on promoting cross-border collaboration on environmental issues that cross national boundaries.

4. **Strengthening US supply chains.** Many arguments against making changes to NAFTA are based on a fear that any change would weaken U.S. supply chains. For example, Amiti, Freund, and Bodine-Smith (2017) argue: "Some critics of NAFTA are concerned about the bilateral trade deficit and have proposed stricter rules of origin (ROO), which would make it more cumbersome for firms to access the zero tariff rates they are entitled to under NAFTA. We argue that measures that make it costlier for US firms to import will also hurt US exports because much of US-Mexican trade is part of global supply chains."

For example, these analysts point to the auto industry, where U.S.- produced components comprise 40 percent of the value of products imported into the United States from Mexico. In contrast, for goods imported from China, only 4 percent of their value is from U.S. content (Wilson, 2011). If NAFTA re-negotiation meant that trade barriers with Mexico were raised, labor-intensive production steps (like assembly of instrument panels) might move to China. Losing access to cheap nearby labor could mean that work currently done in the US (e.g., production of gauges for instrument panels) might move to Asia as well.

However, analysis such as this assumes that individual companies alone optimize their supply chains, and that no market failures exist.[3] The analysis also relies on the key assumption that Mexican (and Canadian) supply chains complement US supply chains and do not substitute for them. Moran and Oldenski (2014) appears to support this complementarity assumption, finding that when firms increase their Mexican employment, they also increase their US employment. However, much more research is needed to be sure of this result. Their data looks only at employment by a focal firm, not at suppliers. It is plausible that when a firm expands in Mexico, it expands its Mexican supply base more than it would if it expanded in the US. Also, it is not clear that their technique separates cyclical changes (e.g., when the business cycle is favorable, firms expand in all their locations) from trends (e.g., a gradual hollowing out of US supply chains).

U.S. supply chains are largely domestic. Eighty-five percent of U.S. exports are composed of U.S.-made parts; domestic content of overall U.S. production is similarly high (Mahoney and Helper,

[3] In contrast, as discussed below, where there are benefits to clusters of firms, the impact of each firm's location and investment decisions spills over to affect other firms in the industry (Mahoney and Helper, 2017).

2017).[4] The threat to manufacturing jobs comes less from the globalization of supply chains than from the movement of large chunks of whole industries abroad.

In many cases, this process begins when manufacturers move labor-intensive components or assembly overseas. Before too long, they do the same for higher-tech operations as well. For example, U.S. personal computer manufacturers started by offshoring the assembly of printed circuit boards, then moved complete product assembly overseas, then supply-chain management, and, finally, design and innovation (Pisano and Shih, 2009).

To prevent this atrophy of capabilities, it is important to identify clusters of industries that are at tipping points, and bolster these eco-systems. For example, it may be that the North American auto parts cluster is approaching such a tipping point. Since NAFTA came into force in 1994, Canada has lost four auto assembly plants and the US has lost ten, even as Mexico has gained eight plants.[5] As more auto assembly occurs in Mexico, more suppliers will find that costs of shipping and of coordinating engineering changes fall, as critical mass is reached. These firms may thus find it profitable to re-locate to Mexico from the U.S. and Canada; as each firm moves, it creates additional reasons for other firms in the network to leave as well (agglomeration economies). The North American industry could benefit from careful examination and management of these trends, assurance that changes are based on fair competition (not unfair practices), and that dislocation is managed and investment in fuel-efficient, innovative vehicles is promoted.

Supply Chain Recommendations

A concern for US supply chains should not foreclose re-negotiation of NAFTA. Instead, promoting the vibrancy of US supply chains would greatly benefit from actions such as the following:

1. Better data and analysis about the health of US supply chains. US statistical agencies are doing a great deal of creative work (despite tight budgets) to improve our understanding of global value chains.[6] However, there are several key steps that should be taken, requiring modest additional resources;[7]

    a. Greater funding of input-output tables. Currently, estimated relationships underlie much of this analysis, data limitations preclude computing many of these statistics for service sector supply chains. Moreover, the domestic content figure assumes "import

[4] See also Fetzer and Strasser (2015), Nicholson and Noonan (2017); Helper and Krueger (2017).
[5] United Auto Workers (2017).
[6] See Fetzer and Strasser (2015) as one example among many.
[7] Taken together, the US statistical agencies spend only 3 cents per American per year. (Powers and Beede, 2014).

proportionality," (e.g., that if 40% of a broad category of steel is imported, that each industry using that steel imports exactly 40% of it).

b. Analysis of the extent to which foreign suppliers are complements or substitutes for domestic suppliers. The Moran and Oldenski analysis could be improved by using customs data to track imports by a particular firm through the tiers of the supply chain. This would allow us to understand the circumstances under which firms add or subtract domestic employment when they expand abroad or use foreign suppliers. It is very rare to trace a product through the supply chain. However, the Customs-Trade Partnership Against Terrorism is beginning to collect such data (Homeland Security, 2015); it would be useful to use this for statistical purposes. (Note that as tracking technologies such as RFID spread throughout the chain, the costs fall of collecting such data and of monitoring that only suppliers with good conduct are used (Mahoney and Helper, 2017).

2. Convening of stakeholders (including business, unions, consumers, environmental groups) across the US, Mexico, and Canada to develop industry-specific strategies and responses.

3. Non-trade policies to strengthen supply chains within the US. US manufacturing supply chains are characterized by a heavy presence of small, isolated firms (40% of manufacturing workers are in firms of fewer than 500 employees). These firms struggle to do the innovation on which the main source of US comparative advantage is based. Strengthening US supply chains could include more robust efforts at training workers and managers, efforts to promote sourcing based on total cost of ownership (including costs of poor quality and missed delivery), promoting collaborative relationships with suppliers, continued funding for the Manufacturing Extension Partnership. See Mahoney and Helper (2017); Helper and Krueger (2016) for more analysis and recommendations.

4. Reviewing NAFTA rules of origin. Rules of origin should be revisited to determine how they could better promote development of tri-national clusters including robust US participation. The process of review should be undertaken carefully. If rules of origin are too weak, other nations can share in the gains from the agreement without taking on the disciplines contained in it. On the other hand, if rules of origin are too strict, firms will forgo NAFTA benefits, import instead under most-favored nation rates at the World Trade Organization, and perhaps weaken clusters. Also, to the extent production moves from low-wage nations (such as China) to North America, production may well go to Mexico, not the US or Canada. Thus, the impact of this policy on US employment and wages depends critically on the policies suggested above regarding stronger labor and environmental rights.

A thoughtful renegotiation of NAFTA could make good on the promise of a prosperous, sustainable North American continent, and should be conducted in an open, inclusive manner. The key step is to put the interests of American workers and communities ahead of the profits of multinational corporations.

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Chairman REICHERT. Thank you. Thank you all for your testimony. Now we will ask you a few questions, if you don't mind.

Mr. Ryan, thanks for being here today. As you said, Darigold, located in the State of Washington, and especially important, located in Issaquah, Washington, which happens to be in the eighth district of Washington, which is the district that I represent. So whatever you said is absolutely correct.

[Laughter.]

Chairman REICHERT. One of the things that I listened to in your testimony, and agree with and am concerned about, is Canada's national ingredients pricing strategy. So that includes the class six and now the class even pricing scheme, With the importance of trade to our state and in your industry, I completely agree this practice that effectively blocks our exports to Canada and negatively impacts your sales in other markets has to end.

So we will continue to work with the Administration to seek additional commitments from Canada with respect to the market access for dairy products. As Mr. Perdue also testified to in his comments, we want to end these discriminatory practices.

I also agree with your concern about the growing use of geographical indications as a form of protectionism, and the need for strong rules to prevent this. We also need additional rules to ensure that our trading partners' sanitary and phytosanitary determinations are based on sound science.

So, I hope that you could please speak to the opportunities that you see for your industry in an upgraded NAFTA, and explain how these changes would impact Darigold's sales with NAFTA and other markets.

Mr. RYAN. Well, first of all, I think it all stems from the competitiveness of the U.S. You know, with more market access—you know, to Canada, for example—you will just simply have a growing U.S. industry.

I think, secondarily, repealing the class seven pricing strategy will essentially reverse what is going to amount to be—as a market share move from the United States to Canada, by virtue of the policy they have, and stemming that. The U.S. dairy industry will be larger. The economy will be bigger. Jobs will be bigger, you know, without the class seven than with it, which I believe is strongly in conflict with the WTO.

From a Mexico point of view, Mexico is a giant dairy import country in the world [sic]. And there is a lot of ambiguity out there. Europe—New Zealand, specific—would love to develop a greater share of the Mexican market. So reinforcing our situation is critical to just stay where we are, and where we are is a very good, good situation. But it is at risk, given the current environment.

Chairman REICHERT. I want to give you the opportunity to comment on any other of the issues or concerns that you heard expressed today that might have struck a note with you as far as border crossings, technology, anything there that you see that could help or benefit?

And anything specifically, other than the dairy issue with Canada, that you would like to mention that maybe—that you see as a benefit that we could add to and change and update NAFTA?

Mr. RYAN. Yes. Chairman Reichert, I think in your opening comments you said that NAFTA can serve as a template for things we can use in other places in the world. And I think in dairy, that is completely appropriate. At the end of the day, the world has—people and productive land are not all in the same spot. Global trade brings that together. It is good for global security and, because we are in one of the most competitive farming, land-rich, sustainable-resource, rainfed parts of the world, we can be a giant supplier to that, and grow the U.S. economy and jobs quite a bit.

Dairy, in specific, is tremendously affordable protein and nutritious, and on trend from all aspects of the nutrition spectrum. And so, the global opportunity to grow the U.S. dairy business is extremely large, not only for Darigold, but for the entire U.S. dairy industry. Other bilaterals, going back to multilateral platforms, different ways—a lot of the things that were done in TPP would be essential for all of the U.S. agriculture, I believe, as well as dairy.

And other countries are on the move. I mentioned in my comments the recent EU–Japan free trade agreement, which is—essentially did about what we were going to do in—for U.S. in our own TPP, and sort of one-upped us, if you will. This is a big setback. Japan is a very natural trading partner, and it sets a precedent for what takes place in other places.

We have an environment where there is a—sort of a window of opportunity created for our export competitors around the world to go forward. And I would urge everybody to jump into that void and advance U.S. interests.

Chairman REICHERT. Great, thank you.

Mr. Pascrell.

Mr. PASCRELL. Mr. Chairman, thank you. And I want to thank the panelists today. All excellent.

Ms. Erickson, I paid very close attention to your testimony. And as senior director of global policy for Etsy, I want to ask you this question about empowering women entrepreneurs.

I am impressed with the way that Etsy—is that correct—has empowered women to start their own businesses and sell products over the Internet. And you said in your testimony that almost a third of the sales on Etsy come from outside the United States. Am I correct?

Ms. ERICKSON. It is about a third of sales involve either a seller or a buyer outside of the United States.

Mr. PASCRELL. Now, you mentioned that our trade laws haven't kept up with the changes in technology. So how can trade agreements help facilitate exports on behalf of small businesses like those that you use on your site?

Ms. ERICKSON. Absolutely. So I think a lot of it is focused on the basic trade facilitation components of trade agreements. So, as I said in my testimony, de minimi customs exemptions would solve most of these challenges for Etsy sellers. The average good people are sending is not very expensive. And so that would eliminate much of the friction.

I think, secondarily, just simplifying the rules. These are businesses of one, and they are hungry to comply with the rules, but it rapidly becomes too difficult for a business of one to figure out what the rules are that apply to their product in a particular country.

I think we also can take advantage of technology to make this easier. So a lot of trade facilitation focuses on, for example, putting rules online on individual Web sites. We would encourage countries to go even further in making those standards available in an open, common format that technology companies like Etsy could easily access to make that information available in the moment of the transaction, so our sellers don't have to go digging through different countries' Web sites to find them.

So, for us, it is really about simplification.

Mr. PASCRELL. Thank you.

Professor Helper, thank you so much for your testimony. Democrats have consistently been vocal, particularly over the last 20 years, about the severe erosion of manufacturing operations and jobs in our own country. People who don't quite agree with that debate, and point out advancements in technology, in automation, as policy-neutral explanations for what is going on.

Many of us have seen entire factories and entire factory towns leave, shut down. So is there any doubt in your mind, as an economist and an expert in manufacturing policy, that the incentives created by our trade policies have played a significant role in that demise of manufacturing jobs?

Ms. HELPER. No, there is no doubt in my mind. There has been a significant change in the economics profession's view on this question.

Mr. PASCRELL. Could you explain that?

Ms. HELPER. There is a very important paper by David Autor, chair of the MIT economics department, looking at the impact of free trade and the China entry into WTO, and finding that this change alone accounted for about a quarter of manufacturing job loss.

There is a recent paper by Hackobyan and McLaren that use this same methodology, apply it to NAFTA, and find a slower wage growth, significantly slower wage growth, across the country in industries that were primarily affected by the tariff changes in NAFTA. And these changes affect not just, you know, a small number of workers in tariff-affected industries.

Mr. PASCRELL. Right.

Ms. HELPER. They spill over to affect the service workers——

Mr. PASCRELL. So not only are we losing the jobs, but those remaining are affected in a negative way, in terms of dollar growth, wage growth, as——

Ms. HELPER. It comes back to bargaining power——

Mr. PASCRELL. Right.

Ms. HELPER [continuing]. That when you are competing with dollar-an-hour labor, and also when you are competing with the lack of demand that people earning a dollar-an-hour can bring to the marketplace, what happens is that businesses move toward strategies that involve lower wages and less innovation, because that is the way they compete.

Mr. PASCRELL. Thank you very much. I yield, Mr. Chairman.

Chairman REICHERT. Thank you.

Ms. Jenkins.

Ms. JENKINS. Thank you, Mr. Chairman, and thank you all for being here.

Mr. Perdue, as you are a producer from York County, Nebraska, an area very similar to and not terribly far across the border from my eastern Kansas district, I imagine you are, no doubt, familiar with the challenges that the agriculture community in rural America is currently facing. Part of that is due, in part, to low commodity prices, seasonal national disasters, and countless other pressures.

Throughout this year and last, producers throughout Kansas in my district have visited with me about these challenges, and they have really stressed the incredible importance our trade deals are to their bottom lines.

In light of the current slump in which the ag sector currently finds itself, how important is NAFTA to your own operation and to your neighbor's farms? And what would be the effect that a withdrawal from NAFTA would have on farmers' livelihoods, whether they be in Nebraska or an hour south, in Kansas?

Mr. PERDUE. Well, thank you. The first answer I will go with is for the second question, and it would obviously mean lower prices to the producers. If we had any impediments to the trade we are currently doing in the export market, we would obviously have a build-up of supply, and it would result in a reduced price. And then you would quickly feel that ripple effect through the communities that are based so much on agriculture.

So, I wish I had the exact numbers. I know there are studies out there. And I would be happy to get those to you in writing later. But there have been analyses to show what the export markets bring to every bushel of corn, every bushel of soybeans that a producer receives, and then take that into the livestock market, as well. And it is a very significant amount of income coming back to the communities from these exports.

Ms. JENKINS. Thank you, Mr. Perdue.

Mr. Chairman, I yield back.

Chairman REICHERT. Mr. Paulsen.

Mr. PAULSEN. Thank you, Mr. Chairman. And also, thanks for the other panel for sticking around. I will start with Ms. Bliss.

You mentioned earlier that we have had a consistent trade surplus in the area of services, both with Mexico and with Canada. And there is widespread agreement, I think from folks here, that we do need to modernize NAFTA, or have a chapter now on e-commerce and digital trade, and have that be added.

Can you just talk a little bit more about what the consequences would be for your members, or for service providers, if digital trade provisions were not included in a modernized NAFTA?

Ms. BLISS. Thank you, Congressman. I think they would be adverse. And for one thing, let me just say that I think my members—and I know a large part of the business community, not just the tech center, believe that NAFTA really presents an opportunity to create a real template and a very high standard set of disciplines with respect to e-commerce and digital trade.

So, if that opportunity is missed, I think the consequences are beyond just NAFTA, but more broadly, because certainly the topic of digital trade and e-commerce is being discussed in a number of forums, in a number of trade agreements with respect to the EU and Japan. There was a decision to kick the can down the road, and so there won't be any disciplines in that agreement. There is a lot of discussion in the WTO among developing countries and others, some who are strongly resisting a strong standard in that area.

So, I think—just point one I would make is it would be a tremendous missed opportunity to not set high standards. Two, I think has previously discussed, the extent of restrictions on data flows, and data localization in particular, are, unfortunately, increasing globally. And they are—have not been as significant a problem with respect to Canada and Mexico—more so for Canada than in Mexico.

So I think that if, again, the agreement did not set a high standard, it would be a missed opportunity, and it could send the wrong signal, in terms of encouraging those kinds of policies.

And then, lastly, just let me say I think if you look at the trade surplus that has been generated broadly for the United States of about 262 billion, about 159 billion of that is accounted for by digitally-enabled services. So it is a huge area in which we are competitive, in which we are generating a big advantage for the United States. So if we don't have those kinds of rules to undergird and to protect that advantage, we stand to lose a great deal.

But I think it is—I would emphasize that it is really the last point, that we want to set an example, and we want to discourage kinds of policies that discourage data flows and mandate-forced data localized.

Mr. PAULSEN. Can you also maybe mention what the implications would be for, you know, service providers or some of your members if a foreign government decided to levy customs duties on data?

Ms. BLISS. Again, it would certainly—the immediate effect would be to increase the cost of business——

Mr. PAULSEN. Sure.

Ms. BLISS [continuing]. Which is always adverse, and makes—would make the U.S. less competitive.

Two, I think it would also set a very bad precedent, because I know there are developing countries that are looking very actively at doing precisely that, and seeing it as a potential source of revenue. So I think it would set a very bad precedent, globally.

Mr. PAULSEN. Thank you, Mr. Chairman, yield back.

Chairman REICHERT. Mr. Levin.

Mr. LEVIN. Well, thank you. I mean this panel, again, I think, illustrates the challenge. Why we find it so difficult for us to listen to all of you, and instead just listen to some of you.

Ms. Bliss, you have outlined the need to have high standards in services, and I have been active in this, including the WTO, as well as data flows and others.

Ms. Helper essentially outlines the need for us to have high standards in terms of worker rights and the environment. But we pick and choose. And the challenge for any renegotiation of NAFTA is to pay attention to the need for standards across the board.

And, Ms. Helper, you outline, I think so clearly, the need for us to do that in terms of labor standards, and you focus on suppliers. It is interesting how little work has been done, including by economists, because, without naming names, I know, for example, of one very large supplier—it is an American supplier—that I think has about 80,000 jobs; 70,000 of them are in Mexico.

And so, when there is a reaction by the public to NAFTA, I think we need to understand the impact of loss of jobs in critical areas like industry, while acknowledging there has been an increase in jobs in other areas, including the service industries.

And Ms. Helper, you mentioned the recent study. And I just saw the abstract. You have to pay to get the whole thing. So I guess I will pay to get the whole thing. But its conclusion is we find evidence of both effects, dramatically lowering wage growth for blue-collar workers in the most effective industries and localities, and it goes on to say even for service-sector workers in affected localities whose jobs do not compete with imports.

And so, everybody has a stake in addressing this issue of the attraction of jobs from the United States, in this case to Mexico, by the policy of Mexico essentially to be a very low-cost economy, when it comes to industry, and to make sure that wages are suppressed, including because workers have no ability to be represented in the workplace.

In industry, in all cases except mining—maybe one or two others—the contracts are totally sham agreements, often reached by a union, so-called, that is attached to the government and the employer, before a single employee has been employed.

So, Ms. Helper, you want to just close with some fervent expression why we need to address this? You are an economist, but you can get fervent.

Ms. HELPER. Yes. And I am also a business school professor.

Mr. LEVIN. Are you? Good.

Ms. HELPER. So I would be remiss to not say that these high standards in the labor area can actually help business, as well.

And I think Mr. Linebarger's testimony about Cummins really shows this, that if he's—innovation in his plants in the U.S. is actually helped when there are higher wages in Mexico, both because there are more demand for his products in Mexico, and also because competitors of his that don't use the high standards that he uses can't get away with the poor practices.

So I think that this is a practice that doesn't benefit just workers, but also innovative businesses, and also consumers.

Mr. LEVIN. Thank you.

Thank you, Mr. Chairman.

Chairman REICHERT. Thank you.

Mr. Kelly.

Mr. KELLY. Thank you, Chairman, and thank you all for being here. I know you are very busy in your lives, and to take time out to come here is really critical to us.

But all of you, we are here for the same reason today, and that is to talk about—specific about NAFTA and where we are with NAFTA today, as opposed to when the NAFTA was initiated, and what you see the improvements could be. Is there anybody at all on the panel that says we just shouldn't do anything?

I know do no harm, I get that part. But is there anything else that you see? Because you are all pretty articulate in what it is that you think the opportunities are, and where maybe we aren't looking that we should be looking in today's market, as opposed to 23 years ago.

Mr. Ryan, and good to have another Domer in the room—by the way, that is Notre Dame, for you folks who don't understand where we are coming from, the Golden Dome.

Mr. RYAN. Go Irish.

Mr. KELLY. Yes, Go Irish is right.

Mr. RYAN. You know, I am struck in that we are talking about NAFTA, but there is dozens and dozens and dozens of countries around the world, and trade is an issue of everywhere. Food and agriculture, again, it is a—there is dozens and dozens of countries who are net importers of food and structurally always will be, and they are growing. And we can be a large net exporter. So it is a boom industry.

I believe that the way we treat this NAFTA negotiation is an opportunity for us to establish ourselves as an extremely reliable trade partner who will always be there and always work to improve. And some of the environment brings that into question, which is simply arming the trade negotiators from our competitor countries to open doors against us.

So I think there is the substance of what you get out of NAFTA, do no harm—clearly, improve a number of things, clearly open some more doors with Canada, specific, a number of industries—dairy and a few others that you mentioned—but in the eyes of Vietnam, in the eyes of the Philippines, in the eyes of China, everywhere else, lay the groundwork to open up the next doors.

I believe, Mr. Smith, you said there was over 95 percent of the consumers are outside of the United States. And billions of them are graduating up into the lower levels of middle class, if you will, by an income definition and are ripe consumers for U.S. products.

So I think the reliability of a trade partner, which has been brought into question, is also at stake right now.

Mr. KELLY. Okay. Ms. Bliss.

Ms. BLISS. Thank you, Congressman. Just elaborating on a couple of points, one is that I think it is worth clarifying that when we talk about promoting growth in the American economy, we are very focused on the 40 percent of services that are tradeable. And those jobs tend to be primarily in professional services, where wages tend to be considerably higher.

And so, we are talking about promotion of the creation of good, high-skilled, high-paying jobs, and I think that is a very important point to make.

And two, in promoting that, we do not ignore the fact that there is a need for significant worker education and training, which—many of our member companies have their own programs that are dedicated to that. So just by point of clarification, in terms of benefits that we see coming forward, we think NAFTA is in that regard.

And the second thing I would say is that the investment protections that have been talked about today are very important across the board, certainly to services companies, because when services companies invest abroad, they generally do so because otherwise they couldn't capture market share. They have to be on the ground and have a local commercial presence to supply their service.

So it is not off-shoring jobs from the United States, it is not that there are jobs that would otherwise exist in the United States. If anything, it is a job creator, and a creator of revenues that then come back to the United States.

Mr. KELLY. Ms. Erickson.

Ms. ERICKSON. Yes, I mean, for us it really is about the opportunity for NAFTA to be the model trade agreement of the future that really drives us into the 21st century.

And at its base it is about three things. Certainly, simplifying the process for micro-businesses to ship their goods across borders.

Secondarily, I think the digital trade components are extremely important to enable the platforms that enable those micro-businesses to grow and expand. And we are seeing many protectionist efforts to push back against those digital platforms like Etsy.

And then, you know, we are very supportive of strong labor and environmental protections, as well. And so, for us, NAFTA represents an opportunity to modernize on all of those fronts.

Mr. KELLY. Thank you.

Mr. Perdue.

Mr. PERDUE. I would just say that NAFTA has been good to agriculture, and we see NAFTA modernization as a template for market access and rules for future negotiations, and to improve agriculture trade with Japan and other Asia-Pacific countries in the future.

Ms. HELPER. It falls to me, as the data wonk to talk about data. We have a data system that is set up for a very different, older world in which finished goods are largely what is exported. In fact, we have a lot of supply chains, we have a lot of related-party trade. In my written testimony I have some ideas about how we can use customs data. I think there can also be cooperation across the three countries to improve our understanding of how supply chains actually work to make supply chains less substitutes for each other and more complements.

So I think the—in the agreement there can be cooperation, and then I think it would be helpful to have a little bit more budget for these very important data issues.

Mr. KELLY. Okay. Thank you all for being here, and thanks for your contributions. We appreciate it. Thank you, I yield back.

Chairman REICHERT. Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman. I thank the panel for their insights. And I have been educated in a number of the elements of the testimony.

But Ms. Erickson, one that I am intrigued by was something that I don't think you have had a good-enough opportunity to explain. And I know under Etsy there is—there are some standards that have been changed, de minimi standards, which the United States seems to have moved towards a more modern approach to that issue. Also mindful of the opportunities that have been created by global access to the Internet.

And as you have identified, small business people—often times, women entrepreneurs that manufacture something or create some kind of a good that is very, very unique. And the kind of—while it may be a niche market, it is able to be accessed anywhere. And therefore, everybody has a chance to shop at that store.

And yet there seems to be barriers that have been put in place. Can you explain what de minimi means, how it influences the ability for small businesses like those you are talking about? And give me the example. I mean Canada and Mexico have taken different standards, but you identified a statistic, if I recollect correctly, that Canada's exports globally from similarly-situated small businesses are significantly higher than those from the United States. Why is that, and what do we need to do to get that right?

Ms. ERICKSON. Absolutely. So the de minimi issue for us is huge, and it is basically the de minimi customs exemption is the value under which goods imported into a country are not subject to customs and duties and those processes.

And so, if a good falls below that threshold, then it basically sails through, and you can ship it from your home to somebody else's home without friction. In the U.S., we recently increased our de minimi customs exemption to $800, meaning any item sent into the U.S., is it subject to those fees? That means it is very—most Etsy—goods from Etsy sellers, it is pretty easy to import into the U.S.

However, in Canada in particular, the de minimi customs exemption is just 20 Canadian dollars, which is actually less than 20 U.S. dollars. And so that means that most goods that U.S. Etsy sellers are shipping into Canada do get stuck in customs. It takes longer for the item to get there. The buyer may have to pay import fees that they don't expect. So that creates friction, that transaction. It means that often a buyer will just send the item back, not pick it up, what have you.

So, for us, increasing those thresholds really eliminates the challenge of having to figure out what the rules are, because the item just goes through.

The statistics I gave you were about Etsy sellers in particular. And so, yes, Canadian Etsy sellers do ship quite a bit more internationally than U.S. Etsy sellers. That is, in part, probably due to the de minimi customs exemptions, and part due to the fact that our market in the U.S. is quite a bit larger with buyers and sellers.

Mr. MEEHAN. What justification would Mexico or Canada give for having a lower number? How do they defend it?

Ms. ERICKSON. I mean, I—you know, I can't speak for the Canadian or Mexican Government, but often it is a desire to protect local industries.

Mr. MEEHAN. Well, I thank you, and I am hoping we can develop the kinds of policies that continue to encourage those global access.

Ms. Bliss, you have also talked a lot about trade and services and how services themselves are entities that we export and create jobs here at home, but not exclusively. Those trade and services also end up supporting other kinds of things, like manufacturing and agriculture, some of the issues that we are dealing with on—across the border.

I have an awful lot of—Michael and I both have dairy in our districts, and we face issues with export there. How do the trade services actually enhance the ability for manufactured goods or dairy goods or other kinds of farm goods to also have enhanced access to markets?

Ms. BLISS. Thank you, Congressman. And I certainly appreciate your earlier remarks in this regard, because it is an area that CSI has really been focused on, because we understand that this Administration is very concerned, in particular, about the manufacturing sector.

So one of the things that we have been doing is doing some work and research about the role of services in enhancing the competitiveness of manufacturing. And it is actually quite considerable. Anywhere from 25 to 49 percent of the value of the input in manufacturing is actually services. And if you look at the auto sector, it is roughly about 50 percent.

And also, in terms of jobs, the—it is, again, a range of anywhere from 25 to 60 percent, depending on the particular product that is being manufactured.

But to your point about how does it promote competitiveness, there are various ways along the chain, starting from the initiation of the production process. And it may be that it is an element of technology that has enhanced the production process itself. It may be that there is a technician, a service supplier that is there, that is implanting a sensor in the product.

I think that might have been an example that you used, or a previous witness might have even used, when they are ultimately telematics. I think the Cummins witness referred to that. So there is a sensor implanted, and then there is a service supplier that is then reading the big data that is then generated, once that sensor is employed. And one perfect example of that are Boeing engines that have sensors to monitor their safety and operation.

Mr. MEEHAN. I will look forward to your research in that space.

Thank you, Mr. Chairman, I yield back.

Chairman REICHERT. Thank you. And thank you for your answer.

Mr. Holding.

Mr. HOLDING. Thank you, Mr. Chairman. I am going to ask kind of a detailed question, Mr. Perdue, having to do with sanitary and phytosanitary measures.

So I believe one of the most important negotiating objectives in TPA is—we put in there is to obtain enforceable WTO plus SPS obligations to hold other countries accountable for using biased and discriminatory standards to justify locking out U.S. agricultural products.

And this can be valuable in the Canadian and Mexican markets, but these negotiations also are important to set high standards that we can use in future trade agreements with other countries.

So, Mr. Perdue, I would like to know if you have some thoughts about would enforceable, high-standard, SPS commitments be valuable to the farmers and ranchers that you represent? And accordingly, other farmers and ranchers throughout the United States?

Mr. PERDUE. In regards to that, the SPS would be a benefit to have the science-based regulations, as well as enforcement with Mexico, especially in the fruits and veggies. That is not my expert matter, but if we could have, you know, the enforcement of the regulations, I think we have heard that that is the important piece throughout today's testimony.

Mr. HOLDING. Good. Thank you very much.

Mr. Chairman, I yield back.

Chairman REICHERT. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. And I also want to thank our witnesses for their indulgence and for being here with us.

I certainly agree that globalization is a fact of life. And we must be strategically prepared to market successfully whatever products, whatever businesses that we have to other countries. And I also agree that our taxing policies have to be such that they are helpful and facilitative.

I agree that NAFTA has been good to agriculture. And, of course, I come from a large, urban area. And people often ask me why I have so much concern about agriculture. One is that the U.S. agriculture sector, including food manufacturers, is deeply concerned about the potential erosion of benefits under NAFTA for an obvious reason: our farm and food sector exports more products to the world than we import from the world. And, of course, agriculture continues to produce and generate surplus with the rest of the world.

Unfortunately, there are many food processors and candy makers in the area that I come from who cannot purchase sugar on the global market, and they have to purchase this domestic sugar. And we are allowing more sugar imports from Mexico and Canada and other places, which drives the cost of sugar up for our candy makers and food processors, which make them less competitive with others, other candy makers, for example.

We have had several candy companies to actually move outside, or move away from Chicago, move away from the area because they just could not successfully compete. And so that is a concern that they have that is also a concern that I have.

I know that NAFTA has produced winners and losers, any way we cut it, no matter what it is that we might say, no matter how we rationalize it. We know that there have been losers—that is, industries, products. I can walk down the street and see vacant lots where there used to be garment makers that no longer exist in the area.

Dr. Helper, I wanted to ask you. How do you think we can try and assure that we can balance the scales a little bit more, in terms of winners-winners, as opposed to winners-losers?

Ms. HELPER. Yes. I think the debate around NAFTA is often—as Chairman—Ranking Member Pascrell said, between sort of pro-free-trade people and isolationists. And I would challenge that.

I mean I think if it was really free trade, NAFTA wouldn't need to be 2,000 pages long. And most of those 2,000 pages are actually protections for people who are—already have quite a lot of bargaining power. So we have the special courts for investors, we have a great deal of intellectual property rights, and very little protections for workers and environment. So, I think changing that, as has been discussed, would be really helpful.

I think a second point, your sugar example, is also a supply chain example in the sense of if you protect part of a supply chain and not others—so you protect—or there is high tariffs on sugar, but not on the candy, you can run into trouble. And you can also see this, you know, where tariffs are very different on an upstream producer, versus a downstream producer. And so I think it is another reason why it is very important to think about supply chains, as a whole, so that, in our efforts to help one industry, we don't hurt other industries.

I guess one last point. I think I would say that, you know, often we think about high-tech industries and low-tech industries. And we often think, oh, textiles, we can't possibly compete in textiles. Well, there is research going on at MIT, for example, saying textiles could be the new software. We could actually have embedded sensors in our clothing. If we have no clothing industry, it is going to be hard for us to take advantage of that market.

So, I think thinking about how do we compete in these innovative, high-road ways, and how do we build that into our trade agreements is a really important agenda, and there is some great opportunity for us, going forward.

Mr. DAVIS. Thank you for your indulgence, Mr. Chairman.

Chairman REICHERT. You are welcome, Mr. Davis.

Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. I apologize for having to step out a little bit, but I really do appreciate the panel's testimony here today, your written and verbal. And I think it is important that we continue to have these conversations of where trade 2.0 should look like, and where we go from here.

I know it has been a frustrating topic of conversation of late because all too often we sometimes let the perfect be the enemy of the good. And trade policy is complicated. There are a lot of different moving parts to it and that, and we are trying to strike the right balance to, again, try to level the playing field for our workers, businesses, farmers, ranchers, right here in this country, so that we can be more effective competing in the global marketplace. That is crucial.

But sometimes trade and trade agreements get conflated. And the fact is we only have 20 trade agreements right now throughout the world. And of those 20 nations, we are actually running a trade surplus in manufacturing, in agriculture, in services. I believe it is the countries we don't have a trade agreement with that get us into trouble, because that is just a race to the bottom with no rules, no laws, no standards to enforce. And it is important for us to be at the table, establishing those rules with our values leading the way.

And I want to get a little bit technical on—Mr. Ryan, I am looking at you, because I know you have been leaning in on this issue, as those of us from dairy country have been. But in the context of NAFTA renegotiation, of course we have got the ultra-filtered class pricing system up in Canada that is giving us some fits lately.

And being from one of the dairy co-ops from the chairman's home state, I just wanted to get your perspective, since I have been trying to wrap my head around it, any possibilities of breakthrough with Canada when it comes to some of our dairy export opportunities there, just want leverage we ultimately have. Of course, they got a supply management system up there that they are trying to protect. They have been very protective with high tariffs when it comes to dairy exports. We are trying to address this ultra-filtered milk issue now that wasn't even around or addressed adequately during NAFTA.

I mean, well, really, what is the path forward here? Is—do we have any leverage at all that we can use effectively in this?

Mr. RYAN. Yes. Been looking for that leverage. Been looking for that path forward. I think, one, of making it a big issue, the bully pulpit that all of us can share in is one way.

I think, two, it looks pretty clearly that it will be in violation of all their WTO commitments. The problem with that is that can take years to come through, and this is a real-life issue right now.

So I believe there is—well, a whole number of other countries have stood up, saying it is in violation of WTO, agricultural ministers around the world. And so there is a collective body there, too. Getting change is another matter.

I believe the leverage of the United States is ultimately one of the things, in a broader NAFTA negotiation, that the United States needs to stand up and say we are standing on this issue. You know it is going to be unwound eventually, through WTO. Do it right now, because it is right, and it is what good trading partners should do.

It is the best I can think of. As far as other leverage, I am open ears.

Mr. KIND. You know, I am sure Washington State is the same as Wisconsin. Canada is a very crucial and important trading partner. In fact, 60 percent of our exports are either going into the Canadian or Mexican market right now. So we don't want to jeopardize that. But then again, we need to be able to feel assured that whatever system we have is a fair and balanced one, one that does level the playing field. And right now we don't feel that that is happening, as it relates to Canada.

And I have been one of those, you know, voices, being from agriculture country, trying to bring that perspective in our farm bill deliberations, that we got to be sensitive to our own WTO obligations, as well. And the title one subsidy programs sometimes puts us in that box, that counts against us. And we are trying to tee up another reauthorization of the farm bill, and I think it would be wise for us to be sensitive to our own trade obligations, globally. Otherwise, this can boomerang against us.

I mean we are still frustrated with the problem we have with cotton subsidy and Brazil right now, who can level economic sanctions against us but for a $500 million bribe going to Brazilian cotton producers every year in order to keep them at bay. I mean this is how crazy our own farm policy has become in this country.

So, you know, we look forward to working with you and others when it comes in the context of the next farm bill, that we are doing this in light of what this means for trade and our WTO obligations in that area, as well.

Mr. RYAN. I fully agree.

Mr. KIND. Yes. Thank you. Thank you all again. Thank you, Mr. Chairman.

Chairman REICHERT. Thank you.

Mr. Smith.

Mr. SMITH OF NEBRASKA. Thank you, Mr. Chairman, for allowing me to participate here with the Trade Subcommittee, and certainly thank you to our entire panel, and especially our Nebraskan here today.

As you have shared your insight and expertise, obviously, U.S. agriculture and NAFTA—I am repeating a lot of what has already been said, but U.S. agriculture has benefitted tremendously under NAFTA.

And I was wondering, Mr. Perdue, if you could perhaps tell us what you think makes American agriculture so competitive that, you know, that we would want to—and have a product that is generally affordable and high quality that the rest of the world would want to buy. Can you tell us maybe what goes into that, from your perspective as a producer?

Mr. PERDUE. I would say that we have some of the most passionate people about what they are doing in producing our food and fiber in this country. And not only are they passionate, they are efficient and take advantage of technology to grow and be more efficient all along that line.

And you know, it is just that passion for high quality food that makes us want to be a trade partner, as we have seen in some recent trade deals, especially in Nebraska.

Mr. SMITH OF NEBRASKA. Right, very good, thank you.

I yield back, and thanks again, Mr. Chairman.

Chairman REICHERT. Thank you, Mr. Smith.

Well, thank you for your testimony, and I think this panel can walk away with the same good feelings that the first panel had in accomplishing, first of all, sharing your message and getting your information to all of us. And I can assure you that there were probably some people just down the street from us in USTR listening to your testimony and our comments, too.

Secondly, another moment of bipartisanship in recognizing the expertise at the panel brought today. So I really want to thank you and assure you that what you have shared with us is important and will be considered as we move forward.

As I have advised the previous panel, please note that the Members will have two weeks to submit written questions to be answered later, in writing. Those questions and your answers will be made a part of the formal hearing record. Our record will remain open until August 1st, and I urge interested parties to submit statements to inform the Committee's consideration of the issues that we have discussed today.

The Committee stands adjourned.

[Whereupon, at 1:14 p.m., the Subcommittee was adjourned.]

[Member Questions for the Record follow:]

Answers to Questions from Rep. Higgins
By Celeste Drake
Witness representing the AFL-CIO
July 18, 2017 Hearing before the House Ways and Means Subcommittee on Trade

1) **Infrastructure:** Do you think that infrastructure investment should be a priority within the context of free trade agreements, and do you think that improvements to infrastructure — particularly cross-border infrastructure — should be prioritized as the Administration and Congress embark on this process?

Answer: Yes, infrastructure investment should be a priority within the context of free trade agreements and should be prioritized as the Administration and Congress embark on the NAFTA renegotiation process. Investing in infrastructure drives long-term, broadly shared growth, which would benefit both the United States and its NAFTA partners. Unfortunately, by stimulating a form of economic competition that prioritizes returns to capital at the explicit expense of wages and tax revenues, NAFTA has made it difficult for the U.S. to engage in commonsense infrastructure investment in recent decades.

Investing in infrastructure is important for reasons beyond immediate job creation and short-term economic gains. Investments in infrastructure spur sustainable economic growth, enhance long-term economic competitiveness and improve quality of life for residents.[1] The benefits of public infrastructure investment are shared broadly across households at all income levels, thus helping to offset any inequality increasing aspects of neoliberal trade rules. State-of-the-art ports, airports, roads and rail; education, training and research centers; water and wastewater treatment and storage; and upgraded national utilities, including broadband, cannot be "captured" by any one group in the economy, but benefit us all, with huge spillover effects for the economy as a whole.[2]

Ensuring that infrastructure investments occur not just in the United States, but on a regionwide basis will ensure the benefits of economic growth are more widely shared than they have been under the current NAFTA. Substantial investments in infrastructure could mitigate wage distribution issues within NAFTA countries as well as between them. Infrastructure occupations offer higher wages compared with jobs that require similar skills sets and educational requirements and frequently pay more than the national median wage.[3] By

[1] *See* Bivens, Josh, "The Short- and Long-Term Impact of Infrastructure Investments on Employment and Economic Activity in the U.S. Economy," EPI Briefing Paper No. 374, Economic Policy Institute, July 1, 2014. *Available at:* www.epi.org/publication/impact-of-infrastructure-investments/; and Testimony of Richard L. Trumka, President, AFL-CIO, before the Committee on Transportation and Infrastructure, U.S. House of Representatives, Feb. 1, 2017. *Available at:* http://transportation.house.gov/uploadedfiles/2017-02-01-trumka.pdf.
[2] *Id.*
[3] *See* Kane, Joseph, and Puentes, Robert, "Beyond Shovel Ready: The Extent and Impact of U.S. Infrastructure Jobs," The Brookings Institution, May 2014. *Available at:* www.brookings.edu/wp-content/uploads/2014/05/Beyond-Shovel-Ready.pdf.

increasing the demand for these jobs, a NAFTA that prioritizes infrastructure improvement—such as by including the AFL-CIO's recommended cooperative commitment of three percent of GDP annually—could benefit working people across the continent.

The American Society of Civil Engineers currently grades U.S. infrastructure as a D+ and calls for an investment of nearly $5 trillion over the next 10 years.[4] Including infrastructure investment as a cooperative commitment both within NAFTA and as mandatory spending as part of trade implementing legislation could help address our infrastructure deficiencies while building popular support for NAFTA and breaking the cycle of disinvestment.

2) **Infrastructure:** My district has four ports of entry on the Northern Border. Wait times are consistently a problem. The Peace Bridge in Buffalo is the second-busiest northern border crossing. Yet the American government does not prioritize investments in border crossings like the Peace Bridge, despite their importance. What financial and infrastructure resources do you feel will help aid the free flow of goods and people between the US and Canada?

Answer: Trade deals are meant to facilitate economic activity, which means we should expect to see greater movement of both goods and people as a result. To date, these deals done a better job at protecting goods than they have people, and that must be fixed.[5]

With respect to goods, trade agreements have attempted to facilitate goods flows through limited means, e.g., by reducing tariffs and quotas, and in recent decades through deregulatory efforts (such as challenges to country of origin labeling and clove cigarette bans). However, when viewed as comprehensive international agreements to enhance and improve standards of living through trade promotion, there is a good deal more that trade agreements, including NAFTA, can do to facilitate efficient, appropriate flows.

It is imperative that U.S. border crossings and entry points, whether those are bridges, airports, water ports, are modern, efficient, and secure. If they are not, trade will migrate toward better functioning entry points. To the extent that some crossings, such as the Peace Bridge between Buffalo and Fort Erie, are inadequate, inefficient, or in need of expansion and repair, it is likely that communities served by those crossings will lose some economic activity to other, more efficient crossings.

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[4] "2017 Infrastructure Report Card," American Society of Civil Engineers, March 2017. *Available at:* www.infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card.pdf.

[5] With respect to the flow of people, trade deals should in no way commodify people, nor ignore their fundamental human rights. Trade rules that fail to secure fundamental rights for working people—including migrant workers—eventually drive down wages and create justified hostility toward the trade agreements themselves. For more information, see the AFL-CIO's NAFTA Recommendations, available here: https://aflcio.org/sites/default/files/2017-06/NAFTA%20Negotiating%20Recommendations%20from%20AFL-CIO%20%28Witness%3DTLee%29%20Jun2017%20%28PDF%29_0.pdf.

One reason China is out competing the U.S. in many facets of trade is its state of the art ports and transportation systems. If it is easy and efficient to move goods in and out of Guangzhou but not Buffalo, that will become a factor in a firm's production and transportation decisions.

Infrastructure investments not only create immediate constructions jobs, they permanently increase the capacity of our economy. The administration campaigned on robust infrastructure investment, but to date, there is no plan of action to fulfill that commitment. NAFTA can be part of that plan, if it includes and promotes real investments. Now is the time for Congress and the administration to commit to a first class infrastructure across North America by including a cooperative commitment to invest three percent of GDP annually in public infrastructure and by developing a NAFTA implementation bill that also includes mandatory funding for the following types of trade-related projects:

- New and improved land border crossings and ICC border commercial zones with Mexico and Canada (including the border crossings such as the Peace Bridge);
- Ports, airports, roadways and waterways;
- New and improved rail corridors, including high-speed rail; and
- Broadband infrastructure, including in rural communities.

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August 21, 2017

The Honorable Dave Reichert
Chairman, U.S. House of Representatives Ways and Means Committee
Subcommittee on Trade
1102 Longworth House Office Building
Washington, D.C.

Dear Representative Reichert:

Thank you for providing me the follow up question to the July 18, 2017 Subcommittee on Trade hearing from Representative Lynn Jenkins regarding Investor State Dispute Settlement (ISDS).

As Representative Jenkins indicated in her follow up question, Kansas City Southern (KCS) agrees that U.S. companies that invest overseas and in our case, in Mexico, are often responsible also for facilitating U.S. exports. In KCS' case, over the 20 years that KCS has been invested in its Mexican concession, it has invested over $4.5 billion to make sure that rail network is reliable and efficient, prepared to deliver U.S. exports to Mexico and service growing Mexican industry. More recently, KCS joined its partners Watco and WTC Industrial last November in announcing a joint venture investment in Mexico which will facilitate and expand the exportation of liquid fuels from the United States to Mexico. The joint venture partners will invest approximately $45 million in the first phase of the project. This opportunity for new U.S. export petroleum products comes as a direct result of energy reform legislation passed in Mexico in 2013. Likewise, shipment of U.S. grain exports to Mexico require capital investment in Mexico to make exportation of U.S.-produced grain and other agricultural products from the United States to Mexico possible.

KCS believes there are very significant and growing opportunities to increase U.S. agricultural, energy, petroleum products and natural gas product exports to Mexico. To fully realize these opportunities, U.S. foreign investment in Mexico of the kind KCS and our partners have made is essential. Without the past and future investment in Mexican rail infrastructure, these opportunities could not be realized because U.S. products could not get to Mexican consumptions markets. And, without Chapter 11 under NAFTA, future investment in this vital export infrastructure would be uncertain. Chapter 11 and ISDS are critical to this investment.

In more specific response to your question, "*How has the legal protection provided by ISDS been important in your investment decisions for the overall benefit of products grown or manufactured in Kansas?*", as with products grown or manufactured across KCS' U.S. service territory, the Chapter 11 protections contained in NAFTA and the ISDS dispute resolution process have been very important to KCS' confidence in making its past investments in Mexico and its future investments which facilitate the transportation of U.S. export products from the U.S. to Mexico. Retaining NAFTA's current investment protections is critical for U.S. companies with foreign investment like KCS. Under NAFTA, the governments of Canada and Mexico agreed to investment rules that guarantee U.S. investments will not be subject to discriminatory treatment and will be compensated in the unlikely event of expropriation. Enforcement of these obligations through Chapter 11's investor-state dispute settlement (ISDS) provision is critical to this foreign investment to facilitate U.S. exports.

Chapter 11 investment protections are consistent with the due process protections guaranteed in the U.S. Constitution. ISDS protects U.S. companies from foreign government's arbitrary actions. These protections are essential to U.S. companies and their shareholders who otherwise might be subjected to expropriation or discriminatory treatment simply on the basis of their nationality. Any attempt to eliminate or dilute these protections would certainly chill future investment consideration. Such protections have earned strong congressional support through their inclusion in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA).

For these reasons, KCS believes preserving the Chapter 11 and ISDS are critical for U.S. foreign investment which is critical for U.S. companies to make such investments and essential to existing, new, and growing U.S. exports such as those produced in Kansas and other states in the KCS service territory.

Sincerely,

Patrick J. Ottensmeyer
President & CEO
Kansas City Southern

August 24, 2017
U.S. House of Representatives
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Question from Rep. Jenkins

1) NAFTA Withdraw Consequences
My question is for Jason Perdue with the Nebraska Farm Bureau. Mr. Perdue, as you are a producer from York County, Nebraska – an area very similar to and not terribly far across the border from my eastern Kansas district – I imagine you are no doubt familiar with the challenges that the agriculture community in rural America currently face pertaining to low commodity prices, seasonal natural disasters, and countless other pressures. Throughout this year and last, producers across Kansas have visited with me about these challenges and stressed the incredible importance our trade deals are to their bottom lines.

In light of the current slump in which the agriculture sector currently finds itself, how important is NAFTA to your operation or to your neighbors' farms; and, what would be the effect that a withdraw from NAFTA would have on farmers' livelihood whether they be in Nebraska or an hour's drive south into Kansas?

As mentioned previously in my testimony, NAFTA is extraordinarily valuable to Nebraska's farm and ranch families. In 2016, Nebraska exported over $2.4 billion worth of products to Canada and Mexico with agricultural products making up $1.5 billion of that total. Mexico alone is the second largest trading partner for Nebraska farmers and ranchers, exporting $1.3 billion worth of agricultural products per year, which supports nearly 1,200 jobs.

However, Nebraska isn't the only state which feels the economic impact from trade with our neighbors. Nationwide, the United States conducts more than $3.6 billion in trade with Canada and Mexico every day. Farmers have seen their exports to Canada and Mexico increase by 350 percent since NAFTA's implementation. In terms of scale, NAFTA is worth three times the export value to Nebraska of what the Trans-Pacific Partnership would have been when fully implemented.

NAFTA has clearly been a boon for farm families whether they be in Nebraska, Kansas or anywhere else. By helping level the playing field, free of tariffs and other obstructions, NAFTA ensures that producers in Nebraska and across the country receive a fair deal. Withdrawal from this agreement would have a significant and dangerous impact on America's farm and ranch families.

Sincerely,

Jason Perdue

[Public Submissions for the Record follow:]

AAPC
AMERICAN AUTOMOTIVE POLICY COUNCIL

FCA Ford GM

Submission for the Record to the
U.S. House of Representatives
Committee on Ways and Means, Subcommittee on Trade
on behalf of the
American Automotive Policy Council

July 18, 2017 Subcommittee Hearing on the
Modernization of the North American Free Trade Agreement

On behalf of its member companies – FCA US, Ford Motor Company, and General Motors Company – the American Automotive Policy Council (AAPC) submits the following comments to the Committee on Ways and Means Subcommittee on Trade (Subcommittee) in connection with its July 18, 2017, hearing on the "Modernization of the North American Free Trade Agreement" (NAFTA).

We thank the Subcommittee for the opportunity to share our views and recommendations on NAFTA, which has played a key role in the domestic auto industry's domestic, regional and global success, including record sales for the past seven years, and a U.S. workforce that grew to over 240,000 directly employed on a full-time basis last year – and that is just for Ford, FCA and GM, who employ roughly 2 out of 3 U.S. autoworkers.

Despite this success, after 23 years NAFTA could benefit from a modernization, and in AAPC's written submission, we have suggested six specific areas of improvement. While there are areas for improvement in NAFTA, we are also mindful that certain changes to NAFTA's market access provisions could lead to unintended and potentially negative consequences for America's automotive sector.

NAFTA provides American automakers with duty-free access to two of the largest vehicle markets in the world where our companies have been incredibly successful. In Canada, our brands now account for 43 percent of the 2 million vehicles sold, and in Mexico, American nameplates have secured 30 percent of the 1.6 million vehicle market — a market that is expected to steadily grow in the future.

The vehicles we sell throughout the NAFTA region have very high levels of American content. These high U.S. content levels support thousands of auto parts jobs here at home, and are due – in part – to a rule of origin that has the highest regional value content of any free trade agreement in the world.

The current rule of origin strikes the right balance: allowing those that have invested in the North American region to continue to benefit from the agreement's duty-free benefits while discouraging "free riders" who might use NAFTA as a conduit for outsourcing. The notion that NAFTA rules of origin encourage the use of imported auto parts from non-NAFTA countries such as China is unfounded. In fact, based on the dollar value of total auto parts consumption, *less than 6 percent* of the auto parts consumed in the United States and Mexico are imported from China. We have encouraged the Administration to examine all aspects of the automotive supply chain before accepting these kinds of claims and making any changes to the NAFTA rules of origin.

We are hopeful that a modernized NAFTA can be a model for future FTAs and as such, we strongly support including the acceptance of U.S. automotive safety standards in the modernized agreement and enforceable measures to deter currency manipulation by our trade partners.

In recent years, the EU has used a well-organized and highly successful global effort to persuade other countries to accept vehicles certified to UNECE European auto standards. The acceptance of UNECE standards often supplant acceptance of U.S.-built products. AAPC, along with other industry partners and the U.S. government, is working to counter this trend. Including provisions in NAFTA that "lock in" recognition of U.S. auto safety standards would bolster this public-private partnership, and serve as a vital precedent for future U.S. free trade agreements.

Additionally, enforceable currency provisions should be included in an updated agreement. Currency manipulation provides an unfair competitive advantage to America's trade partners and often undermines expected benefits of our trade and investment agreements. This has had a particularly harmful effect on U.S. automakers, who have been severely damaged by past currency manipulation here in the U.S. and in other markets where the U.S. competes.

While neither Canada nor Mexico have manipulated their currencies, strong and enforceable disciplines in NAFTA would set an important precedent for other would-be U.S. trade partners that manipulate their currencies – something President Trump and members of his Cabinet have promised to crack down on.

Including these changes, as well as several other recommendations – including customs and border infrastructure improvements – are described in the written comments AAPC submitted to the Administration on behalf of America's automakers, which are attached and made part of AAPC's submission for the record to the Subcommittee. We look forward to working with the Subcommittee and the Trump Administration to modernize NAFTA and advance our shared goals of strengthening the American economy.

TESTIMONY TO THE U.S. CONGRESS HOUSE OF REPRESENTATIVES, COMMITTEE ON WAYS AND MEANS, TRADE SUBCOMMITTEE HEARING ON MODERNIZATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT

TESTIMONY OF HON. ALBERT C. ZAPANTA, PRESIDENT AND CEO, UNITED STATES-MEXICO CHAMBER OF COMMERCE

WASHINGTON, D.C., JULY 18, 2017

The U.S.-Mexico Chamber of Commerce, nonprofit business association chartered in Washington, D.C. in 1973, is the leading binational business organization working to build mutually beneficial trade and investment relationships in the Americas. Its mission is to promote business between the United States and Mexico.

The success of NAFTA and its impact on the U.S. economy cannot be refuted, with tri-national trade up by 245% since 1993. The U.S. is $127 billion richer each year due to the “extra” trade growth that results from the cooperation of the NAFTA partnerships. As an example, Mexico is the largest market for the U.S. in energy while Canada is the biggest energy supplier, creating a combined $100 billion in energy goods and commodities. In 2016 the U.S. exported $231 billion to Mexico, which is more than it did to the UK, Germany, France and Italy combined, and nearly twice as much as it did to China. In agriculture, NAFTA provides the third largest destination for American grown produce and crops.

It is also telling to note that the current $500 billion trade gap was created by the relocation of American manufacturing and technology based business out of the NAFTA partnership. China accounts for more than 60% of the U.S. trade deficit, and petroleum accounts for more than a quarter of the balance.

North America, from the Arctic region to Panama, over the last twenty years has seen a major breakthrough in the way trade is conducted in the Western Hemisphere. The approval of the North American Free Trade Agreement (NAFTA) in the 1990's brought together the economies of the United States, Mexico and Canada, establishing the framework that created the world's largest trade region, connecting 450 million people, and producing $17 trillion worth of goods and services annually.

During the 24 years NAFTA has been in effect, the region has experienced dramatic development with respect to consumption, production, distribution of goods, services, and persons. The hemisphere is indeed repositioning itself and with the opening of the Northwest Passage in the Arctic and the expansion of the Panama Canal, NAFTA partners are finding a need for additional focus on incorporating these regions into trade discussions.

We must consider the notion of North America in the context of today's present challenges, including security, global governance, and the quest for energy independence; while securing the safety of goods and people that expedite trade in a secure and efficient manner along our border, providing stimulus for job creation through all NAFTA partners, and incorporating the use of technology to maximize returns and encourage further investment and update the North American Free Trade Agreement to a fair and balanced partnership.

The border of today has been strengthened by more than thirty years of shared border interests, common objectives, opportunities, challenges and old partnerships. It will be these partnerships that allow the United States to meet the challenges the current economy faces ranging from economic blocs, competitiveness, pricing in international markets, and years of strong collaboration support, business opportunities in the hydrocarbon sector, information technology, supply chain management, agriculture, and investments.

The 2016 Presidential Elections in the U.S., especially the heightened focus and debate on the impact of international trade, immigration and the growing concern relative to cyber and physical security in the hemisphere, prompted the Chamber to establish the North American Working Group initiative.

The Working Group's recommendations are:

- Protecting the U.S. and Mexico trade positions by implementing an innovative SMART Border, leveraging technology, achieving an energy balance, reviewing trade agreements, workforce optimization and improve efficiency of smooth and timely transport of goods and persons;
- Developing and implementing IT platforms to achieve efficiencies in border security and effective trans-border movements of people and cargo;
- Achieving supply chain efficiencies and manufacturing with continued evolution of a shared economy with respect to trusted trader programs, pre-clearance programs, improvements in innovation and infrastructure.
- Pursuing Public/Private Partnerships to support mobile digital learning, skills development, job training, and expanding innovative financing to drive growth in all sectors.

Thank you

San Diego Regional Chamber

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July 31, 2017

The Honorable Dave Reichert
Chairman, House Ways & Means Subcommittee on Trade
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Bill Pascrell
Ranking Member, House Ways & Means Subcommittee on Trade
1139E Longworth House Office Building
Washington, DC 20515

For more than 145 years, the San Diego Regional Chamber has played an important role in driving our region forward with the advancement of global policies that boost cross-border commerce and international trade. Our Chamber membership of 2,500 businesses strongly believes in the importance of the North American Free Trade Agreement which has fueled the growth of the San Diego-Baja, California economy.

Since the implementation of NAFTA, this region has seen an increase in higher-paying jobs and stronger relationships with Mexico and Canada. More than 110,000 jobs in San Diego are dependent on trade with Mexico as our number one export market. Today, the manufacturing industry makes up 10 percent of San Diego's jobs and is the second highest paid sector in San Diego after IT. Companies locate here to create intellectual property and co-produce with Mexico and take advantage of the business opportunities that NAFTA provides. San Diego and Baja California have leveraged NAFTA to create a $2.5 billion manufacturing supply chain that supports co-production between the two cities. Meanwhile, Canada is San Diego's sixth largest source of foreign direct investment and sixth largest employer. That's 3,500 jobs directly tied to trade with Canada.

NAFTA has been a tremendous asset to the San Diego community, yet there room for improvement. The Chamber offers the following points to enhance this important trilateral agreement:

- Inclusion of a section on energy to take advantage of investment opportunities in Mexico with deregulation of the industry.
- Recognition of internet-based businesses and new technologies.
- Implement Unified Cargo Processing at each commercial port of entry.

- Ability for professionals to move back and forth across NAFTA borders without bureaucratic delay. We urge the expansion of the U.S. TN Visa and extension of Mexico's FMM permit, which is currently valid for only six months and limits use to only one entry.
- Creation of a unified framework to facilitate the development of border infrastructure in a coordinated fashion where revenues generated at each border from trade are reinvested to support the infrastructure and staffing needs of the borders before remitting dollars to each country's treasury.
- Integrate a plan to modernize the North American Development Bank.

The North American Development Bank has benefitted 15 million residents on both sides of the U.S.-Mexico border through sustainable infrastructure since its formation in 1994. With an initial $405 million in total paid-in capital contributions from the U.S. and Mexico, NADB has leveraged investments totaling $7.1 billion in the development of sustainable infrastructure.

  - Approve a capital increase.
  - Expand the Bank's role in order to participate in the development and financing of natural gas pipelines, power plants in Mexico for North American energy security as well as improvements at our international land crossings to facilitate trade while supporting border security.

Above all, we strongly urge for the continuation of a trilateral agreement which maintains or expands the free trade zone and the investor visa which spurs investment in the U.S.

Please count on our region and organization's assistance and expertise as a resource in the negotiations of a modernized pact with our trade partners.

Sincerely,

Jerry Sanders
President and CEO
San Diego Regional Chamber

SAN ANTONIO CHAMBER OF COMMERCE
Propelling Business Success

August 1, 2017

The Honorable Dave Reichert
Chair, Subcommittee on Trade
House Ways and Means Committee
United States House of Representatives
Washington, DC 20515

Dear Chairman Reichert:

Since 1894, the San Antonio Chamber of Commerce has advocated for the interests of its more than 2,100 members. It works to build and sustain a vibrant business community by engaging business owners, policymakers and influencers to address the issues and opportunities vital to the success and prosperity of San Antonio.

San Antonio has a rich history with the North American Free Trade Agreement (NAFTA), beginning with the initialing of the historic agreement in San Antonio in 1992. The impact of NAFTA, however, is far more than ceremonial and affects companies of all sizes in our community – many of whom are members of the Chamber.

As the seventh largest city in America and with projections of continued growth over the next 20 years, San Antonio is a hub of growing industries like healthcare, biosciences, information technology, cybersecurity, energy and advanced manufacturing. It is a thoroughfare of international trade, with four of the six major rail gateways in Texas.

This community, like many across Texas, has benefited greatly from NAFTA. Texas leads the nation in worldwide exports by a wide margin. In 2016, Texas's exports to other countries totaled $232 billion, including more than $90 billion to Mexico alone. Mexico is Texas's most important market – accounting for 40 percent of the state's exports in 2016, the most of any state.

As we look to the future, the uncertainty surrounding the upcoming renegotiation has had a chilling effect on growth and new investment throughout the region, putting our existing record of prosperity in doubt. The Chamber would, therefore, like to offer several areas where this vital agreement should be strengthened and modernized.

Energy

SAN ANTONIO CHAMBER OF COMMERCE

Propelling Business Success

The continued integration of the U.S. and Mexican energy markets is beneficial to both nations, but requires regulatory certainty – both within and across borders – to function effectively.

With such certainty, we know the economic growth and investment that follows. For example, as a direct result of the 2013 Mexican Energy Reform and the free flow of hydrocarbons allowed under NAFTA, San Antonio-based Howard Energy will be investing in projects totaling more than $1 billion over the next five years in Northern Mexico and South Texas. These projects will create more than 950 temporary construction jobs and 22 permanent jobs; generate almost $1.5 million per year in local property taxes and $230 million per year in direct economic value; and move approximately $2.1 billion of hydrocarbons per year between the two countries. None of this includes NAFTA's indirect and implied effects of creating new markets for American producers.

Retail

Ensuring that trade remains tariff-free throughout North America is essential to keeping existing retail supply chains moving and maintaining low prices on food and other essential items for American families, thereby preserving the millions of jobs that depend on trade. A stronger, modernized NAFTA can bring greater benefits to U.S. consumers, protect American jobs, and help American retailers and their suppliers in several critical ways:

- A stronger NAFTA will maintain and expand current access for U.S. food and other products to Mexican and Canadian markets while protecting American workers, growers, and manufacturers.
- Reducing non-tariff barriers, such as processing fees and sanitary and phytosanitary measures, will make fresher, healthier, and lower-priced produce and other products more easily available to American families.
- In today's digital economy, it is imperative that a modernized NAFTA include digital and e-commerce provisions like simplified customs requirements and processing for e-shipments, which would make it easier for companies to export goods across the border.
- An improved NAFTA will ensure consistent food and other product labeling requirements across countries, eliminating the need for costly and duplicative efforts to comply with divergent standards.
- Increased resources for customs modernization and improved infrastructure at the border will reduce delays in border crossings, benefitting consumers by minimizing food spoilage and transportation costs.

Environment

SAN ANTONIO CHAMBER OF COMMERCE

Propelling Business Success

Established in 1994, the North American Development Bank (NADB) works to enhance the quality of life for people who live along the U.S.-Mexico border through cleaner water, air, and land. Owned entirely by the United States and Mexican Governments in equal shares, NADB helps develop and finance infrastructure in communities on both sides of the border through a variety of services and programs that encourage sustainable development.

To date, 15 million residents on both sides of the border have benefitted from sustainable infrastructure supported by the NADB.

With an initial $405 million in total paid-in capital contributions from the United States and Mexico, the NADB has leveraged investments totaling $6.9 billion for the development of sustainable infrastructure. NADB is the only development bank that finances projects in the United States and has financed 107 projects in economically-distressed areas. In Mexico, NADB has financed an additional 124 projects for a total of 231 projects in both countries.

In light of the NADB's proven track record of significant infrastructure investment and environmental impact along the border, the Administration should include the Bank's first capital increase in its history in the NAFTA renegotiation talks. Because of the importance of Mexico as a trading partner, we would also like to see the Bank participate in the development and financing of natural gas pipelines and power plants in Mexico for North American energy security, as well as trade facilitation projects that still support strong border security at international land crossings.

Conclusion

The forthcoming NAFTA negotiations must recognize the interdependence of all three economies, guarantee continued access to the U.S., Mexican and Canadian markets, and be conducted in a manner that avoids any prospect of retaliation against American products.

On behalf of the more than 2,100 San Antonio Chamber of Commerce members, I thank you for the opportunity to comment on how we can continue to use and strengthen NAFTA to help our businesses and communities thrive and remain globally competitive. Please contact me at my office line 210-229-2128 if you should have any questions regarding this letter.

Respectfully,

Rits Perez

SAN ANTONIO CHAMBER OF COMMERCE

Propelling Business Success

Richard Perez
President & CEO

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Statement of David Apostolico
SVP, Platform Distribution & Development, QVC, Inc.

House Ways and Means Trade Subcommittee
Hearing on Modernization of the North American Free Trade Agreement
Tuesday, July 18, 2017

On behalf of QVC, Inc., I thank you for this opportunity to provide written comments regarding the modernization of the North American Free Trade Agreement. After 23 years, we believe this is an opportune time to examine and update NAFTA. Since NAFTA was negotiated over two decades ago, we share the general view of the retail sector that it does not reflect today's global value chain or the many new ways of doing business in the global economy. NAFTA should be modernized to reflect today's business environment, technologies and innovations. These provisions should also be nimble and forward-thinking enough to address what may come in the future.

We applaud this Committee for bringing much-needed attention to opportunities and challenges affecting 21st century retail and broadcasting. We look forward to working with you during the NAFTA modernization process to address these issues and, in particular, full market access to the Canadian market for QVC and other companies providing television shopping services.

We look forward to working with the Committee and the Administration to ensure that the NAFTA negotiations result in meaningful access to the Canadian market for U.S. television programs to the same extent as non-U.S. television shopping operators are permitted to compete in the U.S. Eliminating market access barriers will result in greater export potential for U.S. products and vendors, and increase U.S. jobs, and will provide additional economic benefits on the Canadian side of the border as well.

QVC is a global platform for U.S. vendors, small businesses and entrepreneurs

QVC is the world's leading television shopping company. We are a pioneer in innovative methods of retailing, including the sale of a wide variety of consumer products through televised retail shopping programs distributed to hundreds of millions of households worldwide each day.

With operations based in West Chester, Pennsylvania, QVC has grown from a U.S. based television shopping retailer started in 1986, to an international multimedia retailer operating in the U.K., Ireland, Germany, Austria, Japan, Italy, France and China. QVC's current annual revenues are more than $8 billion, and we employ over 10,000 in the United States and another 7,000 around the world.

QVC's innovative retail platform has successfully launched countless American brands and companies based in communities throughout the United States, including Missouri-based Heartland Fresh, Maryland's Perfect Gourmet as well three companies from our own backyard of Pennsylvania -- Tempt-tations LLC, Scrub Daddy and Campanelli Cleaning Products. QVC is transforming nascent concepts into recognizable, profitable, American businesses, creating thousands of jobs in broadcasting sales, merchandising, accounting, legal, supply chain and logistics, information technology, and other corporate functions. With an expansive assortment of products for sale and user-friendly shopping technology, QVC has accrued millions of loyal fans in the United States and abroad. Successful with tie-ins on popular TV shows as well as a QVC-related storyline in a recent Hollywood movie, we continue to grow our customer base.

We believe QVC's work at the intersection of commerce, technology and innovation could do even more for American businesses, including women entrepreneurs, if we could extend our television programming reach to the Canadian marketplace. There is little debate that an open and transparent system for retail and distribution services promotes diversity of programming, reduces the cost of essential goods for consumers, and creates jobs throughout the global supply chain. We are convinced televised retail shopping programs in international markets result in employment opportunities for individuals in the U.S., as well as export opportunities for U.S. product vendors and manufacturers.

Despite these economic benefits, Canada maintains significant regulatory barriers to entry for U.S. television shopping companies by virtue of very restrictive licensing and ownership requirements applicable to television programmers generally, without regard to the type of content they are distributing. In this respect, cultural, historical, and editorial programming is treated in the same manner as television shopping programming. Because television shopping programs are by definition commercial and not cultural in nature, Canada's restrictions result in overbroad and needless barriers to entry for U.S. television shopping retailers such as QVC, which have a business model that is different than more traditional (*i.e.*, non-retail) television programmers. It should also be noted that non-U.S. television shopping programmers face no similar barriers to entry at the U.S. border and are free to enter the U.S. market to freely compete against domestic operators such as QVC.

U.S. providers of television shopping services face needlessly restrictive regulatory barriers to access the Canadian market

QVC and other U.S. providers of television shopping services face a range of restrictive regulatory barriers to access to the Canadian market. We mention the following as examples of such barriers, but would be pleased to provide additional information on Canada's actions with respect to U.S. television shopping services.

- The Canadian Radio-television and Telecommunications Commission (CRTC), the independent government authority that regulates and supervises the Canadian broadcasting system pursuant to the *Broadcasting Act*, restricts foreign direct investment by non-Canadians in holders of broadcasting licenses, and their parent companies. These restrictions create practical limitations on QVC's ability to set up a viable local business in Canada.

- A Canadian broadcast distributor (*e.g.*, cable or satellite) may apply to the CRTC on behalf of a foreign programmer - such as QVC - to add that programmer's foreign service to the *List of non-Canadian programming services authorized for distribution* (the List). Canadian distributors may carry foreign television services only if they are on the List. A number of major U.S. programming channels have successfully been added to the List, including CNN, Fox News, NFL Network, and Turner Classic Movies. The CRTC denied the 2015 application to add QVC to the List, reasoning that QVC's television shopping activities in Canada would mean that it was "broadcasting in Canada" without a license. The rationale for CRTC's treatment of QVC versus other U.S. programming channels is unclear and QVC is appealing the decision.

- The CRTC has the authority to issue administrative Exemption Orders to exempt certain kinds of broadcasters from licensing requirements. The CRTC has issued an Exemption Order for television shopping services, but a broadcaster can benefit from the exemption only if it is "Canadian" (as defined by the Direction to the CRTC), originates its programming in Canada, and makes "predominant use of Canadian creative and other resources". These constraints are examples of unnecessary business challenges to QVC's ability to broadcast in Canada because they attempt to apply a measure designed for cultural protection to an inherently commercial (and non-cultural) activity.

NAFTA modernization must include removing market access barriers for U.S. television services

The upcoming NAFTA negotiations present a unique and critical opportunity to clear the way for QVC's television shopping service to access the Canadian market. We expect the Committee and the Administration will consider a number of ways to eliminate market access barriers and ensuring a level playing field for U.S. television shopping services in the Canadian market. We would like to discuss those options with you and suggest the following two options for your consideration.

- Exclude television shopping from the definition of "cultural industries" under NAFTA Article 2106. Arguably, Canadian ownership requirements are permitted at a treaty level because of the "cultural industries" provisions in NAFTA Article 2106 and US-Canada FTA Article 2005. For broadcasting, these protections have always focused on ensuring a supply of Canadian entertainment and news. Television shopping is a commercial service and, as such, should be excluded from the protections for "cultural industries".

- Negotiate a Memorandum of Understanding, perhaps with an exchange of letters, that would modify the CRTC Exemption Order for television shopping services (discussed above) which limits beneficiaries of the exemption to "Canadian" broadcasters.

QVC access to the Canada market would benefit both the U.S. and Canadian economies

Market access for television shopping is not a zero-sum game for Canada. It is our view that the economies of both the United States and Canada would benefit from QVC's provision of retail programming in Canada. This would give consumers more choices, increase demand for services (*e.g.*, express delivery, transportation, and payments), and provide access for entrepreneurs, including small and medium-sized businesses, to a proven distribution channel for their products. This can result in a true win for both the U.S. and Canadian economies.

Conclusion

We urge Congress and the Administration to use these negotiations to put an end to discrimination against retailing services offered via television by American companies. QVC's access to Canadian viewers would provide significant economic benefits to small businesses, vendors, inventors and women entrepreneurs throughout the United States, and we look forward to working with you to achieve that goal. On behalf of the 17,000 QVC employees, including 10,000 in the United States, thank you for holding a hearing on NAFTA modernization and for giving full consideration to the comments filed by QVC.

Pacific NorthWest
Economic Region

August 1, 2017

Rep. Dave Reichert
Trade Subcommittee Chairman
House Committee on Ways and Means
1102 Longworth HOB
Washington, D.C. 20515

Dear Chairman Reichert,

I am writing to convey the views of the Pacific NorthWest Economic Region (PNWER) on the modernization of the North American Free Trade Agreement (NAFTA). PNWER is a statutory, public-private non-profit that was chartered in 1991 by the five Northwest states of Alaska, Idaho, Montana, Oregon, and Washington, and the western provinces of British Columbia, Alberta, Saskatchewan, and the Yukon and Northwest Territories. Our Canadian provincial government members will engage directly with the Government of Canada and relevant U.S. jurisdictions, so this letter is not intended to convey their views on NAFTA.

PNWER has been working with the public and private sector for over 27 years to create solutions for the economic growth, prosperity, and healthy environment of the entire ten jurisdiction region in both Canada and the U.S. We are encouraged that Congress is involved in the consultation process alongside Secretary Ross and USTR Lighthizer, in improving the existing trade agreement between the U.S., Canada, and Mexico while preserving the spirit of North American cooperation, which has been a great benefit to the competitiveness of our Pacific Northwest businesses.

PNWER has been a champion throughout its 27-year history, bringing together stakeholders, border officials, and policymakers to enhance the border facilitation processes at the U.S. – Canada border. We urge you to build on the success of the Beyond the Border Action Plan, the Regulatory Cooperation Council, U.S.-Canada Preclearance agreement, and the numerous smart border initiatives that our country has invested in for several decades.

We urge the three parties to quickly come to an agreement to modernize NAFTA in a collaborative and transparent process that will strengthen our competitive advantage across the globe. Uncertainty creates an erosion of confidence in markets and investments for the future.

While we recognize the need for NAFTA to be updated, we recommend that a primary objective should be to "do no harm". This is an opportunity to optimize the largest trading relationship in the world, that between the U.S. and Canada.

Hundreds of our public and private stakeholders in both the U.S. and Canada have joined with the PNWER NAFTA Modernization Task Force to participate in a survey identifying key priorities for our region. We ask that you keep these priorities in mind as you consult with the Administration on their list of recently released objectives. The most important elements from our stakeholder survey include the following recommendations:

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1. **Include Advancements from other Free Trade Agreements:** As a starting point, examine previously agreed upon advances from modern trade agreements like the TPP.

2. **Cross-Border Trade Facilitation:** Include 'modern' processes for cross-border customs (methods to streamline and simplify clearance, declaration, documentation, facilitation, etc.). Simple clearance, declaration and origin rules will facilitate that process. Harmonizing and aligning standards before products reach the border to increase efficient trading. This includes preclearance for goods and livestock.

3. **Digital Trade and E-Commerce**: NAFTA should be modernized to provide a framework to promote and govern digital trade, e-commerce, services- including financial services, logistics, and information and communication technology.

4. **Energy and Infrastructure**: Support further integration of North American energy markets and the infrastructure needed to connect them.

5. **Intellectual Property**: Increase protection of intellectual property

6. **Regulatory Cooperation**: Encourage permanent adoption and expansion of the Regulatory Cooperation Council to align product standards, testing, and certification.

7. **Express Delivery**: Include modern provisions to facilitate cross-border express delivery for small shipments; harmonize de minimis thresholds for expedited shipments.

8. **Labor Mobility**: Update NAFTA labor categories to reflect modern classifications and expand common standards for professions and mutual recognition of skills credentials.

9. **Procurement**: Include exemption for Canadian content in 'Buy American' procurement, as it currently is in the defense sector.

10. **Dispute Settlement:** Establish clearer and more effective mechanisms for resolving trade disputes.

Conclusion:
PNWER strongly advocates for a modernized NAFTA and quick negotiation process, with outcomes that will provide the stability and certainty necessary to increase investment in our globally competitive industries. This will increase jobs in the U.S. and provide countless opportunities for Americans. We also suggest a more effective trade adjustment assistance program in the U.S. for workers displaced by globalization.

We remain committed to assisting in any way we can as one of the most mature U.S.-Canada public private regional organizations, focused on the bi-national economy. Please feel free to call on us if we can provide additional input or information.

Sincerely,

Matt Morrison

Matt Morrison
Chief Executive Officer
PNWER

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Pacific NorthWest Economic Region

PNWER NAFTA Modernization Survey
Executive Summary

The following is a summary of the data collected by the Pacific Northwest Economic Region (PNWER) between May 3-June 7, 2017. For more information, please contact PNWER Executive Director Matt Morrison.

Stakeholder Demographics

The survey was administered to PNWER stakeholders and shared with partner organizations that mainly focus on U.S.-Canada trade. Through this process we received 226 responses, with 129 (57.8%) coming from Canadian stakeholders, 92 (40.71%) from United States stakeholders and 3 (1.3%) from Mexico.

US Stakeholder responses primarily originated from the 10 PNWER jurisdictions with the most from Montana (34.07%), followed by Idaho (28.57%), Washington (17.5%), Oregon (5.4%) and other states such as Utah (6.5%).

Canada stakeholder comments also mostly came from PNWER provinces and territories with BC leading the way with 42.5%, followed by Alberta (20.47%), Saskatchewan (13.39%), Yukon (11.02%) and several others outside the region such as Ontario at 9.45%.

Organizations responding identified 32 states where they do business in the U.S.; the percentages of these were fairly evenly spread across the board with the exception of Washington at 12%, California 8.1%, Montana 7%, Alaska 7%, Oregon 6% with the remaining ranging from 1-4%. Organizations identified that they do business in BC (29.4%), Alberta (14.9%) and Ontario (17.11%), followed by Quebec, Saskatchewan and Yukon at around 9% each.

Sectors

The most responses came from Agriculture/Food Processing (28%), followed by "other" (18.78%) which included trade associations, chambers of commerce, education and many other industries. The next highest represented categories were Government (8.9%), Transportation/tourism (8.9%) and Manufacturing (7.98).

Organization Size

The size of the organizations represented ranged from small businesses with less than 50 employees at 63.13% of the respondents, to organizations with between 50 and 1000 employees (22.54%) and large organizations with over 1000 employees (14.29%).

Priority Issues to Address in the Modernization of NAFTA

Stakeholders were given specific identified issues and asked how important these are to include in the negotiation of a modernized agreement. Stakeholders were asked to select if the issues were highly important, somewhat important or not important. They were also given the option to select N/A if the issue did not apply to their industry or if they were not familiar with the issue. In calculating the responses to each issue, the N/A selections are not included in the totals of this summary report. Stakeholders were also given the opportunity to provide comments throughout the survey. Relevant comments were summarized related to related topics.

1. Advances from other Free Trade Agreements (FTAs) - Review recent FTAs, such as TPP, to adopt modernized provisions, in such areas as simplified rules of origin, importer self-certification, trade facilitation, enforcement, supply chain security, non-tariff trade barriers, etc.

Of the respondents to this issue, 89.8% (168) felt that this was important to include as we move toward renegotiating NAFTA. 10.16% (19) did not think it was important.

Select Stakeholder Comments Summary

- Our states and provinces are each other's top customers. Our economy is integrated as the economic watersheds flow north and south. Trade barriers reduce the overall benefit to our region.
- Tariffs are seen as detrimental to business and make products more expensive

- Tariffs risk turning the market elsewhere

2. Buy America - How important is it that Canada be considered "domestic" for the purpose of U.S. federal procurement, as it currently is in the defense sector?

Of the respondents to this issue, 84% (158) felt that this was important to include as we move toward renegotiating NAFTA. 15.9% (30) did not think it was important.

3. Cross-border Trade Facilitation - Should opportunities for trade facilitation and cross-border movement of goods through such efforts as preclearance, expanded border crossing capacity, etc. be encouraged?

96.42% (189) respondents felt this was important to include. Only 3.5% (7) did not think it was important.
<u>Select Stakeholder comments summary</u>

- Include 'modern' processes for cross-border customs (methods to streamline and simplify clearance, declaration, documentation, facilitation, etc.). Simple clearance, declaration and origin rules will facilitate that process.
- Harmonize and align standards before products reach the border to increase efficient trading. This includes preclearance for goods and livestock.
- NAFTA has played a critical role in liberalizing agricultural trade and enabling stronger integration of agricultural supply chains. This integration has led to significant outcomes including greater productivity and competitiveness for the benefit of agricultural producers, processors and consumers across the region.

4. De Minimis Value for Expedited International Shipment - The de minimis threshold for the U.S. is $800, $20 for Canada, and $300 for Mexico. How important is it that these thresholds be aligned?

79.5% (132) of respondents felt this was important to include while 20.4% (34) did not think it was important.

5. Digital Trade - Should a framework to promote and govern digital trade (digital goods and services, for example, software, music, films, games, etc.) be established?

72.18% (109) of respondents felt this was important to include while 27.81% (42) did not think it was important.
<u>Select Stakeholder Comments Summary</u>

- Recognize the importance of services trade in NAFTA, such as financial services, logistics, and information and communication technology.
- All business depends on free flow of data. Examine digital trade provisions that were identified in the TPP as a starting point for including this in a modernized agreement.
- Clients who require cross border banking services would benefit greatly from improved NAFTA regulations pertaining to e-commerce, and standardized financial services regulation.

6. E-commerce - How important are modernized regulations on e-commerce?

90.6% (164) of respondents felt this was important to include while 9.39% (17) did not think it was important.

7. Energy and Infrastructure - How important is it that NAFTA support further integration of North American energy markets and the infrastructure needed to connect them?

90.65% (156) of respondents felt this was important to include while 9.34% (17) did not.
<u>Select Stakeholder Comments Summary</u>

- Find opportunities for further integration of North American energy markets and the infrastructure needed to connect them
- Examine energy and transportation regulations including pipeline standards, renewable energy standards and energy transport standards

8. Express Delivery - How important is it that NAFTA includes modern provisions to facilitate cross-border express delivery for small shipments?

87.74% (174) of respondents felt this was important to include, 12.5% (199) did not think this was important.

9. Intellectual Property - Should NAFTA increase protection of intellectual property?

75.86% (132) of respondents felt this was important to include. 24.13% (42) did not think this was important.

10. NAFTA Professionals List - How important is it to update NAFTA labor categories to reflect modern classifications of employment?

82.55% (142) of respondents felt this was important to include. 17.44% (30) did not think it was important.

Select Stakeholder Comments Summary

- Streamline the process; need to facilitate job offers and timely arrival on both sides of the border
- Update Chapter 16 NAFTA Professions list to reflect the jobs that actually are needed to be filled on both sides of the border, or abolish the list altogether and establish a process that is more responsive to regional labor market dynamics.
- Ability to access talent, supplier, and partner across borders improves ability to compete globally on both sides of the border.

11. North American Single Window - How important is it to finalize cross-border data sharing and harmonization into a single window for import/export?

92.47% (172) of respondents felt this was important to include. 7.52% (14) did not see this as important.

12. Regulatory Cooperation - How important is it to encourage expansion and permanent adoption of the Regulatory Cooperation Council, to align product standards, testing and certification?

92.1% (175) felt this was important to include. 7.89% (15) did not feel this was important.

An overwhelming majority of respondents indicated the importance of aligning consistent regulatory standards in order to more easily facilitate trade and streamline border processes. Respondents encouraged the adoption of consistent and harmonized standards in order to prevent impediments at the border.

Select Stakeholder Comments Summary

- Integrate research-backed findings with regulatory agencies
- Expand regulatory cooperation efforts across all sectors
- Uphold and extend the gains achieved in the existing NAFTA agreement
- Aim to align consistent regulations on both sides of the border

13. Skills Certification Standards - How important is it to encourage mutual recognition of skills certifications standards across borders?

90.86% (169) felt this was important to include. 9.13% (17) did not see this as important.

14. Softwood Lumber - How important is it that a modernized NAFTA include a solution to softwood lumber?

86.1% (130) indicated that it would important to include a solution to softwood lumber within NAFTA. 13.9% (21) did not think this was important.

15. Dairy and Poultry - How important is it that a modernized NAFTA address the issues related to dairy and poultry?

Of the respondents to this issue, 81% (129) indicated it would be important to include. 19% indicated the issue as "not important" (31).

Other Issues to Address

Stakeholders identified other issues that the survey did not specifically address as important to include. This includes focusing on revising dispute mechanisms, environmental concerns and renegotiation process. Below are summary highlights of the comments we received related to these topics.

Dispute Settlement Mechanisms

Select Stakeholder Comments Summary

- NAFTA has been inefficient in resolving disputes in a few major industries, highlighting the necessity for new mechanisms that will decrease 'uncertainty'
    - Uncertainties hurt global competitiveness and may cause certain companies to turn to partners in other regions, esp. Asia

Environment

Select Stakeholder Comments Summary

- Examine opportunities to find common ground on environmental and clean energy standards across North America.

Other Comments

- Ensure groups like PNWER are front and center in consultation mechanisms for negotiation.
- Stakeholders would like to see an institutionalized and fully funded Stakeholder Advisory Council that includes consumer, labor and business community representation going beyond only the "big business" community to enable dialogue, build trust in free trade and ensure all views are heard.
- Engage with grassroots organizations and members of the public. Events like public forums, plain-language information materials and workshops, etc. in order to facilitate access of the public to these negotiations.

TESTIMONY OF AMBASSADOR RUFUS YERXA
PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL

Hearing Regarding NAFTA Negotiations
Docket Number USTR-2017-0006
June 29, 2017

Introduction

Thank you for the opportunity to testify at this important hearing on behalf of the National Foreign Trade Council (NFTC).

NFTC is dedicated to making America more competitive in the global economy by ensuring the adoption of forward-looking tax and trade policies, by strengthening global rules and by opening foreign markets to U.S. products and services. Our strong support for these objectives, and our belief that their fulfillment is essential to our members' success in a globalized economy, have been unwavering for decades. We therefore believe that it is critical to provide policymakers in the Administration with our clear views about the role that trade and tax policies play in unleashing a new era of U.S. competitiveness.

NFTC represents nearly 200 companies and our membership spans the breadth of the national economy. It includes sectors such as energy products, capital goods, transportation, consumer goods, technology, agribusiness, healthcare products, services, e-commerce and retailing. Our companies account for more than $3 trillion in total sales worldwide, employ over five million Americans and produce a large share of our nation's total exports. NFTC members play an important role in ensuring a healthy national economy and promoting U.S. global leadership.

The success of American companies in world markets would not have been possible without the hard work and talent of those in USTR and other agencies who have negotiated better trading conditions worldwide for our goods and services. Nowhere has that been more the case than in our trade with our two North American neighbors. Canada and Mexico are now our two largest export markets, and altogether they now pay $600 billion annually for American goods and services. Although our exporters still face some problems in these two markets, NAFTA has succeeded in eliminating all tariffs and significantly reducing non-tariff barriers in both Mexico and Canada. As a result, U.S. exports have increased by more than 350% in real terms since the agreement went into effect. The expanding markets for U.S. manufacturers, service providers and agricultural producers have contributed significantly to the bottom line for our companies.

But the gains from NAFTA go beyond our increased exports to these two markets. North American integration of our production platforms has helped our industries compete more effectively with producers in Asia, Europe and other regions. In the autos sector, for example, integrated production has lifted our export competitiveness, increasing U.S. exports of autos to over 2 million vehicles annually – more than five times the volume of exports prior to NAFTA. In our most technologically intensive sectors – such as capital goods, machinery, electronics and IT – the wide-scale integration of production in North America has been critical to maintaining US global leadership in innovation and technological development.

NAFTA benefits our economy in a variety of other ways. Our truck and rail transport companies have a huge stake in the vast movement of goods between our three markets, with more than 100 trains and 5,000 trucks crossing our northern and southern borders each day. Our farmers now export close to $40 billion to Canada and Mexico every year. Our banks, insurance companies and accounting firms have made huge gains selling to both Canada and Mexico, part of the reason we enjoy a $34 billion surplus in services trade with our NAFTA partners. Finally, American consumers benefit from a much wider array of goods available at lower prices – from Mexican avocados to Canadian beer.

NAFTA also has another important benefit: It has given us a much more prosperous, stable and democratic neighbor to our south. Until it began opening up in the 1980s and 1990s by joining GATT and signing NAFTA, Mexico was a one-party state with a highly protected economy, state ownership of most industries, widespread poverty and significant out-migration to the United States. Today, Mexico is a multi-party democracy with a growing middle class, a more open economy a thriving private sector and net in-migration from the United States. It is worth noting that few big developing countries have opened their economies to a powerful developed partner so completely. In fact, U.S. exports to Mexico now represent 20% of its GDP, a remarkably high percentage (by way of contrast, imports from Mexico represent only 1.8% of our GDP). So, in the final analysis, a stable and prosperous Mexico means fewer immigration problems here at home and better customers for American goods and services. That is why it is in our long term national interest to continue Mexico on its path of economic stability and growth.

Guiding Principles for NAFTA Modernization

As consultations begin with Congress and the private sector on how to modernize this vital agreement, the member companies of NFTC want to state our unequivocal support for an outcome that will maintain and build upon NAFTA's success in creating a more open and integrated North American market and strengthening America's competitiveness in the global economy. Our membership includes many of our nation's largest exporters, with extensive North American production platforms. We depend heavily on a smooth-functioning open market among the three NAFTA countries. Any effort to modernize NAFTA must recognize this reality. While it is important to address remaining barriers, especially those affecting newer technologies and modes of trade that didn't exist when NAFTA was enacted, we already enjoy significant gains from the elimination of tariffs and reduction of other barriers achieved under

NAFTA. Any final agreement that diminishes our existing access will have significant adverse effects on our U.S. operations, sales and employment.

It is therefore vital to ensure that negotiations to modernize NAFTA result in a strengthening of our trade ties with our North American partners. We believe there are many ways the agreement can be improved, and are prepared to work closely with U.S. negotiators to identify key potential gains for the United States from a modernization of the agreement. In particular, we see important gains to be made by including new commitments in areas not contemplated when NAFTA was negotiated over 20 years ago, by upgrading the rule-book in traditional areas of non-tariff discipline in ways that will improve trade and by eliminating remaining tariffs that were not removed under the existing agreement. These "upgrades" of NAFTA will set important precedents for any future negotiations with Asia or Europe, and thus it is important to make sure the result of these negotiations can become the template for a new era of trade cooperation.

Based on the aforementioned, NFTC believes that the effort to upgrade NAFTA should be guided by the following basic principles and objectives:

1. **The New NAFTA Should Create More Open Markets and Better Rules, Not New Restrictions.**

Negotiations should be focused on improving market access and ensuring greater fairness, but must not become a pretext for designing new trade restrictions or undermining existing access.

2. **The New NAFTA Should Strengthen the North American Production Platform.**

The agreement should strengthen North America as an integrated production platform for goods and services, enhancing U.S. producers' competitiveness in global markets, while also maintaining strong investment protections in all three countries.

3. **The New NAFTA Should Remain a Tripartite Agreement**.

The final agreement should maintain common rules and commitments among all three NAFTA partners. Separate bilateral agreements create greater inefficiencies for U.S. exporters.

4. **The New NAFTA Should Reflect the Changing World Economy.**

Negotiations should create new rules to ensure open markets in digital trade, e-commerce and other new technologies and modes of commerce that were not covered by the original agreement, establish new disciplines on state-owned enterprises and create better opportunities for small and medium-sized enterprises to compete in global commerce.

5. **The New NAFTA Should Update Rules in Other Areas Covered by the Original Agreement.**

Negotiations should seek to update NAFTA's rules on services, intellectual property, customs and trade facilitation, sanitary and phytosanitary measures, technical regulation, and regulatory coherence to both ensure greater fairness and openness in NAFTA trade and make NAFTA a better model for future negotiations with other regions.

Specific Negotiating Objectives

Consistent with our written comments filed in connection with this hearing, I will now highlight various areas where NFTC has proposed specific goals for the NAFTA modernization.

Customs and trade facilitation:

We need to streamline and make fully transparent the customs clearance process to ensure that movement of goods across borders is efficient and timely. NAFTA should allow for acceptance of electronic signatures for the certification process in all three countries and the use of digital documentation for audits. We should make certain that NAFTA mirror TFA commitments. The NAFTA should ensure publication of laws and regulations, provide for an advance rulings process, and move North America towards a single window system for entries. Finally, NAFTA should establish a commercially-meaningful *de minimis* threshold in Canada and Mexico. We note that the U.S. has an $800 threshold, whereas Canada's threshold is $15 USD, the lowest in the industrialized world and among the lowest globally and Mexico maintains two rates: a $50 USD rate applied to express carriers and a $300 USD rate applied to Mexico Post.

Digital Trade:

We need to ensure a framework of rules for digital trade in North America that will benefit both businesses and consumers. We need to ensure that companies and consumers can access and move information freely, that there are no customs duties on digital products and that we provide for use of electronic signatures and authentication methods to allow transactions through secure online payment systems. Provisions should also guarantee that new digital products are protected against future discrimination. We must prohibit governments from requiring local storage of information or force suppliers to share source codes or other confidential information and include appropriate protections for Internet intermediaries regarding third-party activity that occurs on their networks

Intellectual Property Rights:

The U.S. economy is driven by innovation – our companies develop groundbreaking technologies, products and services which we export to the world. These companies rely on IP protections to incentivize their R&D and innovation. Among the issues to address in a modernization, Canada must address its patent utility standard known as the "promise doctrine," a doctrine which is inconsistent with international practice and has resulted in 28 court decisions invalidating biopharmaceutical patents for "lack of utility." Consistent with current U.S. law, the IP chapter should be updated to include a 12-year period of regulatory data protection for biologic medicines. A modernized agreement should also include provisions on copyright, establishing copyright safe harbors for online service providers consistent with U.S. law and provide effective protections for rights holder while fostering an appropriate balance, including through limitations and exceptions consistent with the internationally recognized three-step test. Finally, the IP chapter should be revised to update the trade secret provisions of NAFTA and require NAFTA members to establish criminal procedures and penalties for trade secret theft.

Rules of Origin:

These rules were heavily negotiated and have functioned well over time – they should be maintained as they currently exist.

Investment:

NAFTA's Investment Chapter should be revised and updated, in particular to apply to state-owned enterprises, and should not contain any industry-specific carve-outs.

Government Procurement:

The NAFTA contains a strong procurement chapter that helps U.S. companies access procurement opportunities in Canada and Mexico. We consider it critical that these provisions be maintained in a modernized NAFTA.

SOEs:

It is important to address SOE behavior by providing a definition of SOEs that is broad enough to include SOEs that are principally engaged in commercial activity as well as SOEs that are acting under delegated authority from a government. When SOEs make commercial purchases and sales, they must do so on the basis of commercial considerations. The agreement should Provide that SOEs cannot discriminate against the companies or goods or services of another NAFTA party.

Thank you for the opportunity to provide our comments to you today. I look forward to answering any questions that you may have.

Testimony to the U.S. House of Representatives

Committee on Ways and Means

"Hearing on Modernization of the North American Free Trade Agreement (NAFTA)"

July 18, 2017

Heather Wingate, Senior Vice President, Head of Global Government Relations

MetLife Inc.

Testimony for the Record

MetLife and Trade

MetLife, Inc. is a leading global provider of insurance, annuities, employee benefits and asset management, serving approximately 100 million customers and more than 90 of the top one hundred FORTUNE 500® companies. MetLife has operations in 44 countries and holds leading market positions in the United States, Latin America, Asia, Europe and the Middle East.

Founded in 1868, MetLife continues to build upon its long history of serving our customers by launching new and innovative products, expanding its role as a leader, and continuing to provide high quality financial solutions that are backed by a trusted, well-recognized brand name and strong financial performance.

International growth is critical to our company's future success. In 2016, MetLife's international business operations accounted for more than 40 percent of our revenue. Our international business growth is supported by many of our highly-skilled employees in the United States in fields such as investments, finance, and technology.

MetLife operates in markets around the world. We need to be where our customers are – our products do not cross borders. Our investments in foreign markets allow us to serve customers we otherwise could not through our U.S. operations. We are a "local" business - by necessity, we incorporate locally and are subject to local regulation and capital requirements. The growth of our business relies on new market opportunities. As a result, MetLife is a strong supporter of efforts to break down barriers to global trade to ensure that U.S. firms can compete on a level playing field in foreign markets.

MetLife Mexico: A Growth Story for MetLife

Mexico is MetLife's 3rd largest market, after the United States and Japan. Since MetLife entered the Mexican market in 1992, our business has grown dramatically, thanks in large part to our 2002 acquisition of the formerly state-owned insurer, Aseguradora Hidalgo. We are now the largest life insurer in Mexico and serve nearly 10 million customers, the vast majority of whom work for the government. We protect nearly two-thirds of all public servants in Mexico. Many of our customers are low-income government employees, including some who lack a basic bank account. MetLife provides them financial education and protection at their worksite. For MetLife, the more our business grows in Mexico, the more we are able to use dividends from foreign earnings to fund investments in the United States, which helps the U.S. economy.

MetLife Mexico: A NAFTA Enabled Business Highlights the Agreement's Benefits

NAFTA has provided a strong foundation for MetLife's business model in Mexico. As a result of NAFTA, Mexico substantially liberalized its financial services industry, opening the banking sector to foreign competition, and eliminating its 30 percent foreign equity limitation on foreign insurers. The Mexican government privatized Aseguradora Hidalgo because of commitments made under the agreement. That privatization paved the way for MetLife's acquisition of what had been a state-owned insurance company. Furthermore, NAFTA's rules on government procurement facilitate our ability to sell employee benefit products to the Mexican government and its employees under a fair and transparent process. Similarly, NAFTA provides strong protections for foreign investors through a binding investor-state dispute settlement process.

NAFTA Modernization Will be Helpful

MetLife supports the effort to modernize NAFTA with updates and additions, particularly to address instances where financial services have been carved out of provisions in other agreements. From our perspective, it is critical that negotiators take a "first, do no harm" approach to modernization. NAFTA's provisions on government procurement, investor protections, market access and national treatment fortify our operations in Mexico by creating a level-playing field based on core trade principles of non-discrimination, transparency, and rule of law. From MetLife's perspective, any modernizing reforms to NAFTA should preserve and keep in force the critical benefits of the agreement. MetLife is particularly focused on aspects of the NAFTA negotiations that would impact our business in Mexico. We do not do new business in Canada. We were pleased that the Administration's "Summary of Objectives for the NAFTA Renegotiation," released on Monday, July 17, 2017, largely followed the "first, do no harm" approach.

Government Procurement is Critical to MetLife

As mentioned above, a significant portion of our business in Mexico is driven by contracts with the Mexican government – MetLife insures nearly two-thirds of all

Mexican government employees. MetLife provides Mexican federal employees with life, medical and retirement insurance through employee benefit products. Most of these contracts are awarded through a public procurement process. NAFTA's rules on government procurement ensure that MetLife and other firms can compete for Mexican government contracts on a fair and transparent basis. In particular, non-discriminatory rules set out a transparent and objective tendering process that creates a level-playing field for U.S. firms operating in Mexico.

We are pleased to note from MetLife's experience doing business in Mexico that the Mexican government has honored both the letter and spirit of the government procurement chapter. This experience proves the power that trade agreements have to open markets when partner countries agree to reciprocal access.

It is important to add that the Federal Procurement Data System shows that the benefits from leveling the government procurement playing field thus far are flowing very favorably to U.S. firms. Just 2% of all U.S. federal government contracts were secured by foreign-headquartered companies in FY 2016. This data makes the strongest possible case that the government procurement chapters in NAFTA and other trade agreements are working well for U.S. companies.

We are pleased the Administration plans to preserve NAFTA's existing commitments on government procurement as a baseline, while seeking to increase opportunities for U.S. firms to sell goods and services in our NAFTA partner markets. We also support the addition of anti-corruption provisions to NAFTA, as outlined in the Administration's negotiating objectives.

Investment Protections are Key to Financial Services Companies

A modernized NAFTA should preserve and build on existing investor protections and access to investor-state arbitration. These rules provide a legal framework for ensuring that investments are not subject to discriminatory treatment, and in the event of expropriations or nationalizations, that investors are compensated. They are backed by a binding arbitration mechanism that investors can use to gain redress in the event of a breach of these rules.

However, NAFTA's financial services chapter does not provide access to investor-state dispute settlement for violations of national treatment or most-favored nation treatment. As a result, we ask that a modernized NAFTA ensure that financial institutions receive the same degree of investor protection and ability to enforce those protections under investor-state dispute settlement as provided to all other sectors, including for breaches of national treatment and most-favored nation treatment.

While the Administration's objectives on investment are broadly consistent with the investment objectives outlined in Trade Promotion Authority (TPA), we were disappointed that the language did not include a specific reference to investor-state dispute settlement. As noted above, access to a binding arbitration mechanism allows firms like MetLife to ensure that they are able to meet their obligations to shareholders and gain redress if a party to the agreement breaks the rules.

Affirm and Update Cross-border Data Flows and Data Localization Provisions
The United States should seek to reaffirm existing commitments on cross-border data flows and prohibit data localization requirements for all sectors, including financial service suppliers.

NAFTA includes provisions requiring parties to allow financial institutions to transfer data across national borders for processing where such processing is required as part of that institution's ordinary business. However, parties may also schedule exceptions or limitations to this requirement. In addition, NAFTA does not provide enforceable protection from forced data localization, a critical barrier for all firms operating in a modern economy that rely on the ability to transfer and store their data based on efficiency and security decisions, rather than arbitrary requirements. MetLife is seeking new provisions that address this gap by extending data localization prohibitions to all sectors including financial services, as tabled by the United States in the Trade in Services Agreement (TiSA) negotiations. The Administration's goal of ensuring NAFTA countries refrain from imposing barriers to cross-border data flows or that require the use of local computing facilities is a welcome modernization. It is a goal that will allow data-dependent companies, including MetLife, to manage their data in ways that prioritize security and efficiency.

Regulatory Cooperation is Important for Highly Regulated Industries
NAFTA should include a formal consultative mechanism on regulatory cooperation. This will encourage NAFTA participants to avoid costly regulatory inefficiencies stemming from inconsistent or contradictory regulation. NAFTA's financial services chapter established the Financial Services Committee (FSC) which meets on an annual basis. Under the renegotiation, the FSC should also be charged with taking up financial services regulatory cooperation. This committee could be used to implement the Administration's objective to seek good regulatory practices that ensure transparency and accountability in the development, implementation and review of regulations.

Summary: As the largest life insurer in Mexico, MetLife supports the above-referenced modernizing reforms to NAFTA, but with a strong recommendation that such reforms be achieved while simultaneously preserving and keeping in force the benefits of the existing agreement. Specifically for MetLife, provisions on government procurement, investor protection and financial services are paramount.

STATEMENT FOR THE RECORD

SUBMITTED TO THE

House Ways & Means

Trade Subcommittee

"Hearing on Modernization of the North American Free Trade Agreement (NAFTA)"

Held on July 18, 2017

Submitted by the

Motor & Equipment Manufacturers Association (MEMA)

on August 1, 2017

Introduction

The Motor & Equipment Manufacturers Association (MEMA) represents the full scope of the motor vehicle supplier industry – providing technologies, components, and systems for all vehicle types – passenger cars and light trucks as well as medium- and heavy-duty commercial trucks. Our members make the original equipment installed on new vehicles as well as new and remanufactured aftermarket parts for the maintenance and repair of over 260 million vehicles on the road today.[1] Our members lead the way in developing advanced, transformative technologies that enable safer, smarter, and more efficient vehicles, all within a rapidly growing global marketplace with increased regulatory and customer demands. Suppliers' components account for about 77 percent of the content value in today's vehicles.

Vehicle suppliers have seen a 19 percent increase in employment since 2012 – a growth rate that is three times that of other major sectors of the U.S. economy – providing over 871,000 direct jobs to Americans nationwide, making it the largest manufacturing sector in the United States. Together with indirect and employment-induced jobs, the vehicle supplier industry supports 4.26 million jobs. The economic contribution to the U.S. GDP generated by vehicle parts manufacturers and supported activities is nearly $435 billion – or about 2.4 percent of the GDP.

Modernizing the North American Free Trade Agreement (NAFTA)

On June 12, 2017, MEMA responded to the request from the Office of the United States Trade Representative (USTR) for public comments on modernizing the NAFTA. To view that detailed response, we refer the House Ways and Means' Subcommittee on Trade to MEMA's complete written comments located in the public docket under record number USTR-2017-0006-0923.

MEMA supports a balanced modernization of the NAFTA that creates a 21st century trade agreement. A modernized NAFTA must foster a competitive U.S. manufacturing environment and avoid unintended risks that may impact domestic jobs, increase production costs, and disrupt supply chains. MEMA members operate in a global economy; an economy that depends on strong North American trade and a complex worldwide network of suppliers and customers for continued viability and growth. Our industry's 19 percent job growth can be attributed, in part, to the NAFTA model. NAFTA-enabled "nearshoring" of an interconnected, highly complex supply chain between the U.S., Canada, and Mexico has allowed the U.S. manufacturers to compete with the rest of the world.

MEMA commissioned The Boston Consulting Group (BCG) to evaluate the impact of NAFTA on the vehicle industry and how changes may affect vehicle parts manufacturers. For your reference, this data was discussed in more detail in our aforementioned written comments to

[1] MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

the USTR; the complete BCG study can also be found online.[2] The study provided valuable information to form MEMA's conclusions, including key highlights noted in MEMA's recent comments to the USTR:

- Domestic investment in technology innovation and R&D is possible in part because of the industry's access to imported parts from low-cost countries (e.g. Mexico). This sourcing allows the labor market in the U.S. to focus on developing and manufacturing new and advanced technologies and systems domestically and on providing high-quality, higher-paying jobs in the U.S.[3]
- BCG found that the implementation of a tariff on goods from Mexico would create \$16-\$27 billion of additional costs for the U.S. automotive market. Consequently, as the cost of vehicles rise, vehicle manufacturers may decrease content that could impact 25,000 to 50,000 U.S. jobs.[4]

One of the stated goals of a renegotiated NAFTA is to re-shore jobs into the United States. However, industry challenges dealing with capacity, sales volumes, and skilled workforce complicate that objective. Both vehicle manufacturers (a.k.a. "OEMs") and suppliers are operating their current manufacturing facilitates at peak capacity. Any new capacity would require new or expanded facilities at a time when U.S. sales volumes are at their peak and the economic viability of opening new facilities is minimized. Furthermore, like many manufacturing industries, suppliers are having a difficult time finding enough skilled tradespeople to fill open positions in the U.S. At the same time, we must maintain existing and increase higher value-added manufacturing in the U.S., where we already have a competitive advantage.

Finally, a renegotiated NAFTA should:

- **Establish a level playing field for all parties**, and initiatives that would eliminate unfair trade practices globally (including non-tariff barriers to trade);
- **Allow flexibility** in key NAFTA provisions on how to qualify items because of the substantial manufacturing process in the region and to update the rules of origin that reflect current and future manufacturing environments;
- **Include investor-state disputes and other NAFTA forums** that could speed conflict resolution including tariff classifications (including tariff classifications);
- **Enforce Intellectual Property Rights (IPR) protection**;
- **Align data protection and privacy laws** so that data can freely flow within NAFTA;

[2] "Impact of BAT and NAFTA Reforms on the U.S. Motor Vehicle Industry; Summary of analysis and key findings" The Boston Consulting Group and MEMA. July 2017 https://www.mema.org/resource/border-adjustment-tax-and-changes-nafta
[3] *Ibid*, Slide 16
[4] *Ibid*, Slide 15

- **Ensure that U.S. Federal Motor Vehicle Safety Standards** and other similar provisions are accepted in treaty countries;
- **Promote a harmonized regulatory system**, particularly working with Mexico to implement safety and environmental provisions that are in line with the U.S. and Canada;
- **Regulate the move and residence of laborers, their dependents, and business visitors across NAFTA** (e.g., allowing for additional inner-NAFTA work visas beyond the current program);
- **Require that imports of all aftermarket parts** – including remanufactured goods – are not treated differently from new goods imports;
- **Utilize draft components of previous trade agreements** that are beneficial for all three countries (e.g. services, IPR); and,
- **Increase and encourage cooperation between countries and the industry to improve international trade.**

In closing, the final NAFTA product must continue to provide for a vibrant North American supply chain. Care must be taken to balance the re-shoring of U.S. jobs with the unintended risks to current workers and the supply base. MEMA stands ready to fully participate in the modernization dialogue.

For questions and more information, please contact Ann Wilson, senior vice president of government affairs at (202) 312-9246 or awilson@mema.org.

# # #

KEVIN L. FAULCONER

MAYOR

July 31, 2017

The Honorable Dave Reichert
Chairman, House Ways and Means Subcommittee on Trade
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Bill Pascrell
Ranking Member, House Ways and Means Subcommittee on Trade
1139E Longworth House Office Building
Washington, DC 20515

Re: Statement for the Record on Modernization of the North American Free Trade Agreement

Dear Chairman Reichert and Ranking Member Pascrell:

On behalf of the City of San Diego, I am writing to provide the following statement for the record following the House Ways and Means Subcommittee on Trade's July 18 hearing on modernization of the North American Free Trade Agreement (NAFTA). For the last 23 years, NAFTA has bolstered the economy of the San Diego region. We welcome the opportunity to modernize the trilateral agreement to meet the needs of the 21st century economy.

NAFTA has created a highly-efficient manufacturing environment that has resulted in an enhanced quality of life throughout the region. San Diego's top export market is Mexico, with $5.5 billion in exported goods in 2016. San Diego and Baja California have leveraged NAFTA to create a $2.5 billion manufacturing supply chain that supports co-production between the two cities. Concurrently, Canada is San Diego's sixth largest source of foreign direct investment and sixth largest employer, with 3,500 jobs directly tied to trade with Canada.

A modernized NAFTA will help all of North America remain competitive against other trade blocs, preserving U.S. jobs and discouraging the outflow of capital. The modernized agreement will also ensure that products made in the U.S. can compete abroad, while lowering prices and expanding consumer choice here at home. We encourage all three nations to approach renegotiation as an opportunity to shape a 21st century trade agreement and to do so in the spirit of friendship that has defined these cross-border relationships for generations.

Thank you for the opportunity to comment on the renegotiation of NAFTA.

Sincerely,

Kevin L. Faulconer
Mayor

202 C STREET, 11TH FLOOR • SAN DIEGO, CA 92101

May 25, 2017

The President
The White House
Washington, DC 20500

Dear Mr. President:

As your administration considers the future of the 23-year old North American Free Trade Agreement (NAFTA), we—the undersigned chief executives of American companies—write to express our support for your efforts to modernize the agreement. We hereby offer to work with your administration to promote free and fair trade with Canada and Mexico, ensure a level playing field, and spur economic growth and job creation for American workers, farmers, and businesses.

Americans benefit from trade and investment with Canada and Mexico in many ways. U.S. trade with these two countries supports 14 million American jobs, and the daily volume of trade between the United States and our two North American neighbors tops $3.5 billion. In addition, the significant cross-investment among the three partners supports many additional good paying jobs across closely integrated supply chains. Much of this commerce depends on NAFTA, and the forthcoming negotiations with Canada and Mexico should be conducted in a manner that recognizes our shared values as neighbors and that does not put these millions of American jobs at risk. With your support, we believe this goal is eminently achievable.

The benefits of U.S. trade and investment with Canada and Mexico include:

- **Jobs across America:** The expansion of trade unleashed by NAFTA supports tens of thousands of jobs in each of the 50 states—and more than 100,000 jobs in each of 17 states.
- **Biggest Growth Markets:** U.S. exports to Canada and Mexico—which represent America's largest export markets by a wide margin—expanded far more in the 2009-2015 period than U.S. exports to any other country in the world (by $115 billion to Mexico and $89 billion to Canada). Half of all Canadian and Mexican imports come from the United States.
- **Manufacturing Jobs:** Canadians and Mexicans purchased $445 billion of U.S. manufactured goods in 2016, generating $37,000 in export revenue for every American factory worker.
- **Services Surplus:** In 2015, U.S. services exports to Canada and Mexico reached $88 billion, with a services trade surplus of $37 billion. U.S. service providers are market leaders in many sectors of the Canadian and Mexican economies.

- **Advancing Agriculture:** Under NAFTA, U.S. agricultural exports to Canada and Mexico have quadrupled from $8.9 billion in 1993 to $38 billion in 2015, providing critical growth opportunities for an industry at the heart of rural America.
- **Big Gains for Small Business:** Canada and Mexico are the top two export destinations for U.S. small and medium-size enterprises, more than 125,000 of which sell their goods and services in Canada and Mexico.

As your administration seeks to modernize and improve NAFTA, we ask that the following be taken into account to guide the process:

First, we should build on the elements of our trading relationship that are already working well. We should enhance the job-sustaining flow of trade across our borders, which has reached $1.3 trillion. Returning to the high tariffs and other trade barriers that preceded NAFTA is not in the interests of U.S. workers, farmers, and exporters.

Second, as Secretary Ross and others have pledged, the administration's pursuit of negotiations following the procedures established in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, known as TPA, will provide a more predictable environment for business. Pursuing the TPA statute's negotiating objectives and following its consultation procedures will build broader support in Congress and the U.S. business and agriculture communities for this effort.

Third, we encourage the administration to proceed quickly and trilaterally. Uncertainty about the future of America's terms of trade with Canada and Mexico would suppress economic growth and may cause political reactions that undermine U.S. exporters and their significant growth opportunities in these markets. Further, maintaining NAFTA's three-party framework is critical to ensure a strong, profitable market for U.S. exports and to avoid disrupting the substantial existing flow of commerce and the American jobs that depend on it.

Mr. President, we look forward to working with you and your administration on this critical effort. We stand ready to assist you and your administration in any way we can.

Sincerely,

David Abney
Chairman and Chief Executive Officer
UPS

Richard C. Adkerson
Vice Chairman, President, and Chief Executive Officer
Freeport-McMoRan Inc.

Kirk Aubry
President & CEO
Savage Services

Richard Brent
Chief Executive Officer
Louroe Electronics

Greg Brown
Chairman and CEO
Motorola Solutions

Michael L. Corbat
Chief Executive Officer
Citigroup

William Fellows
President & Chief Executive Officer
Bartlett & Company

Lance M. Fritz
Chairman, President and Chief Executive Officer
Union Pacific Corporation

William A. Furman
Chairman & CEO
The Greenbrier Companies

Alex Gorsky
Chairman of the Board and Chief Executive Officer
Johnson & Johnson

Evan G. Greenberg
Chairman and Chief Executive Officer
Chubb

Dave Hager
President and Chief Executive Officer
Devon Energy Corporation

Jeff Immelt
Chairman and CEO
GE

Wilson R. Jones
Chief Executive Officer and President
Oshkosh Corporation

Steven A. Kandarian
President, Chairman, & Chief Executive Officer
MetLife, Inc.

Ryan M. Lance
Chairman and Chief Executive Officer
ConocoPhillips

Andrew N. Liveris
Chairman and Chief Executive Officer
The Dow Chemical Company

Tamara Lundgren
President and Chief Executive Officer
Schnitzer Steel Industries, Inc.

David MacLennan
Chairman and CEO
Cargill, Incorporated

Doug McMillon
President and CEO
Walmart

Dennis E. Nixon
CEO
International Bank of Commerce

Indra K. Nooyi
Chairman and Chief Executive Officer
PepsiCo

Patrick Ottensmeyer
President and CEO
Kansas City Southern

W. Douglas Parker
Chairman and CEO
American Airlines Group, Inc.

Debra Reed
Chairman, President and Chief
Executive Officer
Sempra Energy

Dr. Edmund O. Schweitzer, III
President
Schweitzer Engineering Laboratories

David Taylor
Chairman of the Board, President, and
Chief Executive Officer
Procter & Gamble

Steve Van Andel
Chairman
Amway

Steven E. Rendle
President & Chief Executive Officer
VF Corporation

Frederick W. Smith
Chairman & CEO
FedEx Corporation

Jim Umpleby
Chief Executive Officer
Caterpillar Inc

Scott W. Wine
Chairman and CEO
Polaris Industries

& FLORIDA FRUIT VEGETABLE ASSOCIATION

House Committee on Ways and Means
Trade Subcommittee
Hearing on Modernization of the North American Free Trade Agreement (NAFTA)

Statement for the Record

July 31, 2017

Michael J. Stuart
Florida Fruit & Vegetable Association

The Florida Fruit & Vegetable Association (FFVA) is submitting this Statement for the Record in connection with the House Committee on Ways and Means Trade Subcommittee's Hearing on the modernization of the North American Free Trade Agreement (NAFTA) of July 18, 2017.

FFVA is a trade association comprised of growers of vegetables, citrus, sugarcane, tropical fruit, and other agricultural commodities in Florida. The Association is the State's leading full-service specialty crop organization, serving Florida's grower-shipper community since 1943.

Florida is the second leading producing state in the nation for fruits and vegetables. Its fruit and vegetable sector delivers an annual economic impact of $12.2 billion. Although Florida grows the highest quality produce in the world and can successfully compete in a fair global marketplace, the current unfair trade environment fostered by NAFTA has had a significant adverse impact on specialty crop producers in Florida.

Since the turn of the millennium, most of the growth in Mexico's agricultural shipments to the United States has been in the fresh fruit and vegetable sector. As discussed further below, imports of Mexican strawberries have almost tripled, imports of Mexican bell peppers have grown by 163%, and imports of Mexican tomatoes have increased by about 2 billion pounds, dramatically impacting US jobs and revenues.

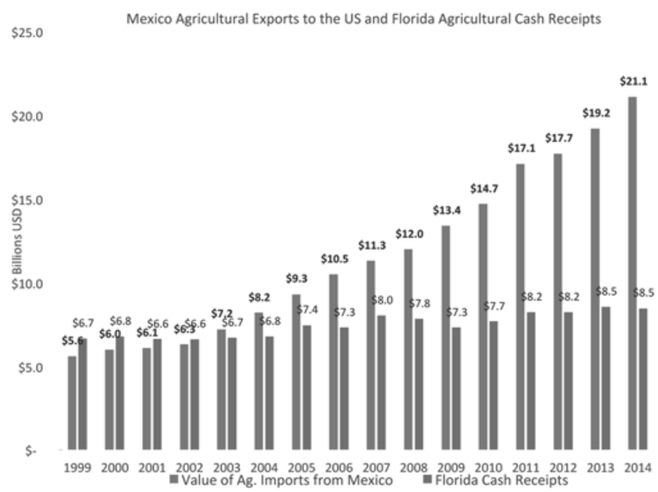
Although the United States is one of the world's major agricultural producers, Mexico's extraordinary expansion in fruit and vegetable shipments to the United States is creating a growing trade deficit in US-Mexico agricultural trade. As of 2016, that deficit exceeded $5.3 billion.

Source: Florida Department of Agriculture and Consumer Services

Because Florida and Mexico produce a number of the same specialty crops and share a similar growing season (*i.e.,* primarily the winter months, November-March, before most other US producers begin their harvests), fruit and vegetable imports from Mexico have had a disproportionately negative impact on Florida producers. The original NAFTA negotiators anticipated this result, forecasting that Florida producers of winter fruits and vegetables would be negatively affected once NAFTA was implemented. True to that forecast, the state's specialty-crop farmers have faced mounting pressure from growing Mexican imports in virtually every year since NAFTA took effect.

Today, as a result of unfair subsidy, pricing, and labor practices (*see below*), Mexican producers have become the dominant supplier of fruits and vegetables in the US market, greatly diminishing Florida's production and profitability in these sectors. Based on conservative estimates of what Florida's fruit and vegetable sector could have produced in the absence of these surging Mexican volumes, Florida has experienced a loss of agricultural cash receipts of between $1-3 billion a year by reason of Mexican imports.[1]

[1] Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture" (March 2017), at 8.



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Source: Florida Department of Agriculture and Consumer Services

The following are notable examples of how Mexico's unfairly traded shipments of fruits and vegetables have harmed Florida producers:

- **Strawberries.** Strawberry imports from Mexico have almost tripled since the turn of the millennium, rising from 76.1 million pounds in 2000 to 216 million pounds in 2016 (a 184% increase).[2] That expansion has compromised absolute growth and market share for Florida producers. Of equal concern, cash receipts for Florida strawberry producers have declined. In the winter of 2016-2017, Mexican strawberries shipped to the eastern United States were priced half as high as Mexican strawberries shipped to California, and at rates about 50% of the price achieved each week by Florida producers.[3]

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[2] Data from Florida Department of Agriculture and Consumer Services.

[3] Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture" (March 2017), at 5.

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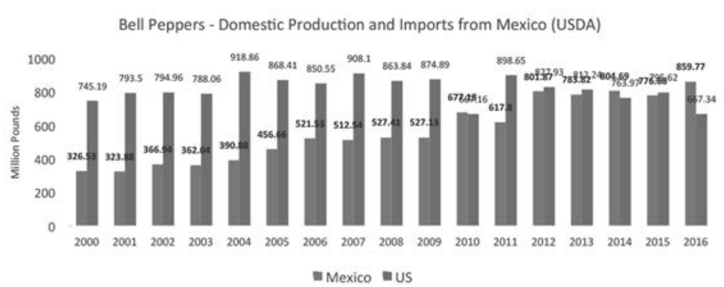
Source: Florida Department of Agriculture and Consumer Services
Note: "Others" (gray) is primarily California production that appears to be shifting to Mexico.

- **Bell Peppers.** Imports of bell peppers from Mexico have grown from 326.53 million pounds in 2000 to 859.77 million pounds in 2016 (a 163% increase). By contrast, US production of bell peppers has shrunk from 745.19 million pounds in 2000 to 667.34 million pounds in 2016 (a 10% decrease).[4] Oversupply of lower-priced Mexican products has depressed Florida's price position and reduced per-pound prices by 20-35%. The estimated economic injury inflicted upon Florida farmers through unfair pricing by Mexican bell pepper shipments is $226 million.[5]



Source: Florida Department of Agriculture and Consumer Services

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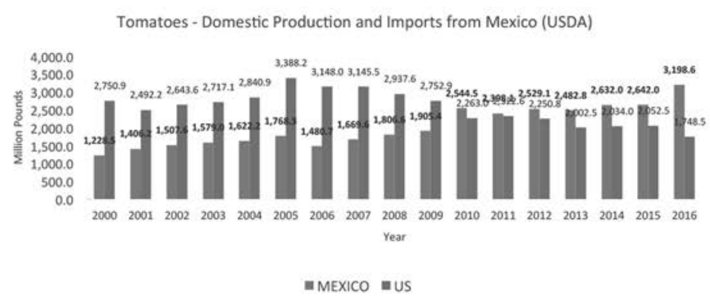
[4] Data from Florida Department of Agriculture and Consumer Services.

[5] Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture" (March 2017), at 20.

- **Tomatoes.** Imports of tomatoes from Mexico have increased from 1.2 billion pounds in 2000 to 3.2 billion pounds in 2016 (a 166% increase). By comparison, domestic production has shrunk from 2.7 billion pounds in 2000 to 1.7 billion pounds in 2016 (a 37% decrease).[6] US fresh tomato growers have struggled as prices, depressed by escalating import competition, have failed to keep up with rising farming costs. Low market prices have forced farmers to leave tomato fields unharvested in bad years, and numerous producers, especially smaller farms, have been forced into bankruptcy. USDA figures show that US fresh tomato production is in serious decline, having lost almost 25% of total acreage since 1996.[7]



Source: Florida Department of Agriculture and Consumer Services

Mexican fruit and vegetable producers have only been able to achieve their extraordinary US growth with the help of unfair subsidies, sales prices significantly below costs of production, and dramatically lower labor costs. Mexican fresh tomato growers and other fruit and vegetable producers benefit from government support programs aimed at increasing productivity in Mexican greenhouses and shade houses, not only during the winter months (November-March), but throughout the year. These support programs, which provide as much as 45%-60% of the cost of improvements for certain specialty crops,[8] have helped Mexican producers become the dominant US supplier of specialty crops and are progressively pushing Florida producers out of their own market.

Since 2001, the Government of Mexico has steadily expanded its fruit and vegetable support payments. From 2001 to 2008, Mexico's main agricultural ministry, SAGARPA, spent $50 million subsidizing

[6] Data from Florida Department of Agriculture and Consumer Services.

[7] *See* USDA National Statistics Service, Annual Survey Data, available at *https://quickstats.nass.usda.gov/*

[8] *See* Wageningen University and Research, "Mexican Protected Horticulture: Production and Market of Mexican Protected Horticulture Described and Analyzed,"(Report GTB-1126, 2011); USDA Foreign Agricultural Service, 2012 Tomato Annual, GAIN Report No. MX2036 (June 4, 2012), at 6.

1,220 hectares (ha) of greenhouses and other forms of protected agriculture.[9] In 2009 and 2010, Mexico spent $189.2 million on 2,500 ha of protected agriculture: 65% for greenhouses, 25% for shade-houses, 7% for macro-tunnels, and 3% for micro-tunnels. Those aid programs supported 859 ha of tomatoes (41%), 428 ha of cucumbers (20%), 347 ha of bell peppers (16%), 274 ha of berries (13%), and additional plantings of zucchini, grapes, brussels sprouts, habanero and green peppers, and ornamental plants, among other specialty products.[10] Not surprisingly, Mexico's productivity improved markedly during this period, even as overall planted areas decreased.[11]

Mexico's specialty crop support payments continue today. For FY2017, SAGARPA has established at least nine programs and 43 "components" to support agriculture.[12] Its regulations specifically authorize greenhouse "incentives" of up to $48,000 per hectare.[13] Other reports have found that subsidies for new greenhouse installations are as high as $162,000 per agricultural project.[14] Those greenhouse funds can be used in Mexico for the purchase of materials, equipment, and infrastructure, and for the management, conservation, and processing of greenhouse products.[15] The funds can cover up to 50% of the cost of investments.[16] FFVA believes that Mexico's fruit and vegetable sector is also benefiting from other unpublished subsidies.

These Mexican government benefits, which are aimed at promoting the year-round production of Mexican fresh fruits and vegetables, have already put Florida producers at serious risk. Over time, as greenhouse support further expands Mexico's production season, all US producers of fruits and vegetables will be compromised.

Another major factor in enabling Mexican fruit and vegetable producers to achieve their extraordinary US growth is their dumping of specialty products into the US market at prices significantly below the cost of production. In the winter of 2017, for example, as shown in Figures 1A and 1B below, Mexican strawberries shipped to the eastern United States were priced half as high as Mexican strawberries shipped to California, and at rates about 50% of the price achieved each week by Florida producers.

FFVA does not have access to Mexican cost data, but based on the vast experience of Florida specialty crop producers, FFVA believes that the prices charged for Mexican strawberries shipped to the eastern United States are not even close to sufficient to cover the Mexican producers' costs of producing and

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[9] Wageningen University and Research, "Mexican Protected Horticulture: Production and Market of Mexican Protected Horticulture Described and Analyzed,"(Report GTB-1126, 2011), at p. 55.

[10] USDA Foreign Agricultural Service, "Mexico Tomato Annual: Early 2012 Supply Spike Leads to Low Prices, Exports Expected Higher in MY2012/2013," June 14, 2012, available *https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Tomato%20Annual_Mexico%20City_Mexico_6-14-2012.pdf.*

[11] *Id.* at 2.

[12] Government of Mexico website, "SAGARPA has the Support You Need," January 14, 2016.

[13] Official Diary of the Government of Mexico, "Rules of Operation for the Program for the Promotion of Agriculture of the Secretariat of Agriculture, Livestock Rural Development, Fisheries and Food for the 2017 Fiscal Year," December 31, 2016, Article 12.

[14] *Id.*

[15] *Id.*

[16] *Id.*, at Article 10.

shipping those strawberries, much less make a profit. The same is true for other specialty products, with devastating impact on Florida producers. Oversupply of lower-priced Mexican bell peppers, for example, has depressed Florida's price position and reduced per-pound prices by 20-35%.

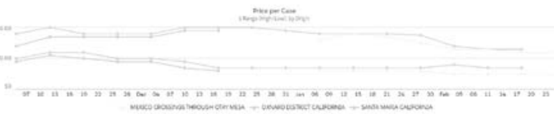

Figure 1A (2016-17 season): California prices compared with prices of Mexican products entering California; Mexican and California prices closely mirror each other.

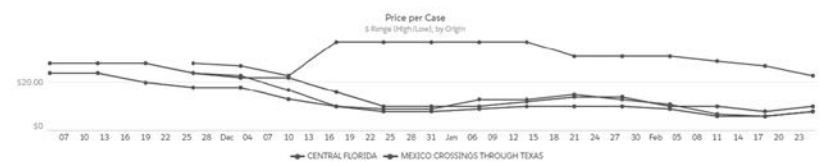

Figure 1B (2016-17 season): Florida prices compared with Mexican imports to the eastern US; Mexican prices have a much narrower price range, are consistently skewed toward the lower pricing range of Florida, and the products must be shipped farther across the US.

Still another unfair advantage enjoyed by Mexican producers of specialty crops is Mexico's extremely low labor costs. The estimated annual Mexican wage advantage in the agricultural sector is $1 billion.[17] Mexican farm laborers are paid about 10% of what Florida farm laborers are paid for similar work.[18] As each phase of production is completed, this labor differential provides Mexican specialty crop producers with a compounding advantage.

Under the Trade Priorities and Accountability Act of 2015 (TPPA), Congress has called on the Executive Branch to pursue in all trade negotiations governed by TPPA several objectives related to specialty crops, the primary ones of which are as follows:

> (J) eliminating practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;

[17] Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture" (March 2017), at 11.

[18] Farmworkers in Mexico typically earn approximately the equivalent of $8 per day, while US farmworkers earn approximately $10-12 per hour. Thus, assuming an eight-hour day, a farmworker in the United States would earn at a minimum $80, while a Mexican farmworker would earn $8, *i.e.*, 10%.

> (K) ensuring that import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries; . . . . [and]
>
> (R) seeking to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.[19]

Pursuant to these and other TPAA objectives, the Administration's July 17, 2017, ***Summary of Objectives for the NAFTA Renegotiation***, properly underscored the Administration's intention to

- "improve the U.S. trade balance and reduce the trade deficit with the NAFTA countries;"
- "seek a separate domestic industry provision for perishable and seasonal products in AD/CVD proceedings;"
- "preserve the ability of the United States to enforce vigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws;" and
- "require NAFTA countries to have laws governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

USDA Secretary Sonny Perdue and USTR Ambassador Bob Lighthizer have elsewhere publicly emphasized the need to find an effective, timely solution to the Florida fruit and vegetable industry's growing concerns regarding unfair imports from Mexico.[20] Florida's specialty crop sectors applaud the commitment being expressed by Congress and the Administration to solve this urgent problem.

Because of the urgency of Florida's import concerns, the State's industry has already asked the Administration to consider every remedial and political tool at its disposal to help quickly reverse the unfair Mexican practices and adverse US import trends described above. Among other near-term approaches, the industry is discussing with the Administration, in close coordination with its Congressional delegation, an accelerated Government investigation into Mexico's unfair subsidy and pricing practices, self-initiated import relief action(s), and increased US Government advocacy at highest levels to insist that Mexico cease its unfair trading practices. FFVA looks forward to working closely with Congress and the Administration in moving these and other steps forward to deliver timely, effective, and enforceable relief for Florida's produce sector.

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[19] Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub L. No. 114-26, § 102(b)(3), 129 Stat. 320, 322-23 (2015) ("2015 TPAA").

[20] *See, e.g.*, Secretary Perdue's May 17, 2017, testimony before the House Committee on Agriculture; US Trade Representative Response to Questions for the Record, US Senator Bill Nelson, March 20, 2017.

Although FFVA recognizes that a modernized NAFTA may not enter into force for some time, and therefore may not be able to provide the near-term import relief the Florida industry needs, FFVA nevertheless urges the Committee on Ways and Means to endorse NAFTA solutions that are consistent with the TPPA and NAFTA renegotiation objectives above, and to lend its support to the trade investigation, enforcement, and political steps the industry is currently pursuing with the Administration. As the near-term remedial and political solutions take shape in concert with the Administration, FFVA will have a better sense of the complementary provisions needed under NAFTA to enshrine and reinforce those solutions over the long term.

FFVA looks forward to working closely with Congress and the Administration on a comprehensive strategy that aligns near-term remedies with longer-term NAFTA specialty-crop reforms to provide the Florida industry with timely, durable protections against unfairly traded Mexican produce.

DISTILLED SPIRITS COUNCIL

U.S. HOUSE OF REPRESENTATIVES
TRADE SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS

"Modernization of the North American Free Trade Agreement"

August 1, 2017

STATEMENT OF THE DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC.

I. Introduction

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. ("Distilled Spirits Council") for inclusion in the printed record of the House Ways and Means Trade Subcommittee's hearing on modernization of the North American Free Trade Agreement (NAFTA). The Distilled Spirits Council is a national trade association representing U.S. producers, marketers, and exporters of distilled spirits products.

The Distilled Spirits Council's member companies export spirits products to more than 130 countries worldwide. Over the past two decades, the U.S. spirits sector has become increasingly reliant on exports to fuel growth. Since 1989, the value of global U.S. distilled spirits exports has increased nearly five-fold, from $242 million to over $1.4 billion in 2016. Canada and Mexico are the top and tenth-ranked export markets, respectively, for U.S. distilled spirits exports.

The Distilled Spirits Council strongly supported the negotiation and implementation of NAFTA and enthusiastically welcomes the administration's efforts to modernize the agreement. To be sure, U.S. distilled spirits exporters have benefitted significantly from the terms of NAFTA. U.S. spirits exports to Canada and Mexico have grown exponentially since the agreement was implemented in 1994, thus supporting jobs in the manufacturing, hospitality, retail, and logistics sectors in the United States. Specifically, total U.S. spirits exports to our NAFTA partners increased from $34 million in 1995 to $228 million in 2016. It is therefore critical that the modernization of NAFTA preserve – and build upon – the gains that have already been achieved. The specific provisions of NAFTA that have benefited the U.S. spirits sector, as well as our specific objectives for negotiations to modernize the agreement are detailed below

II. NAFTA's Key Provisions Related to Distilled Spirits

Implementation of NAFTA opened the Canadian and Mexican markets to U.S. spirits exports. As detailed below, these include tariff elimination commitments, recognition of distinctive U.S. spirits, and establishment of certain commitments to ensure the fair and equal treatment of U.S. spirits by Canada's state-owned beverage alcohol distribution and retail monopolies.

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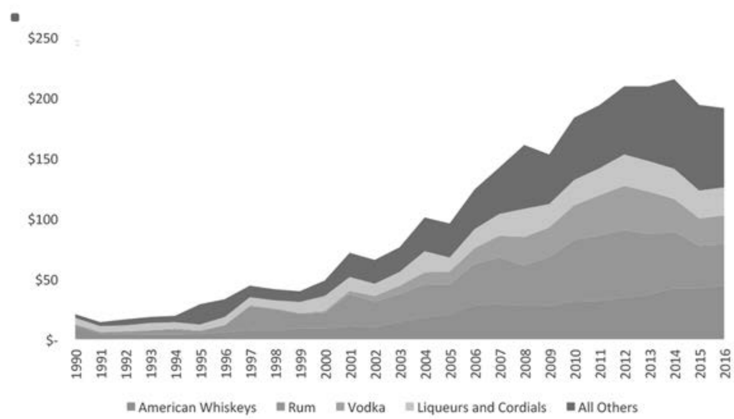
A. All U.S. Distilled Spirits Exports to Mexico and Canada are Duty-Free

NAFTA eliminated tariffs on Bourbon and Tennessee Whiskey exports to Mexico immediately upon entry into force of the agreement. Tariffs on all other U.S. spirits exports to Mexico were eliminated over a five-year phase out period. Tariffs on U.S. exports of whiskey and rum to Canada were eliminated under the Canada – U.S. Free Trade Agreement (CUSFTA) in January 1989. Canadian tariffs on all other U.S.-origin spirits were scheduled to be eliminated over five or ten years, with all U.S. spirits to Canada being duty-free by 1998. In addition, since 1995 Canada has bound at zero its tariffs on whiskey, brandy and Tequila at the World Trade Organization (WTO) on a most-favored nation (MFN) basis. Thus, U.S. exports of "white spirits" such as rum, vodka and gin, have enjoyed preferential access to the Canadian market since the CUSFTA/NAFTA commitments entered into force in the late 1990s.

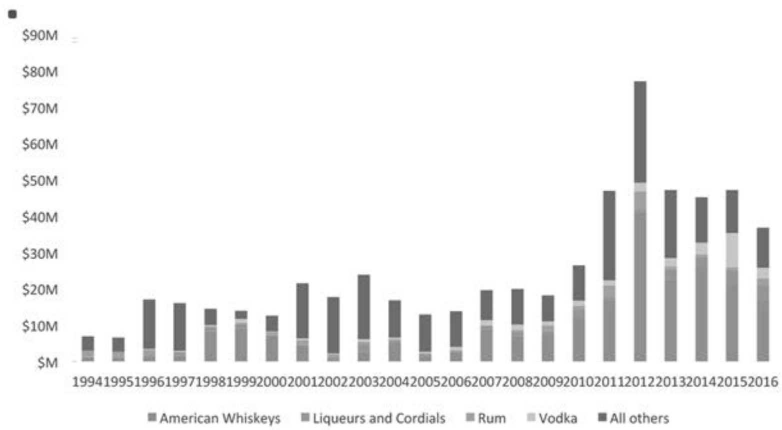
The tariff elimination on U.S. spirits to our NAFTA partners has contributed to the dramatic increase in exports to those markets. For example, U.S. spirits exports to Canada grew nearly 582 percent, from $28 million in 1995 to $191 million 2016. Of this, 23 percent is accounted for by American Whiskeys, 18 percent by rum, 12 percent by vodka, and 12 percent by liqueurs and cordials. As noted above, Canada now ranks as **the largest** market globally for U.S. distilled spirits exports.

U.S. Distilled Spirits Exports to Canada 1990-2016
($ millions)



Similarly, U.S. distilled spirits exports to Mexico grew nearly 470 percent since NAFTA was implemented, from just over $6 million in 1994 to $37 million in 2016, making it the tenth largest export market. American Whiskeys accounted for 45 percent of the total.

U.S. Distilled Spirits Exports to Mexico 1994-2016
($ millions)



However, Canada and Mexico have not bound all of their tariffs on distilled spirits at zero under the WTO's General Agreement on Tariffs and Trade (GATT). Specifically, while Canada's WTO bound tariff for whiskey, brandy and tequila is zero, its bound rate for gin is 4.92¢/liter of absolute alcohol (laa), for rum is 24.56¢ per laa, and for vodka and liqueurs is 12.28 ¢/laa. Mexico's WTO bound rate is 45 percent *ad valorem* for all distilled spirits categories. In contrast, the United States has bound its tariffs under the WTO's GATT at zero on all spirits categories (except low value rum (HTS 2208.40.20 and 2208.40.60) and one "other" category (2208.90.80)).

Thus, in order for all U.S. distilled spirits exports to continue to receive tariff free treatment in Canada and Mexico, it is critical that NAFTA retain tariff free trade in distilled spirits throughout the three partner countries.

B. Mexico and Canada Officially Recognize "Bourbon" and "Tennessee Whiskey" as "Distinctive Products" of the United States

"Distinctive product" recognition refers back to the laws in the product's country of origin and serves as an important tool to assure consumers that the products purchased are genuine. Since 1964, the United States government has officially recognized "Bourbon" as a distinctive product of the United States. The first international agreement explicitly recognizing "Bourbon" exclusively as a product of the United States dates to 1971 (Agreement between the United States of America and France for the Protection of Names of Bourbon Whiskey and Certain French Brandies). Since then, Bourbon and Tennessee Whiskey have also been accorded distinctive product recognition through trade agreements and other bilateral agreements the United States has negotiated with several other countries, including the 28 members of the European Union, Chile, Korea, Brazil, Colombia, Peru, Australia, Panama, Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Canada, and Mexico.

Specifically, under Chapter Three: National Treatment and Market Access for Goods - Article 313 and Annex 313 (1) of NAFTA, Canada and Mexico agreed to recognize "Bourbon Whiskey" and "Tennessee Whiskey" as distinctive products of the U.S. In return, Mexico and the U.S. agreed to recognize "Canadian Whisky" as a distinctive product of Canada, and Canada and the U.S. agreed to recognize "Tequila" and "Mezcal" as distinctive products of Mexico (see Annex 313 (2) and (3)). The United States' decision to confer such recognition to these distinctive Canadian and Mexican spirits reflects the fact that these products cannot legally be made in the United States.

This recognition, which is implemented primarily through a country's domestic product marking and labeling laws, is a very important mechanism to ensure that products labeled as "Bourbon" or "Tennessee Whiskey" that are offered for sale in Canada and Mexico are, in fact, legitimate products that were produced in the U.S. in accordance with U.S. laws and regulations regarding the production of these products. Because American Whiskeys, such as "Bourbon" and "Tennessee Whiskey", account for 69 percent of total U.S. spirits exports globally, it is critical that this recognition be retained.

C. Canada's Provincial Liquor Board Policies Required to be Transparent and Non-Discriminatory

In Canada, provinces are empowered under its Constitution to establish beverage alcohol supply and distribution monopolies. In the 1980s, Canada maintained closed provincial markets with discriminatory restrictions on the listing and sale of imported spirits. These discriminatory practices were addressed by the provisions contained in Chapter Three: National Treatment and Market Access for Goods - Article 312 and Annex 312.2, which incorporated Chapter Eight: Wine and Distilled Spirits from the Canada – United States Free Trade Agreement (CUSFTA).

Specifically, Chapter Eight (Article 802 (1)) stated that measures concerning the listing policies for the sale of distilled spirits are to be transparent, treat Canadian and U.S. products equally and be based on "normal commercial considerations." Thus, any distiller applying for a listing is to be informed promptly of the decision and, in the case of a negative decision, a statement of the reason for the refusal. The distiller can appeal the decision through the administrative appeal procedures that were established following CUSFTA.

With regard to pricing/mark-ups, Chapter Eight (Article 803 (4)) specified that all discriminatory mark-ups on distilled spirits were to be eliminated immediately upon entry into force of the agreement. However, public entity distributors are permitted to charge the "actual cost-of-service differential" between spirits of the other party and the domestic spirits. Any such differential, however, shall not exceed the audited cost of service for the spirits of the exporting party with the audited cost of service for the spirits of the importing party (Article 803 (1)).

Concerning distribution, the agreement stated that any measure related to the distribution of spirits shall conform with national treatment obligations (Article 804 (1), but indicated that measures limiting on-premise sales by a distillery to distilled spirits produced on its premises would be permitted (Article 804 (2a)).

Finally, Article 312 of NAFTA specified that no party may adopt or maintain any measure requiring that distilled spirits imported in bulk from another territory for bottling be blended with distilled spirits of the importing party.

D. Rules of Origin

NAFTA's rule of origin for distilled spirits was changed in 2003 to reflect increased efficiencies within the supply chain (Annex 401: specific rules of origin (as amended over time) for HTS 2208). Distilled spirits must comply with these rules in order to receive "preferential" treatment under the agreement. The U.S. spirits sector strongly supported the change and continues to support its retention in a modernized NAFTA.

III. Objectives for NAFTA Modernization

As noted above, the overall spirits trade relationship with Canada and Mexico as a result of NAFTA has been highly successful and beneficial for U.S. spirits exporters. However, there are several areas in which the NAFTA modernization negotiations could improve the agreement and provide further benefits for U.S. distilled spirits exporters to these vital markets.

Protecting and preserving the important gains achieved in NAFTA is paramount. However, targeted improvements to the agreement can be made to help expand opportunities for U.S. spirits exporters. In particular, the U.S. spirits sector is seeking to: 1) preserve the current duty free access for U.S. spirits exports; 2) preserve existing protections for "Bourbon" and "Tennessee Whiskey" and secure distinctive product recognition for "American Rye Whiskey;" 3) adopt a section detailing labeling and certification best practices for spirits; 4) strengthen and update the rules regarding Canada's Provincial Liquor Boards; 5) eliminate Canada's discriminatory excise tax on imported beverage alcohol products; 6) preserve the preferential rules of origin for spirits, as well as include new transit and transshipment provisions; and 7) end the prohibition in NAFTA on the use of duty drawback.

A. Preserve Duty-Free Treatment for U.S. Distilled Spirits Exports

The Distilled Spirits Council urges that the U.S. government ensure that the current duty-free treatment for U.S. distilled spirits exports to Canada and Mexico will be retained. As noted above, the United States has bound its tariffs at zero at the WTO on practically all spirits categories on a most-favored nation basis, yet this is not the case across the board for Canada and Mexico. Thus, all U.S. spirits exports to Canada and Mexico will only remain duty-free if the tariff commitments contained in NAFTA remain in place.

B. Affirm Distinctive Product Recognition by Canada and Mexico of "Bourbon" and "Tennessee Whiskey" and Expand Recognition to Include "American Rye Whiskey"

Over the past decade, Rye Whiskey production in the United States has experienced phenomenal growth, with over 100 brands now on the market. This is up from a handful a decade ago. In terms of the United States domestic market, from 2009 – 2016, American Rye Whiskey sales volumes have grown by an astonishing 778 percent to reach over 774,800 cases. In terms of value, that translates into a 900 percent jump from slightly over $15 million in supplier revenues in 2009 to over $150 million in 2016. This represents approximately $450 million in retail sales in the United States alone. Several companies, both large and small, export American Rye Whiskey to a wide-range of markets, including Canada and Mexico.

The Distilled Spirits Council urges the U.S. government to ensure recognition for "Bourbon" and "Tennessee Whiskey" is retained (NAFTA Article 313 and Annex 313 (1)), and secure and incorporate recognition by Canada and Mexico for "American Rye Whiskey" into Annex 313 (1). Securing distinctive product recognition will help assure the producers of this rapidly growing category that only rye whiskeys made in accordance with U.S. laws and regulations will be able to be labeled and sold as "American Rye Whiskey" in Canada and Mexico. In exchange, the Distilled Spirits Council would support the recognition of "Canadian Rye Whisky" by the United States.

C. Incorporate Regulatory Best Practices for the Labeling and Certification of Distilled Spirits Products

NAFTA modernization negotiations are an excellent forum for advancing reasonable, science-based regulation of beverage alcohol in Canada, Mexico, and around the world. To that end, we propose the inclusion of a section detailing regulatory best practices for distilled spirits with regard to labeling and certification requirements, ideally as part of a new chapter on technical barriers to trade.

Securing these commitments will make NAFTA a model 21st-century trade agreement for the distilled spirits industry, by ensuring that three of the major spirits producing and consuming nations in the world will adhere to a set of regulatory principles with regard to labeling and certification. Doing so will reduce potential barriers to trade by providing greater certainty, transparency and efficiencies for distilled spirits producers, importers and exporters throughout the NAFTA countries.

D. Strengthen and Update Rules Concerning Canada's Provincial Beverage Alcohol Distribution and Retail Monopolies

The NAFTA modernization negotiations provide an opportunity to update and strengthen the rules governing the practices of Canada's provincial state-trading enterprises, importation monopolies and market-dominant state-owned beverage alcohol retailers to ensure that they do not discriminate against U.S.-origin distilled spirits. While many of the provisions are important to retain, several are in need of updating to reflect the current marketplace and to address new barriers that have arisen.

For example, currently the practices of certain provincial liquor boards with regard to product mark-ups appear to run counter to Canada's international trade obligations, which provide for transparent and standardized product mark-ups for all "like" or "directly competitive and substitutable" product. In ***British Columbia***, for example, while the wholesale portion of the markup is transparent, published, and standardized, the retail portion, which is applied by the BC Liquor Distribution Branch, is not. ***Saskatchewan*** has announced its intention to move towards the British Columbia model in the future. In addition, ***Nova Scotia*** operates a complicated supplier competition for certain subcategories of spirits, such as "economy vodka" or "economy white rum", which can result in certain products not being subject to the posted standardized mark-up. The Liquor Control Board of ***Ontario*** (LCBO) notified suppliers in June 2016 of its intention to test the concept of "flexible mark-ups" for wine and spirits, a further deviation from the application of standardized and transparent product mark-ups. The LCBO issued a letter on July 11, 2016 announcing an indefinite extension to the timeline to submit supplier quotes under the agency's proposed "flexible mark-up" initiative.

Furthermore, expanded retail access opportunities are provided to local producers in key provinces of British Columbia, Ontario and Quebec. Local beer, wine and spirits are now offered for sale in farmers' markets in ***British Columbia*** and local wine and cider in ***Ontario***. ***Quebec's*** Bill 88 permits the sale of local artisanal wine, cider and mead products to be sold in grocery and corner stores. ***British Columbia*** has auctioned new licenses for the sale of local wines on the shelves of grocery stores in violation of the maximum number of discriminatory wine stores established under NAFTA. To address some of these barriers, in January 2017 the U.S. government requested consultations with the Government of Canada under the WTO's dispute settlement provisions raising concerns with British Columbia's decision to expand access to British Columbia wines on the shelves of grocery stores while relegating all other beverage alcohol to a separate "store-within-the-store."

The Distilled Spirits Council requests that the U.S. government seek updated and strengthened rules addressing Canada's provincial beverage alcohol distribution and retail monopolies (*i.e.* discriminatory product markups and retail access).

Specifically, the Distilled Spirits Council supports the retention of:

- NAFTA Article 312 (concerns bulk imports, as detailed above);
- CUSFTA Article 801 (1), which states that this Chapter applies to any measure related to the internal sale and distribution of wine and distilled spirits;
- CUSFTA Article 802 (1) (concerns listing policies, as detailed above)
- CUSFTA Article 804 (1) (concerns national treatment and distribution of spirits, as detailed above);
- CUSFTA Article 804 (2)(a); (concerns on premise sales by distilleries, as detailed above); and
- CUSFTA Article 807 (concerns Parties being able to retain their rights and obligations under General Agreement on Tariffs and Trade (GATT) and agreements negotiated under the GATT.)

However, the Distilled Spirits Council requests the following modifications to other provisions:

- CUSFTA Article 801 (2) (Coverage): This provision, which permits existing measures to be imposed that are not in conformity with national treatment obligations, should be deleted in its entirety. The Distilled Spirits Council specifically seeks the elimination of preferential federal excise duties for certain domestic wines (including ciders) and beers introduced in 2006 (*see* Section E below for details).

- CUSFTA Article 803 (1) (Pricing): This provision concerning public entity distributors' permission to charge the "actual cost-of-service differential" should be updated and further clarified. For example, Annex 30-B (Section D: 4a-Pricing) to the Comprehensive Economic and Trade Agreement (CETA), a free-trade agreement between Canada and the European Union), includes several important commitments to enhance transparency, efficiency and non-discrimination of pricing policies by public entities involved in the sale and distribution of beverage alcohol. Specifically, "Each Party shall ensure that a cost of service is not applied to a product of the other Party on the basis of the value of the product." Further, "the cost of service differential shall be justified in line with standard accounting procedures by independent auditors on the basis of an audit completed on the request of the other Party…" and "on request of that Party at intervals of not less than four years." In addition, "the audits shall be made available to either Party within one year of a request being made. Competent authorities shall update cost of service differential charges, as required to reflect the commitment made" regarding cost of service differentials. And "Competent authorities shall make available applicable cost of service differential charges through publicly accessible means, such as their official website. Competent authorities shall establish a contact point for questions and concerns originating from the other Party with respect to cost of service differential charges. A Party will respond to a request from the other Party in writing within 60 days of the receipt of the request."

The Distilled Spirits Council supports the inclusion of these enhanced commitments, as provided for in CETA, into a modernized NAFTA.

- CUSFTA Article 803 (5) (Pricing): The Distilled Spirits Council supports retention of an overall commitment to ensure that no discriminatory pricing measures are in force, and that no discriminatory pricing measures will be adopted in the future. Specifically, the Distilled Spirits Council requests that all provincial spirits mark-ups, levies, taxes or other pricing measures are transparent, non-discriminatory and apply equally to all "like", directly competing or substitutable products sold through any retail sales channels, including private outlets.

- The Distilled Spirits Council is also seeking new disciplines on state-owned enterprises to ensure fair commercial treatment for U.S. spirits exporters and avoid state sanctioned anti-competitive behavior. Specifically, the Distilled Spirits Council requests that provincial state-owned liquor boards commercial activities be restricted to those within their own territorial borders and any extraterrestrial activities be restricted to those solely essential to fulfilling those internal activities. Moreover, the Distilled Spirits Council seeks a prohibition by state-owned alcohol retailers from listing or offering for sale distilled spirits products in which they have any ownership or financial interest.

E. Eliminate Canada's Discriminatory Excise Tax on Imported Beverage Alcohol Products

On March 22, 2017, Canada's federal government introduced a 2 percent increase on the federal excise tax on beverage alcohol and a future yearly automatic increase tied to the Consumer Price Index (CPI). However, since 2006 wines made from 100 percent Canadian grown grapes or other fruits, (including ciders made from Canadian apples) have been exempt from any federal excise tax. Increasing beverage alcohol excise duties by 2 percent immediately and by the CPI annually thereafter, while continuing to maintain the exemption from federal excise tax on wines made from 100 percent Canadian grown grapes or other fruits, exacerbates the uneven playing field that exists in the Canadian market for beverage alcohol products. This disparity will grow wider as the tax rate increases on an annual basis. Such a scheme imposes new costs on U.S. spirits and wine imports, thus tilting the playing field even more to domestic wine, to the detriment of imported wines and spirits.

In the context of the NAFTA modernization negotiations, we request that the U.S. work to secure Canada's commitment to eliminate all of the discriminatory aspects of its excise tax pertaining to beverage alcohol products. This will allow spirits trade to continue the considerable expansion it has enjoyed over the past twenty-five years, and will reaffirm the Parties' commitment to the rules-based international trading system.

F. Rules of Origin

The NAFTA "preferential" rule of origin for distilled spirits, as described above, should be retained.

In addition, new transit and transshipment provisions should be included to expressly permit minor processing in non-NAFTA members to include unloading, labeling, marking, reloading, etc., without losing the good's originating status. The goods should, however, remain under the control of the customs administration during this process.

G. Duty-Drawback

The Distilled Spirits Council supports removal on the prohibition on the use of duty drawback currently contained in NAFTA Article 303.

IV. Conclusion

As detailed above, international trade has become increasingly instrumental to the long-term viability of the U.S. distilled spirits sector. The commitments contained in NAFTA have helped to make Canada and Mexico extremely important markets for U.S. spirits exporters. While there is much to be retained in NAFTA, the Distilled Spirits Council and its members support negotiations to modernize the agreement in order to protect and expand upon the important gains already achieved.

Written Statement of:

Christine LoCascio
Senior Vice President
International Issues and Trade
Distilled Spirits Council of the United States, Inc.
1250 Eye Street, NW, Suite 400
Washington, DC 20005

Consumer Technology Association™

July 18, 2017

VIA ELECTRONIC SUBMISSION

The Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515

Re: Comments on Hearing on Modernization of the North American Free Trade Agreement (NAFTA)

North American Trade Issues Impacting the U.S. Consumer Technology Industry

Dear Mr. Chairman and Members of the Subcommittee:

The Consumer Technology Association ("CTA") welcomes the opportunity to provide comments to Committee on Ways and Means in response to the July 18, 2017 hearing on the Modernization of the North American Free Trade Agreement (NAFTA.). We have identified a number of areas that could be updated including digital trade, technical barriers to trade ("TBT"), rules of origin or origin procedures, and trade-related intellectual property rights issues, that affect CTA's membership. As such, CTA is excited at the chance to participate in this process and hopes that these comments help the Committee appreciate the various issues facing the U.S. consumer technology industry when they trade with Canada and Mexico. CTA hopes that Congress the Administration will maintain the beneficial parts of NAFTA, which has played a significant role in liberalizing trade and in giving U.S. manufacturers the chance to grow their market presence in Canada and Mexico. Still, we appreciate that the current Administration is deciding to modernize this 23-year-old trade agreement. We certainly agree, and describe herein, that NAFTA could be improved to more thoroughly reflect the global trade issues facing U.S. companies and consumers today.

I. BACKGROUND ON THE CONSUMER TECHNOLOGY ASSOCIATION

As a proponent of innovation, CTA advocates for the entrepreneurs, technologists and innovators who mold the future of the consumer technology industry. Representing more than 2,200 corporate members, CTA provides a platform that allows today's consumer technology leaders to connect and collaborate. Its membership includes companies from every facet of the consumer technology industry, including manufacturers, distributors, developers, retailers, and integrators. In addition, CTA provides avid policy support to its membership, by fighting for the issues that most significantly affect its membership. Relying on its leading market research, CTA also educates members and shapes the industry as a whole by establishing standards that impact its membership's product lines.

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International trade is critical to our members – both big and small. CTA's membership consistently trades throughout the North American region. In fact, Mexico has been one of the U.S. consumer technology industry's fastest-growing marketplaces over the past few years. Our members must have the ability to compete, sell, and distribute on a level playing field in North America. Otherwise, they, including, in many cases, their domestic manufacturing presence, suffer.

II. COMMENTS ON SPECIFIC ISSUES RELATING TO NAFTA

Trade with Canada and Mexico supports nearly 14 million U.S. jobs, and nearly 5 million of these net jobs are supported by the increase in trade generated by NAFTA, according to a comprehensive economic study commissioned by the U.S. Chamber of Commerce.[1] The expansion of trade enabled by NAFTA supports tens of thousands of jobs in each of the 50 states—and more than 100,000 jobs in each of 17 states. In fact, U.S. manufacturers added more than 800,000 jobs in the four years after NAFTA entered into force. In addition, U.S. exports to Canada and Mexico have increased by $385.9 billion (272 percent) since NAFTA went into effect in 1994.[2] As of 2016, the United States was exporting $7.8 billion of computer equipment to Canada and $12 billion of semiconductors and other electronic components to Mexico.[3]

This data demonstrates that NAFTA has been highly beneficial for the U.S. economy and for the U.S. technology sector. However, CTA recognizes that the renegotiations present an opportunity to modernize NAFTA. As a result, CTA submits comments on the following NAFTA issues: (1) digital trade and internet services; (2) TBT; (3) rules of origin; (4) intellectual property rights; and (5) temporary entry of professionals.

a. Digital Trade and Internet Services

The digital economy is key to America's growth and global competitiveness. The United States has exported roughly $400 billion in digitally-deliverable services on an annual basis in recent years, and today's U.S. consumer technology industry supports more than 15 million jobs. Internet services have transformed trade and enabled small and medium-sized businesses to reach global audiences in ways never possible in the past. Over the last decade, the Internet has created new opportunities for cross-border trade and investment, enabling small businesses around the world to connect with customers and suppliers in the global market without building their own multinational supply chains. With the help of Internet platforms, small businesses: (1) grow up to four times faster than businesses that do not embrace the web; (2) create twice as

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[1] U.S. Chamber of Commerce, *NAFTA Triumphant: Assessing Two Decades of Gains in Trade, Growth, and Jobs*, *available at* https://www.uschamber.com/sites/default/files/legacy/reports/1112_INTL_NAFTA_20Years.pdf.
[2] Business Roundtable, *The United States Needs Trade Agreements to Grow*, *available at* http://tradepartnership.com/wp-content/uploads/2015/01/US_State_Study.pdf.
[3] M. Angeles Villarreal & Ian F. Fergusson, *The North American Free Trade Agreement (NAFTA)*, Congressional Research Service (May 24, 2017), *available at* https://fas.org/sgp/crs/row/R42965.pdf.

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many jobs; (3) are three times as likely to be exporters;[4] and (4) bring in twice as much revenue through exports as a percentage of sales.

Overall, the Internet is powering US economic growth. The U.S. International Trade Commission ("ITC") found that the productivity gains from the Internet have increased U.S. real GDP by 3.4 to 3.5 percent.[5] It is clear that digital trade and e-commerce have become important for multinational companies and small and medium-sized businesses alike to market their products or services in the global marketplace. Thus, reducing barriers to digital trade and e-commerce is crucial "to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities."[6] Re-negotiating NAFTA, therefore, presents an opportunity to modernize the agreement in order to account for the significant growth of digital trade and trade in services.

In addition, U.S. retailers also benefit significantly from low tariffs on consumer electronics and home appliances. As a result, CTA urges Mexico to join the expanded Information Technology Agreement ("ITA"). The original ITA led to the elimination of import duties on a large number of high tech products which in 2013 accounted for an estimated $1.6 trillion, and the expanded ITA eliminated tariffs on an additional list of 201 products.

i. Cross-Border Data Flows and Trade in Digital Content

Internet services and digital trade have been able to play a significant role in boosting U.S. trade due to their open nature: online services and/or intermediaries can facilitate transactions and communications among millions of businesses and consumers, enabling buyers and sellers to connect directly on a global basis. As a result of the benefits of increased digital trade, Internet penetration, and cross-border data transfers, CTA urges that the "Digital 2 Dozen" prioritizes principles[7] and prevents barriers to e-commerce trade and cross-border data flows.

The Trans-Pacific Partnership ("TPP") agreement included some positive provisions in support of a global, open Internet, including protecting cross-border data flows and preventing data localization. CTA urges that the re-negotiated NAFTA allows for a free and open Internet and adequately protects the free flow of information through cross-border data flows. In addition, the new NAFTA should prevent forced localization requirements of data centers and facilities. In an age where cloud computing is increasingly utilized by U.S. businesses to store and transfer information between offices and facilities across many regions, countries that

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[4] Deloitte (commissioned by Google), *Connected Small Businesses US* (2017), *available at* https://www2.deloitte.com/us/en/pages/technology-media-and-telecommunications/articles/connected-small-businesses.html.

[5] For more information on the studies cited in this section, please see McKinsey & Company, *Digital Globalization: The New Era of Global Flows* (March 2016), *available at* http://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows.

[6] Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Sec. 102(a)(8).

[7] Please see https://ustr.gov/sites/default/files/Digital-2-Dozen-Final.pdf.

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require local servers or data centers as a condition for market access will create significant barriers to the cross-border business of consumer technology companies.

In order to facilitate trade in digital products and content, the re-negotiated NAFTA should also prohibit customs duties, taxes, and other barriers to digital products (e.g., software, music, video, e-books, etc.) and services. Moreover, the new agreement must ensure non-discriminatory treatment of digital products transmitted electronically.

ii. Intermediate Liability Rules in Internet-Driven Trade

For the Internet to serve its trade-enabling role, and for local entrepreneurs to drive cross-border economic activity, trade negotiators need to ensure predictable liability protections are in place across countries where users and content creators are sharing information on Internet platforms. Millions of small businesses and billions of consumers depend on clear rules of the road that enable connections and trade flows online.

The current business model works because intermediaries can host online transactions without being held liable for the vast amounts of content surrounding each transaction. As such, the new NAFTA should make clear that, in order to allow global e-commerce, NAFTA parties must ensure that online services are not automatically considered liable for third-party content. This is a core principle necessary for digital trade and is already recognized by the United States, the EU, and many other countries. Intermediary liability laws like Section 230 of the Communications Decency Act in the United States enable Internet services to host, process, and distribute user-generated content without being treated as the creator or originator of such content for purposes of determining liability.

These safe harbors are keys to enabling digital trade. If a platform with millions of users faced the risk of being held liable each time a user posted even remotely questionable content, then it is very unlikely such services would ever launch in the first place – harming not just innovation within a country but also the ability of small businesses to use these services to export to global customers. To promote digital trade and foster vibrant domestic Internet economies, NAFTA parties should include a provision that addresses intermediary liability. By providing safe harbor protections from liability, NAFTA parties will establish an innovation framework for digital trade.

b. Technical Barriers to Trade

CTA respectfully submits that regulatory misalignment, through the establishment of TBT, is a significant problem for the consumer technology industry and a problem that NAFTA should more thoroughly tackle. Articles 904.4, 905, 906, and 908 of the current NAFTA encourage the NAFTA partners to, amongst other things, avoid imposing unnecessary obstacles to trade, rely on international standards (as opposed to making their own standards), and make compatible and/or equivalent their standards-related measures, as well as their conformity assessment procedures. However, there are several loopholes in NAFTA that, in the end, give

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each country enough leeway to implement what they want, with little limitation. Plus, CTA has seen our NAFTA partners not stringently follow the notice and comment requirements of NAFTA's Article 909, as well as the agreement's other procedural obligations. CTA submits that, in light of these problems, we need stronger obligations in NAFTA on regulatory substantive and procedural alignment.

These problems have particularly affected CTA's membership in the energy efficiency regulatory space. Over the last several years, CTA has seen both Mexico and Canada impose diverging energy efficiency requirements that do not reflect the U.S. and/or international norm in this area. For example, although Mexico has worked with CTA and its membership to roll back some of its more troublesome parts, a recent proposed measure on energy efficiency would have required the use of a marking symbol that does not align with the rest of North America and a product label with a substantial amount of extraneous information that other countries do not require (including the full name of the regulation itself). As it currently stands, the measure, and its underlying law, still provide for unaligned testing requirements, including a requirement that manufacturers test and certify their products on a yearly basis. In most countries, manufacturers only need to test and certify a product once, until they significantly modify it. An annual testing requirement is extremely burdensome and misaligned in comparison with the energy efficiency requirements of other countries, including the United States.

We have also experienced similar issues with Canada, particularly relating to the measures of its provincial governments. Article 902 of NAFTA provides that each party shall seek, through appropriate measures, to ensure observance of Article 904 through 908 by state or provincial governments in its territory. However, CTA has, on more than one occasion, seen Canada's provinces, such as Quebec, contravene the spirit of NAFTA and these obligations by implementing energy efficiency requirements that do not align with Mexico and the United States or even its own national government. CTA asks that an updated NAFTA focuses on addressing these issues.

As we noted above, we also ask for focus on ensuring that our North American partners have a transparent and open notice and comment process for proposed regulations or standards measures. Although the current NAFTA imposes some of these requirements on the parties, the obligations are not always followed. The United States should ensure that the obligations are more strictly enforced. For example, we hope that the renegotiation ensures that all NAFTA parties follow Article 909.1(d), which provides that each party shall "without discrimination, allow other parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account." We have experienced some tendency, on the part of our NAFTA partners, to weigh domestic party comments more heavily than comments from manufacturers in, for example, the United States. We have also not always seen our NAFTA partners notify us when their sub-national governments propose new energy efficiency measures, even though Article 3.2 of the WTO TBT Agreement and Article 903 of NAFTA generally require it. We not only see a need for more enforcement, but also for stronger obligations in this area. For example, we believe that requiring all of the NAFTA parties to establish public consultations early in the development of

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new measures, enabling trade-related concerns to be vetted and addressed before new measures are finalized, is crucial to implementing regulations that make sense for industry.

CTA also submits that NAFTA should include some text that encourages the NAFTA countries to consider using non-regulatory initiatives in lieu of traditional regulation, where appropriate. CTA has found that, in the fast-moving product space of the consumer technology industry, regulations often cannot keep pace with technological development. For this reason, CTA has worked with governments, including Canada and the United States, to develop non-regulatory solutions for ensuring the energy efficiency of consumer technology products. The most successful solution that CTA has helped to develop is the voluntary agreement, *i.e.,* a non-regulatory approach at setting energy efficiency requirements that relies on industry-driven standards and government oversight (through mandatory reporting and audit authority). The United States and Canada have taken this approach to impose energy efficiency standards for set-top boxes, and government officials from both countries have indicated that the agreements have been a success. These programs have also proven effective in providing consumers with the information that they need in making their choices for consumer technology products. CTA encourages USTR to develop some language for the modernized NAFTA that recognizes the value of these solutions and encourages all NAFTA parties to consider them when dealing with the issue of energy efficiency requirements for consumer technology products.

c. Rules of Origin

CTA understands that the three NAFTA parties may seek to negotiate new rules of origin ("ROO") to address recent developments in auto and auto parts manufacturing. However, when considering potential ROO changes to IT products, CTA urges that making the ROO requirements, including regional value content thresholds, more restrictive and burdensome to the consumer technology industry be avoided. Consistent with the Administration's intention to "do no harm" in renegotiating NAFTA, CTA urges Congress and the Administration to ensure that the consumer technology manufacturing base, as well as complex and integrated supply chains, are reviewed and understood and any ROO changes and their potential impact are carefully studied.

CTA also emphasizes that current IT products produced in a U.S. FTZ cannot qualify for preferential treatment even if they otherwise meet the rules of origin ("ROO") requirements under NAFTA. However, goods produced in maquiladoras[8] can qualify for preferential treatment. CTA asks that the re-negotiated NAFTA allow goods produced or assembled in FTZs that meet the relevant ROOs requirements to qualify for preferential treatment under the agreement, consistent with the treatment that qualifying goods from maquiladoras receive. FTZs help local employers remain competitive, and lower FTZ-based production costs encourage increased investment in U.S. facilities.[9]

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[8] Maquiladoras are plants in Mexico that are owned by foreign companies that assemble products and export to the country of those companies.
[9] Please see http://enforcement.trade.gov/ftzpage/letters/ftzinfo.pdf.

d. Intellectual Property Rights

NAFTA was the first free trade agreement to contain an intellectual property rights ("IPR") chapter. However, given the significant evolution in IPRs protection and the significant growth in digital content and services, CTA urges USTR to modernize the chapter.

CTA asks that NAFTA reflects the strong IPR enforcement obligations in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and a standard of protection, including proper and flexible copyright limitations and exceptions, similar to that found in U.S. law. The new NAFTA should provide strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property in a manner that facilitates legitimate digital trade. In addition, the re-negotiated NAFTA should ensure that standards of protection and enforcement keep pace with technological developments and that rights holders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works. The new NAFTA should provide strong enforcement of IPRs, including through expeditious and effective civil, administration, and criminal enforcement mechanisms. Provisions should also prevent government involvement in the violation of IPRs, including through cyber theft or piracy.

In addition, the re-negotiated NAFTA should require copyright limitations and exceptions like fair use that have been essential to U.S. innovation and the strength of the U.S. tech sector, as well as copyright 'safe harbors'. The absence of such provisions in Mexico leaves the U.S. tech sector vulnerable there – particularly as Mexico strengthens other parts of its copyright system.

The United States cannot continue to export one-sided enforcement provisions of copyright law without their equally important partner under U.S. law – fair use. The Internet's open and seamless operation thrives on copyright policies that recognize equally exclusive rights for creators and flexible limitations and exceptions such as fair use and the first sale doctrine that encourage innovation. U.S. copyright law reflects this balance and contributes to the success of Internet companies domestically.

The past 30 years and the growth of the U.S. tech and Internet economy have demonstrated the importance of a balanced approach to copyright. The United States has promoted the progress of sciences and useful arts by ensuring that there is breathing room in copyright law for the development of new products and services such as the VCR, DVR, iPod, cloud computing, search engines, social media, and 3D printing. All of these innovations – and the growth of U.S. companies that they have created – are fundamentally reliant upon concepts like fair use and other copyright limitations and exceptions. These innovations could be jeopardized by weak language on limitations and exceptions in the copyright laws of other countries.

e. Temporary Entry of Professionals

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The United States is the top knowledge economy in the world with a strong and innovative technology sector. With the development of the Internet of Things ("IoT"), cloud computing, and other state-of-the-art technologies, the United States technology sector will also require skilled employees to continue to grow. Specifically, appropriate immigration policies are key to unleashing the potential of the IoT sector.[10]

In light of the breathtaking growth expected in this sector over the next decade, it is unlikely that the United States' science, technology, engineering and math ("STEM") work force will be sufficient to support the sector's rapid expansion unless Congress adopts meaningful reform to the United States' overly restrictive immigration policies. There simply are not enough STEM-skilled U.S. workers today to fill the myriad of technical positions that will be created by the IoT sector at the hardware, operating system, connectivity, data management and user interface layers. Strategic immigration reforms are needed to encourage U.S.-educated immigrants to remain in the United States to build businesses and create domestic jobs. Moreover, permitting temporary entry of IT professionals in the United States will help ensure that research and development ("R&D") remains based in the United States instead of the professionals' home country. Doing so will allow the United States to maintain its edge as the most innovative technology economy in the world. As a result, CTA urges that this issue be addressed in the negotiations for a new NAFTA.

Thank you for the opportunity to provide comments on the upcoming NAFTA modernization. CTA hopes that this information assists the Committee during the upcoming negotiations and is happy to act as a future resource for the U.S. government on NAFTA. Please feel free to contact the undersigned with any questions or comments.

Best regards,

/s/
Sage Chandler
Vice President, International Trade
schandler@cta.tech

/s/
Douglas K. Johnson
Vice President, Technology Policy
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[10] For more information, please see Consumer Technology Association, *Internet of Things: A Framework for the Next Administration* (November 2016), *available at* https://www.cta.tech/cta/media/policyImages/policyPDFs/CTA-Internet-of-Things-A-Framework-for-the-Next-Administration.pdf.

Citigroup submission in response to the House of Representatives House Ways and Means Committee, Trade Subcommittee Hearing regarding Modernization of the North America Free Trade Agreement (NAFTA)

As a global financial institution with a significant and diversified presence in all three NAFTA signatory countries, Citi strongly supports both NAFTA modernization and the preservation of many existing benefits of the current agreement. We encourage the administration to negotiate expeditiously because a swift resolution will limit economic and political uncertainty while ensuring that the symbiotic trade partnership the U.S. now enjoys with both Canada and Mexico is not merely maintained but bolstered by the enhanced trade agreement.

As the leading global bank, with approximately 200 million customer accounts, Citi conducts business in more than 160 countries and jurisdictions, including in Canada since 1919 and in Mexico (via Citibanamex) since 1886. Citi is the largest U.S.-based bank in Mexico, and Citibanamex activities comprise roughly 20% of the financial sector in Mexico. We are one of the largest global banks operating in Canada. Our strong support for NAFTA is based on our long history of working in and facilitating trade and investment among the U.S., Canada and Mexico and witnessing its many benefits to our clients.

Citi believes that it is vital to ensure that all trade agreements, including NAFTA, maintain the highest possible standards and commitments. A comprehensive agreement enables the financial industry to support clients in manufacturing, agriculture and other areas of the U.S. economy. For the past quarter century, the financial services chapter of NAFTA has served as a reliable and consistent foundation for the opening up of the financial sectors in Mexico and Canada to foreign competition, the establishment of a strong rule of law governing the treatment of foreign investors and the creation of new procurement opportunities.

On July 17, 2017 the Trump Administration released its summary of objectives for the NAFTA modernization as required under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Along with the summary of objectives, the law requires USTR to publish an explanation of how a successfully concluded agreement will further those objectives and benefit the United States.

The negotiating objectives include positive language on financial services, seeking to expand market opportunities and obtain fair and open conditions for financial services trade and investment; improve transparency and predictability in financial services regulatory procedures; and prohibit restrictions on cross-border data flows and requirements to use or install local computing facilities.

As Citi outlined in its response to the Federal Register notice inviting public comment on NAFTA modernization, Citi strongly supports language, as tabled in the Trade in Services Agreement (TiSA), to ensure the free flow of data across borders and prohibiting governments from imposing measures requiring local servers for data storage. The existing financial services chapter of NAFTA includes a provision that permits the transfer of data across borders for data processing in the normal course of business. However, the provision is outdated and insufficient to addressing the new methods that companies like Citi now use to move data on a global basis while securing that data from cyber risks. The Trans-Pacific Partnership excluded the financial sector from provisions ensuring free flow of data and prohibiting localization. We are pleased that the negotiating objectives of the current administration specifically included financial services in data localization protections and we recommend looking to the TiSA language as a model for a modernized NAFTA.

We are also pleased to see regulatory cooperation included in the administration's objectives. We would like to see an expansion of the NAFTA Financial Services Committee's jurisdiction to mandate more integrated cooperation on regulatory matters including anti-money laundering regulation. Financial regulatory cooperation is more vital than ever and should take place through a more formalized, principles-based consultative mechanism.

With significant investments in both Mexico and Canada, it is important that investor-state arbitration be included in NAFTA modernization as the appropriate enforcement mechanism available to U.S. investors abroad. We are concerned about the absence of its inclusion in the Administration's objectives. In fact, Citi supports expanding the investor protections afforded to the financial sector and providing access to an efficient enforcement mechanism, investor-state dispute settlement, to adjudicate breaches of those protections, including for national treatment and most favored nation treatment. Past U.S. trade agreements, including NAFTA, have not afforded the financial sector the same investor protections – and enforceability of those protections – as are ensured for all other sectors. A NAFTA modernization should extend to financial services the same level of protection, e.g., minimum standard of treatment, civil strife, performance requirements, as is provided for all other sectors in the existing NAFTA.

In conclusion, Citi – and Citi's clients around the world – rely on the provisions of the existing NAFTA to keep both their domestic and international operations functioning smoothly and efficiently. We believe the administration can both improve and update NAFTA while maintaining the benefits our country and its companies enjoy under the existing agreement.

Statement on Modernization of NAFTA
Evan G. Greenberg, Chairman and CEO, Chubb Limited
House Ways and Means Committee
Trade Subcommittee Hearing -- July 18, 2017

My name is Evan Greenberg and I am the Chairman and CEO of Chubb. Chubb is the world's largest publicly traded property and casualty insurer. With direct operations globally around the world in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients.

I would like to provide my company's perspectives on the positive impact NAFTA has had on the services sector in general and the insurance industry specifically, and how modernizing NAFTA is mutually beneficial for all three parties.

NAFTA AND SERVICES

Chubb is part of the services economy, and the services sector dominates the U.S. economy. The services sector accounts for over 75% of the American workforce and nearly 80% of U.S. GDP (Source: BEA).

Since its implementation in 1994, NAFTA has effectively integrated the services markets of Canada, Mexico and the United States. Through the creation of common and non-discriminatory trade rules, NAFTA has opened both Canadian and Mexican markets to a diverse array of U.S. services providers, strengthening the U.S. services trade relationship with our neighbors.

From 1999 to 2015 (latest data), the United States has doubled its bilateral services trade surplus with Mexico and quadrupled it with Canada. The U.S. had a $37 billion trade surplus in services in 2015 with our NAFTA partners.

The goods trade figures also do not take into account how cross-investment between the three countries creates enormous economic benefits for all the parties, generating jobs and growth.

CHUBB AND NAFTA

Chubb is a great example of a company that has benefited from the positive environment NAFTA created.

In Mexico, for example, a key component of NAFTA was the elimination of the foreign investment cap, allowing U.S. insurers to own 100% of locally established companies.

The "National Treatment" provisions of NAFTA required Mexico to treat foreign firms the same as local businesses in terms of regulatory and tax treatment.

NAFTA's procurement provisions ensure that U.S. owned firms in Mexico are able to participate in government and state-owned enterprise (SOE) procurement opportunities.

NAFTA also required increased transparency and administrative procedural safeguards for U.S. insurance companies in Mexico. Under NAFTA, a "Financial Services Committee" was established, creating a mechanism to address issues of concern.

While the specific provisions of NAFTA are critical, most importantly, NAFTA created an environment of non-discrimination in Mexico, allowing foreign insurers to flourish there.

This is evidenced by the meaningful portion of our business that is done with the Mexican government. We insure government vehicles, water treatment facilities, infrastructure projects and public universities, just to name a few of our insured public entities.

This non-discriminatory environment was accommodating for foreign investors and allowed Chubb to grow both organically and through acquisitions over the past 23 years since NAFTA was implemented. Mexico is now our fourth largest market, after the United States, the United Kingdom and Canada, and Chubb is the third largest property and casualty insurer in the country.

Mexico's growing middle class, which has been fostered by the nation's strong pro-trade stance since NAFTA, has created significant opportunities for our industry and others. Mexicans are buying more homes and cars and establishing new businesses all of which require insurance protection.

The infrastructure reforms have created significant opportunities for our surety business in Mexico, where we are the second largest surety company in the country.

Finally, Chubb benefits as it insures a significant and growing number of U.S. firms operating in Mexico as well as Mexican firms operating around the world.

To give you an example of the magnitude of our business and presence in Mexico, Chubb has more than one million automobile insurance policies in Mexico through our wholly owned subsidiary ABA Seguros. Today, Chubb has over 2,400 employees in 66 locations across Mexico, and a strong agency distribution network with more than 4,000 agents and brokers.

Chubb also has a significant presence in Canada – as I just noted, our third largest market. Chubb has been in Canada since 1821, when we became the first American insurance company to appoint an agent in Canada.

Today we are a top 10 insurer and employ nearly 600 Canadians located in four branch offices in Toronto, Montreal, Calgary and Vancouver.

Our success in Mexico and Canada supports Chubb jobs in the U.S. Many of our 15,000 employees in the United States support our Mexican and Canadian operations in important professional functions such as analytics, claims, finance, legal and underwriting.

So, you can see this is not a zero sum situation. This is the case for our industry as well as the services sector overall. NAFTA has created an environment of mutual benefit among the three countries.

MODERNIZING NAFTA

The U.S. business community has made it clear that it has no interest in going backwards with respect to NAFTA. Our first principle with respect to a NAFTA renegotiation should be to do no harm.

Interrupting the $1.3 trillion in annual trade across our borders, or reverting to the high tariffs and other trade barriers that preceded NAFTA, would be devastating for workers, farmers, service providers and exporters in all three countries. Preserving the existing benefits I noted earlier is critical.

It is also important to maintain NAFTA as a trilateral agreement. Unwinding the supply chains established over the last two decades would cause unnecessary but significant economic disruption.

Lastly, beyond the economic and trade benefits, all three countries have also clearly benefited from NAFTA with regard to our shared border. The positive economic benefits over the past two decades have generated trust among our governments, allowing for successful cooperation on many matters including national security.

Given that the agreement is 23 years old, there is room and a need for modernization. Such modernization should enhance NAFTA. Issues like the treatment of cross-border data flows and storage and e-commerce simply didn't exist when NAFTA was originally negotiated. Transparency and anti-corruption provisions that promote good governance and deter the damaging impact of bribery and corruption should also be included in the modernized NAFTA. Establishing disciplines in these new areas would be beneficial for all three parties.

Finally, establishing standards for small and medium-sized enterprises and establishing state-owned enterprise disciplines would enhance NAFTA, again to the benefit of all three parties.

CONCLUSION

NAFTA has significantly improved our nation's competitive profile. North America and the United States are a competitive force in global trade. It is part of our country's strategy to remain competitive in the future in a world where other powerful countries aren't standing still.

We believe that when all the facts are reviewed in terms of the economic, social and national security implications of NAFTA, our political leaders will recognize the magnitude of our North American integration and will take the right steps in fortifying this mutually beneficial relationship.

I hope I've given you some insights into how NAFTA has benefitted the services sector and the insurance industry, and how modernizing the agreement would provide further benefits.

Thank you again for allowing me to express my company's views on this important subject for your consideration.

AUTO ALLIANCE
DRIVING INNOVATION

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July 18, 2017

The Honorable Dave Reichert
Chairman
Ways & Means Trade Subcommittee
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Pascrell, Jr.
Ranking Member
Ways & Means Trade Subcommittee
U.S. House of Representatives
Washington, DC 20515

Re: House Ways and Means Trade Subcommittee hearing entitled "Modernization of the North American Free Trade Agreement"

Dear Chairman Reichert and Ranking Member Pascrell:

On behalf of the Alliance of Automobile Manufacturers (Alliance), we welcome this opportunity to provide the following comments on the Modernization of the North American Free Trade Agreement (NAFTA). The Alliance is the leading advocacy group for the auto industry. Together, our 12 member companies represent 70% of annual new car and light truck sales in the United States.

A robust auto sector is vital to a healthy U.S. economy, and NAFTA has allowed automakers that produce in the U.S. to maximize investments and remain competitive in the global marketplace. Auto manufacturing represents the largest manufacturing sector in the U.S. with 13 automakers operating 44 assembly plants across 14 states. Automakers along with their suppliers and dealers generate billions of dollars for the U.S. economy and support 7.25 million American jobs. The industry pays out $500 billion in annual compensation to its employees and generates more than $205 billion in federal and state tax revenue in the manufacture, sale and maintenance of autos.

Additionally, between 2010-2014, the industry has invested $46 billion in factories and facilities in the U.S., typically investing $18 billion a year on research and development (R&D) in the U.S – an average of $1,200 for every new vehicle produced. Fifty percent of the companies listed on the Dow Jones Industrial Average depend on the auto industry for revenue. Simply put, the auto industry is one of the most powerful engines driving the U.S. economy.

The auto industry has historically contributed 3-3.5% to economic growth in the U.S., denoted by Gross Domestic Product, and remains a significant player in today's global economy as well. The U.S. based auto industry is America's largest export sector with automakers exporting more than 2 million vehicles in 2016, totaling more than $56 billion[1] – a roughly138 percent increase from 2009[2]. Additionally, these exports are from both U.S. based and international automakers. Among Alliance members, BMW Group, FCA USA LLC, Ford Motor Company, General Motors Company, Mercedes-Benz USA, Toyota Motor North America, Inc. and Volkswagen Group all manufacture vehicles in the U.S. for export, and Volvo Car USA is currently building a U.S. facility that will also export vehicles. More than half of those exports are to our NAFTA partners, Canada and Mexico. Thus, America's automotive industry has a significant economic stake in the outcome of the renegotiations of NAFTA – perhaps more than any U.S. industrial sector.

Department of Commerce Secretary Wilbur Ross recently stated that the first guiding principle of the upcoming renegotiations will be to "do no harm." The Auto Alliance wholeheartedly appreciates and supports this approach towards the modernization of NAFTA, an agreement that has been a key contributor to competitive success of the U.S. auto industry in the global marketplace.

Today's highly complex automobile is a product comprised of thousands of parts sourced from a global network of thousands of suppliers. NAFTA has resulted in the "near-shoring" of manufacturing operations to our neighbors, Mexico and Canada, in lieu of more distant ones. NAFTA's strong regional bloc supports an expansive automotive supply chain in the U.S, Canada, and Mexico. In many cases, auto parts and components cross U.S. borders more than eight times in the production and assembly process. In this way, even investments in Mexico and Canada result in the creation of jobs in the U.S. by encouraging a network of local business partners. Disrupting this integrated supply chain would increase prices, lower sales, threaten exports and endanger American workers' jobs.

NAFTA has resulted in significant North American investment from within the global auto industry. Global companies have shifted production from other automotive regions to North America and increasingly rely on North American supply chains. Facilities built in Canada or Mexico support U.S. jobs and vice-versa. For example, prior to

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[1] United States Department of Commerce, Bureau of the Census, Foreign Trade Division, *New Passenger Vehicle Exports to the World.* http://www.trade.gov/td/otm/assets/auto/New_Passenger_Exports.pdf
[2] U.S. Department of Commerce. Office of Transportation & Machinery, *Trends in U.S. Vehicle Exports*. August 2015 http://www.trade.gov/td/otm/assets/auto/ExportPaper2015.pdf

NAFTA, the U.S. content of vehicles imported from Mexico was five percent and today, that figure is approximately 40 percent.[3]

While NAFTA has provided countless benefits to the automotive sector, Alliance members recognize that much has changed in the global economy since NAFTA was enacted in 1994. As such, we support the Administration's aim of modernizing this trilateral trade agreement and offer recommendations to further enhance the benefits of NAFTA. If implemented, these recommendations will significantly advance the guiding principles underlying the Administration's trade policy agenda by encouraging fair and free trade, increasing economic growth, promoting job creation in the U.S., and strengthening the U.S. manufacturing base.

- **Maintain strong and effective market access provisions within NAFTA:** Many of the aforementioned benefits created by NAFTA are due in part by the effective market access provisions granted for autos and auto parts. Specifically, duty-free access granted under the existing rules of origin generate the free flow of autos and auto parts throughout the North American region. It is important to note that the 62.5% regional vehicle content under the existing net cost method is the highest of any U.S. trade agreement.
- **Improve Regional Regulatory Cooperation:** A modernized NAFTA should encourage more effective regulatory cooperation on future standards to avoid unnecessary divergence. Regulatory streamlining across the region will further facilitate trade and reduce unnecessary costs and administrative burdens. Regulatory cooperation among the three NAFTA partners will help spur cooperation on the global stage, within the United Nations Working Party 29.
- **Formal recognition of U.S. motor vehicle safety standards (FMVSS) throughout the NAFTA region:** We recommend the U.S. utilize this opportunity to formally enshrine existing practice and include commitments in the agreement requiring Canada and Mexico to recognize FMVSS.
- **Streamline customs procedures to facilitate cross-border trade flow:** As indicated above, in many cases automotive parts and components may cross the border as many as eight times before reaching final assembly. A modernized NAFTA should expressly allow true electronic signatures, (i.e. those that do not require the integration of a reproduced hand-written signature), requiring all three party-countries to accept them on NAFTA certificates. Reducing existing

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[3] Center for Automotive Research, *NAFTA Briefing: Trade benefits to the automotive industry and the potential consequences of withdrawal from the agreement.* January 2017

inefficiencies and burdensome border delays will help facilitate the free flow of these goods.

- **Update NAFTA's labor and environmental provisions:** The Alliance supports efforts to strengthen NAFTA's labor and environmental provisions to reflect a strong commitment to maintain a level playing field with parties to the agreement.
- **Promote cross-border data flows:** Since NAFTA is more than 20 years old, it lacks language on cross-border data flows. A modernized NAFTA should ensure that automakers are able to move data freely across borders to enable them to compete fairly to serve customers in North America and around the world.

Much attention has been given to the U.S. trade deficit with Mexico. A significant reason for the U.S. trade deficit with Mexico is related to the complex and integrated regional supply chain that has developed since NAFTA entered into force more than 20 years ago. Automakers import several labor-intensive auto parts and components from Mexico, including wire harnesses and seat components. If this trade were to stop, automakers would seek supply from other sources outside the NAFTA region because it would not be economical to source such components in the U.S. Additionally, some non-U.S. sourced components are not currently available to be sourced in the U.S. Sourcing these components elsewhere would adversely affect the U.S. economy: on average, a 10 percent increase in employment at a Mexican affiliate operation leads to a 1.3 percent increase in U.S. employment, a 1.7 percent increase in U.S. exports, and a 4.1 percent increase in U.S. R&D.[4]

As noted above, the auto sector has benefited greatly from a strong and integrated North American regional bloc and it has clearly enabled job creation within the U.S. auto industry. Auto manufacturing throughout the region has helped anchor automaker and supplier engineering and R&D operations largely within the U.S. In doing so, it creates and supports thousands of high-wage auto sector jobs.[5]

It should be noted that Mexico also has free trade agreements (FTAs) with 45 countries, giving automakers access to nearly half the global auto market tariff-free. The U.S., on the other hand, has FTAs with 20 countries, representing about nine percent of the

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[4] Moran, T. H., and Oldenski, L., Peterson Institute for International Economics, *How U.S. Investments in Mexico have increased investment and jobs at home. In NAFTA, 20 Years Later.* July 2014

[5] Center for Automotive Research, *NAFTA Briefing: Trade benefits to the automotive industry and the potential consequences of withdrawal from the agreement.* January 2017

global market. Mexico's trade agreements are making it an increasingly important hub to export outside of North America, which is a boon to U.S. suppliers given the significant amount of U.S. content in these Mexico-assembled vehicles. As free trade opens markets abroad for US exports, the US should endeavor to undertake new trade agreements with its key trading partners.

The Alliance stands ready to be a constructive stakeholder as the Administration and Congress move forward with the modernization of NAFTA. NAFTA has created a strong regional bloc and enhanced American competitiveness in this global economy. Modernizing this trade agreement provides a unique opportunity to expand the benefits that this North American partnership has provided to our nation's economy and further expand job creation within the U.S.

Thank you for the consideration of our views.

Sincerely,

Mitch Bainwol
President & CEO
Alliance of Automobile Manufacturers

U.S. Trade Representative
Trade Policy Staff Committee
"Negotiating Objectives Regarding Modernization of
North American Free Trade Agreement with Canada and Mexico"

Written Testimony of Kyle Isakower
Vice President, Regulatory & Economic Policy
The American Petroleum Institute
June 29, 2017

Members of the Trade Policy Staff Committee, thank you for the opportunity to speak with you. My name is Kyle Isakower, and I am Vice President, Regulatory & Economic Policy, with the American Petroleum Institute (API). API is the only national trade association representing all facets of the oil and natural gas industry.

Today's North American energy market, including oil and natural gas, is highly integrated and interdependent, which has been facilitated by the North American Free Trade Agreement (NAFTA).

A critical component of the North American energy market is the U.S. energy renaissance. The United States is now the largest producer of oil and natural gas in the world.[1] According to the EIA, the U.S. is projected to surpass the historical 1970 peak of crude oil production by 2018.[2] Since 2005, natural gas production in the U. S. has increased by 47 percent. Energy flows between the U.S., Canada, and Mexico are multi-directional, as depicted in the graphic from the API *North American Energy* backgrounder.

[1] https://www.eia.gov/beta/international/
[2] 1970 Production Peak - https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCRFPU.S.2&f=A
EIA forecast - https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf

Canada is the top export market for U.S. crude oil, motor gasoline blending components, and kerosene type jet fuel.[3] Mexico is the largest export market for U.S. pipeline natural gas, total refined products, finished motor gasoline, and distillate fuel oil.[4] In addition, significant U.S. crude oil imports from Mexico are manufactured in the U.S. into the refined products that are exported back to Mexico and elsewhere. As for natural gas, in 2016 the United States exported 2.1 trillion cubic feet of natural gas by pipeline to Canada and Mexico.[5] U.S. pipeline capacity for natural gas exports to Mexico has rapidly expanded in the past few years and is expected to nearly double in the next three years.[6] Mexico is also a new market for U.S. LNG, receiving 67 billion cubic feet of natural gas shipped since February 2016.[7]

U.S. refineries also receive crude oil from Canada and Mexico, which supports U.S. jobs. In 2016, 69 U.S. refineries, primarily in the Midwest, processed heavy sour crude oil from Canada.[8] In 2016, twelve (12) U.S. refineries along the Gulf Coast imported crude oil from Mexico,[9] producing refined products for both U.S. and Mexican markets. Since 2000, Mexico's net imports of gasoline and diesel have tripled, most of which are supplied by refineries in the United States.[10]

Canada and Mexico are also significant markets for U.S. investment in oil and natural gas. Mexico's hydrocarbon sector is just now opening to foreign investment for the first time in nearly a century. In Mexico's December 2016 bid round of deepwater blocks, U.S. companies were successful in capturing five of the eight blocks awarded.

[3] https://www.eia.gov/dnav/pet/pet_move_expc_dc_NU.S.-Z00_mbblpd_a.htm
[4] https://www.eia.gov/dnav/pet/pet_move_expc_dc_NU.S.-Z00_mbblpd_a.htm
[5] https://www.eia.gov/dnav/ng/ng_move_expc_s1_a.htm
[6] https://www.eia.gov/todayinenergy/detail.php?id=28972
[7] https://energy.gov/sites/prod/files/2017/05/f34/LNG%20Monthly%202017_1.pdf
[8] https://www.eia.gov/petroleum/imports/browser/#/?e=201701&f=m&s=200901&vs=PET_IMPORTS.WORLD-US-ALL.M
[9] Ibid
[10] International Energy Agency (IEA). 2016. *Mexico Energy Outlook*, p. 23.

As the President, USTR and Congress begin to consider possible changes to the NAFTA, we urge them to keep in mind the important role this agreement has played in fostering the dynamic energy relationship between our countries. As an energy superpower, with the United States as the world's leading producer of oil and natural gas, NAFTA has allowed U.S. oil, natural gas, and derived products to flow to and from both Canada and Mexico. API urges the U.S. Government to retain the following in a modernized NAFTA:

- Zero Tariffs. NAFTA eliminated tariffs for crude oil, gasoline, motor fuel blending stock, distillate fuel oil and kerosene type jet fuel.
- Full Trade Liberalization. NAFTA also liberalizes trade in energy, including the automatic liberalization, per the Natural Gas Act, of U.S. natural gas exports to Canada and Mexico.
- Market Access that is non-discriminatory, providing "national treatment" to US products and investors. NAFTA also plays a critical role for U.S. foreign direct investment in Canada and Mexico.
- Investment Protection. NAFTA's provisions for strong investment protections, which are consistent with U.S. law, are essential for U.S. oil and natural gas investments in Canada and Mexico.

In conclusion, NAFTA supports U.S. jobs and manufacturing in energy, helps to make energy more affordable for American families, enhances energy security and affordable energy for U.S. allies, and enables U.S. companies to compete in Canada and gain opportunities for development in Mexico. We look forward to working with the Administration and Congress to continue the U.S. energy renaissance and our energy linkages to North America and the rest of the world. Thank you, and I would be happy to answer any questions that you may have.

AMERICAN PHOENIX
TRADE ADVISORY SERVICES PLLC
FORGING A NEW CONSENSUS ON TRADE.

EXECUTIVE SUMMARY
August 1, 2017

In the past year, the backlash against globalization has expressed itself through Brexit, the withdrawal of the U.S. from the Trans-Pacific Partnership, and the launch of NAFTA renegotiations. It is clear from the discussions that significant segments of the population do not feel that globalization is working for them.

Both economic theory and empirical evidence support the argument that trade *overall* is beneficial. But theory and practice also support the argument that trade exacerbates inequality.

Modernizing trade agreements is not just about recognizing that we now live in a digital age. It is also about rethinking the terms of these agreements, and making our trade policy more inclusive.

The following principles are designed to modernize policy to achieve that goal:

1. Less is sometimes more.

2. Labor and environment rules not only need to be included but strengthened.

3. Rules of origin need to be tightened – intelligently.

4. Digital trade is vital, but we must be thoughtful about it.

5. Investor-State Dispute Settlement in trade agreements is an anachronism.

6. We need a competitiveness policy.

7. Visionary businesses must lead the charge for a new, more inclusive trade policy.

* * *

These views are elaborated below.

The NAFTA Renegotiation: Seven Ways to Modernize Trade Policy

Mistrust of government and business – the very entities that make our trade policy -- is one of the enduring legacies of the financial crisis. Couple that mistrust with the targeted, devastating effects of trade to certain segments of the population, and the backlash against globalization is not hard to understand.

There now seems to be a new consensus that trade agreements must be modernized. The NAFTA renegotiation is the first step in this direction. However, modernization can take one of two forms. It can continue the past practice of focusing on business and simply update the agreement to provide benefits for new industries, such as digital trade. Alternatively, modernization can recognize the inequality inherent in the approach to date, and seek better balance. Below are seven principles designed to promote the latter.

Less is sometimes more.

The reflexive reaction to the concept of modernizing trade agreements is to expand them.

Less, however, can be more.

As a nation, we have decreasing confidence in the way panels have interpreted provisions in our trade agreements. The latest example is the controversy over the panel decision *In the Matter of Guatemala – Issues Relating to the Obligations under Article 16.2.1(a) of the CAFTA-DR.*, where the United States lost its case against Guatemala over labor rights – despite having proven that Guatemala hasn't lived up to its promises.

Given these concerns, we should reevaluate whether it is a good idea to expand the jurisdiction of the very panels we believe are interpreting the agreements incorrectly. As it is, the Trump Administration is seeking to eliminate the special mechanism that governs unfair trade disputes.

Other reasons to ask ourselves if increasing the girth of these agreements is the best policy:

- *We aren't just plaintiffs – we're also defendants.* We tend to design trade agreements with an overly-optimistic view that we will be attacking other countries' laws, rather than defending on our own. That approach was certainly true, for example, when we were designing the WTO dispute settlement system. Yet we more frequently find ourselves defending our own laws than we had anticipated.

The WTO has been particularly aggressive in striking down our unfair trade laws – despite the fact that preserving them has been a major negotiating priority for the United States since before the GATT was created in 1947. That priority led to the exceptionally strong language in Article VI of the GATT that dumping is to be "condemned."[1] The United States has been, and remains, the global market of last resort. That means other countries will use all available tools to improve their access to our markets, including filing seemingly meritless disputes at the WTO that nevertheless end up succeeding.

In that context, the push for enforceable "WTO-plus" sanitary and phytosanitary rules might be a case of "be careful what you wish for." If our trading partners choose to challenge our laws, we cannot guarantee that those laws won't be found inconsistent with our trade commitments. We can certainly argue that we won't be forced to change those laws, but that argument will ring hollow in the wake of, for example, the repeal of the Country of Origin Labeling law. It may be that big business can absorb an influx of invasive species; but it is less clear that our independent farmers can. During the debate around the NAFTA renegotiation, we have heard over and over again that agriculture has been a big winner. The mantra, including from the agriculture community, is to do no harm. Why risk it?

Similarly, on currency manipulation, rather than having a set of rules that a panel might or might not interpret in a way we consider sound, why not include language affirming our ability to use our countervailing duty laws to address the problem? That approach has the benefit of preserving our ability to tackle currency manipulation -- unilaterally.

- *Provisions don't just restrict other governments – they restrict ours.* Little discussed is the push to include provisions for the purpose of hamstringing *Congress'* flexibility. During the negotiation of the Trans-Pacific Partnership, one of the stumbling blocks was the length of protection for biologic medicines. The U.S. industry pushed for 12 years – the same amount of time as provided for in current U.S. law. Meanwhile, there was a simultaneous debate in the United States about whether the 12-year period should be reduced to seven. Had TPP required 12 years, and entered into force, then any ongoing effort to reduce the U.S. term of protection would have been met with the argument that we'd be in violation of the very provisions we insisted on including in TPP.

  For this reason, highly prescriptive provisions are seen as incursions on sovereignty, and may explain why, during the trade debates of 2015, the Members of the Freedom Caucus were more aligned with Progressives than with other Republicans.

[1] Terry Stewart, *The GATT Uruguay Round: A Negotiating History,* at 1405.

- *Sometimes we're wrong.* We also do not have perfect information, and in our zeal to establish rules for everything, we include provisions that turn out to be ill-advised. As an example: at one point, we considered it a foregone conclusion that capital controls should be prohibited, and thus we began to proscribe them in our trade agreements. Then the financial crisis occurred, and we learned that capital controls can be valid and useful. In recognition of that fact, prohibitions on capital controls were not included in the Trans-Pacific Partnership. But they live on in, for example, the U.S.-Korea trade agreement.[2] We leave too little room to revisit policies that over time become anachronistic.[3]

  Even as to tariffs we have been too idealistic. At the GATT (now WTO), other countries often negotiated a bound rate – the maximum tariff they can impose on imports of a particular good. However, they also have a separate applied rate – the rate they intend to actually impose. The applied rate cannot be higher than the bound rate, but it can be lower. The wriggle room between the two provides policy flexibility for countries to raise their applied rates if the need arises. The United States, by contrast, did not negotiate a lower applied rate, and we thus have no wriggle room. Perhaps our manufacturing base would have fared better, and the backlash against globalization less severe, if we had allowed ourselves more flexibility.

The very fact that NAFTA is being renegotiated after two decades highlights the comparative permanency of the rules in these agreements. They cannot be changed unless the parties all agree. As the scope and detail of agreements grow, these agreements become inflexible, outdated contracts that do not easily respond to the evolution of trade priorities. Instead of taking every regulatory grievance, big or small, and shoehorning it into a trade agreement, we should ask ourselves if it would be better to return to the days when these agreements provided a more general framework of rules under which trade is conducted. Businesses prefer zero risk, to be sure. But the effort to eliminate risk has led to excessively prescriptive agreements that tie regulators' hands and encourage the feeling that these agreements are the product of crony capitalism.

LABOR AND ENVIRONMENT RULES NOT ONLY NEED TO BE INCLUDED BUT STRENGTHENED.

The NAFTA renegotiation highlights how the thinking behind trade policy can evolve. In 1994, labor and environmental provisions were considered

[2] *See* Article 11.7, https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file587_12710.pdf
[3] Indeed, the question of whether total liberalization of trade in financial services has been good policy remains an area that has not been adequately explored. One of the upshots of *This Time is Different*, the famous work exploring centuries of financial crises, is that a rapid influx of capital leads to bubbles that eventually burst – and ensuing crises. It is worth examining whether the financial crises of the late 1990s were in any way linked to trade liberalization in financial services after implementation of WTO commitments. Perhaps not – but the issue should be examined.

inappropriate subjects for a trade agreement at all, let alone to be backed up with binding dispute settlement. Just over a decade later, in 2007, a new consensus emerged, and today Republicans and Democrats alike support enforceable labor and environmental provisions.

However, a disparity remains. To prove a claim under the labor and environmental chapters, the complaining party must demonstrate that the breach affected trade or investment between the parties. At first blush, that condition makes sense. After all, the provisions are part of a trade agreement. But the trade nexus is not applied in other chapters. Take the TPP intellectual property chapter, for example. The chapter requires parties to impose penalties, including *criminal* penalties,[4] for violations of intellectual property rights – whether or not a cross-border transaction is involved.

As it turns out, that condition is pivotal. The United States failed to make its case in the *Guatemala* dispute not because Guatemala complied with the substantive labor rights provisions of the agreement – the panel found otherwise - but because the United States did not prove that Guatemala's breaches occurred in a manner affecting trade or investment between the parties.[5]

Labor and environment provisions aren't included in these agreements because they're "social" issues – they're included because they're *economic* issues. They directly affect the competitiveness of U.S. workers, businesses, goods, and services. It only makes sense that these provisions be subject to the same dispute settlement standards as other provisions in the agreement.

Lastly, these provisions must be enforced. There are breaches of existing trade agreements that would clear the hurdle that proved problematic in *Guatemala.* For example, there are substantiated allegations that Peru is in breach of its obligations under our bilateral trade agreement, particularly with respect to illegal harvesting and export of timber. A shipment of such merchandise made its way to the Port of Houston, where the U.S. government detained it – certainly that ought to meet the requirement that the breach occurred in a manner affecting trade. Yet no dispute has been brought against the Peruvian government to compel compliance.

RULES OF ORIGIN NEED TO BE TIGHTENED – INTELLIGENTLY.

When people talk about rules of origin, they often focus on sensitive products, such as autos, or textiles and apparel.

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[4] *See*, e.g., Article 18.77.

[5] *In the Matter of Guatemala – Issues Relating to the Obligations under Article 16.2.1(a) of the CAFTA-DR,* http://trade.gov/industry/tas/Guatemala%20%20%E2%80%93%20Obligations%20Under%20Article%2016-2-1(a)%20of%20the%20CAFTA-DR%20%20June%2014%202017.pdf, pp. 50 et seq; pp. 156, 167-170.

What people don't talk about is the rules of origin for goods that *aren't* sensitive. Those rules are *even weaker.* President Trump has been dismissed as wrongheaded for claiming that China had a backdoor to TPP. The truth is that China has had a backdoor *to all of our trade agreements in the past two decades*, via weak rules of origin for non-sensitive goods.[6]

Tightening these rules is even more important now that we have binding labor and environmental rules in our trade agreements. These rules are only binding on the parties to the agreement, not to third countries such as China. At present, Korea – a trade agreement partner – is required to meet labor and environmental standards as a condition of enhanced access to our markets, but China is not. If we want to establish the rules of the road for trade, which was a commonly-invoked argument in favor of TPP, why not start by tightening up our rules of origin?

At the same time, we have to be realistic. The United States has comparatively low tariffs on most products. If we require 100% regional content, then companies may not bother using the agreement, and pay the tariff instead, as Professor Helper explained.[7] That certainly won't incentivize American production.

Little work has been done to identify optimal rules of origin. Rather than rushing to complete a renegotiation in a short period of time, negotiators would be well-served to spend some time devising a process for identifying more optimal rules of origin that would drive sourcing in the region.

In this vein, calls for eliminating duty drawback restrictions are at odds with the goal of incentivizing regional sourcing. Advocates for eliminating these restrictions themselves state that the upshot of the drawback restrictions is to encourage manufacturing to move from non-NAFTA parties to NAFTA parties. In that context, it seems the drawback rules are fulfilling their intended goal.

DIGITAL TRADE IS IMPORTANT, BUT WE MUST BE THOUGHTFUL ABOUT IT.

Much of the emphasis on modernizing NAFTA has focused on digital trade, including issues around forced localization and cross-border data flows. Indeed, digital trade

[6] Rules of origin are technically complex. Many rules do not involve a percentage content requirement but rather depend on whether an appropriate shift has occurred from one classification in the Harmonized Tariff Schedule to another. A rule of origin permitting a shift from one subheading to another is considered a lenient rule of origin that facilitates a much greater amount of third-party content than a rule requiring a change from one chapter to another. A perusal of the NAFTA rules origin highlights that many of these lenient rules exist today.

[7] Further, if the rate applicable to all our trading partners (the "MFN" rate) is zero, then a lenient rule of origin is not problematic. However, if the MFN rate is positive, then lenient rules of origin create a free-rider problem.

– not manufacturing – was the first sector listed in the letter Ambassador Lighthizer sent to Congress notifying the NAFTA renegotiation.[8]

There is no need to repeat the discussion here. A few points, however, are raised less often, if at all:

- Are we at risk of repeating the mistakes we made with manufacturing? We were pioneers in manufacturing and assumed that open markets would always operate to our benefit. As manufacturing shifted abroad, we have been left with few tools to replace the lost jobs, and the frustration stemming from job loss has fueled the backlash against globalization.

- Are there legitimate reasons to require data localization? As one example, Chinese companies listed on U.S. stock exchanges must allow U.S. audit inspectors to examine the company's audit workpapers. The Chinese don't allow those inspectors to do so. The United States could reasonably require the workpapers to be kept here, rather than in China.

- What will we do with 3D printing? There is little discussion about additive manufacturing, including what appropriate rules of origin might be in such circumstances.

Although the Administration has indicated it believes it can wrap up the negotiations quickly, previous Administrations have had similar ambitions, only to be frustrated by the exponential complexity of modern trade negotiations and the inability of the United States to dictate terms.

If indeed the parties want to claim victory before Mexico's election season begins in earnest, then they may choose to conclude a digital update to NAFTA – one that would not necessarily require implementing legislation in the United States. If so, then the Administration's NAFTA modernization would be of the kind that simply follows the previous line, rather than fundamentally improving the balance in favor of those who have lost more than they have won from globalization.

INVESTOR-STATE DISPUTE SETTLEMENT IN TRADE AGREEMENTS IS AN ANACHRONISM.

Investor-state dispute settlement may have made a certain amount of sense when it was initially included in investment treaties. Those treaties had no other mechanism to resolve conflicts, and the risk of expropriation in some countries was real.

[8] https://ustr.gov/sites/default/files/files/Press/Releases/NAFTA%20Notification.pdf

The world, however, has changed. Today, the excesses of ISDS are a common point of discussion. One of the witnesses at the hearing characterized ISDS as an important mechanism to keep countries honest. Unfortunately, threats to use ISDS to keep a country "honest" are in too many instances threats to prevent a country from regulating in the public interest.

Indeed, even companies that don't have deep pockets now reportedly benefit from "angel" investors who will fund the litigation: hedge funds have gotten into the business of financing claims as investment vehicles, subsidizing claimants who might not otherwise have the means to wage a battle of attrition against a foreign sovereign government.[9]

The debate has reached the point where the pro-trade Economist is scratching its head:

> If you wanted to convince the public that international trade agreements are a way to let multinational companies get rich at the expense of ordinary people, this is what you would do: give foreign firms a special right to apply to a secretive tribunal of highly paid corporate lawyers for compensation whenever a government passes a law to, say, discourage smoking, protect the environment or prevent a nuclear catastrophe. Yet that is precisely what thousands of trade and investment treaties over the past half century have done, through a process known as "investor-state dispute settlement", or ISDS.[10]

In fact, the Economist went so far as to advocate that we should simply rely on state-to-state dispute settlement to solve these types of conflicts.[11] And that is the main reason ISDS in trade agreements makes little sense. These agreements already have dispute settlement mechanisms, and thus it is not necessary to give investors special access.

Labor unions and environmental groups oppose ISDS – as does the Cato Institute.[12] The AFL-CIO and the Cato Institute do not consistently share policy positions; yet they agree that ISDS should not be part of our trade agreements.

WE NEED A COMPETITIVENESS POLICY.

[9] http://www.nakedcapitalism.com/2017/04/investor-state-dispute-settlement-isds-suits-become-favored-hedge-fund-investment.html
[10] *The Arbitration Game*, October 11th, 2014, https://www.economist.com/news/finance-and-economics/21623756-governments-are-souring-treaties-protect-foreign-investors-arbitration
[11] *A Better Way to Arbitrate*, October 11, 2014. https://www.economist.com/news/leaders/21623674-protections-foreign-investors-are-not-horror-critics-claim-they-could-be-improved
[12] Dan Ikenson, *A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement*, https://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state

Important as it is to have labor and environmental provisions, and to recalibrate the rules of origin, these provisions will not, by themselves, bring jobs back to the United States. The labor and environmental rules would dissuade race-to-the-bottom offshoring, but they won't necessarily lead companies to onshore in the United States. Rules of origin incentivize *regional* sourcing, but that sourcing could be in Mexico or Canada – not necessarily the United States.

When many think of trade agreements, they assume that Trade Adjustment Assistance addresses any job losses under our agreements. TAA is an excellent program for helping workers from an individual factory retrain to become something else – a nurse, for example, or a software programmer. But TAA was never intended to address the kind of crippling job loss that has ravaged the Midwest as entire supply chains have been offshored, or to replace the textile and apparel industry that once flourished in North Carolina. As a country, we made the decision to open our markets. But, as a country, we have no answer for the consequences that have been visited on entire regional economies.

It doesn't have to be that way. In light of German workers' ability to weather the financial crisis comparatively well, there are new questions about whether we should explore Germany's apprenticeship system, or something similar. Other ideas include reexamining the way we evaluate foreign investment, and to consider it in light of its effect on competitiveness.

There are reasons other than trade agreements to take a look at how we can improve our competitiveness. There's no need to debate whether trade or automation causes more job loss – they both do, and right now we have a solution for neither.

VISIONARY BUSINESSES WILL LEAD THE CHARGE FOR A NEW, MORE INCLUSIVE TRADE POLICY.

Businesses that like trade agreements and want more of them should be concerned that, absent major changes in process and substance, the opposition that sank TPP may sink future agreements as well. The financial crisis fundamentally changed the way Americans view both government and big business. Polls indicate that people trust business and elected officials *least*.[13] Yet our trade policies have to date been predominantly created by collaboration between government and big business.

The fight over TPP, and the Brexit vote, represent a watershed, the embodiment of the frustration that the middle and working class have had with global economic policy. The response to this frustration can be, as it has been, to dismiss opponents as unfamiliar with even the most basic principles of "Econ 101." But this response is facile. Paul Krugman didn't win a Nobel Prize in Economics on the basis of freshman

[13] *See, e.g.,* http://www.pewresearch.org/fact-tank/2016/10/18/most-americans-trust-the-military-and-scientists-to-act-in-the-publics-interest/

trade theory, where variables are suspended and information and markets are presumed to be perfect. Economists such as David Autor at MIT are challenging the assumptions that traditional approaches have been accurate predictors of economic change:

> I think if we had realized how traumatic the pace of change would have been we would have at a minimum had much better policies in place. [14]

Advocates of trade must be at the forefront of seeking a more inclusive approach to our policy. At the hearing, Mr. Linebarger of Cummins stood out, expressly supporting not just enforceable labor and environmental standards, but actual enforcement of those standards. At the same time, those are policies that have been in place since 2007. In light of the backlash against globalization, it seems clear that still more must be done.

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American Phoenix has submitted these comments on its own behalf.

[14] http://freakonomics.com/podcast/china-eat-americas-jobs/

NAFTA negotiations: An opportunity for precedent-setting e-commerce rules

Claude Barfield | June 30, 2017 | TechPolicyDaily.com

Of all the negative fallout from the Trump administration's withdrawal from the Trans-Pacific Partnership (TPP) agreement, clearly one of the most destructive was the demise of the precedent-setting new trade rules for e-commerce. In any otherwise cautious, conservative analysis of the TPP, the US International Trade Commission had agreed with outside observers that the "E-commerce and other digital trade-related provisions are the most transformative measures in the agreement." The commission also predicted that the e-commerce rules would become a "template for future US and global trade agreements."

The timing and substance of the proposed TPP e-commerce trade regime was of key importance. As I noted in these pages at the time: "Legal principles and rules for the internet are still in their infancy. If successfully ratified by the 12 members of the TPP, the regime created for e-commerce, international competition, and regulation will inevitably form an important baseline for future international law and custom." Other nations and trading entities — notably China and the European Union — with different views regarding digital trade rules stood (and stand) ready to advance their own competing agendas.

So where are we now in the face of President Trump's foolish destruction of the original 12-member TPP? The other 11 members of the TPP — as I've strongly advocated for — will possibly come together to form a rump transpacific agreement that would include the groundbreaking e-commerce trade rules. But those negotiations, should they become serious, will take months if not years to complete.

An opportunity with NAFTA

At this point, the upcoming renegotiation of the North American Free Trade Agreement (NAFTA) represents the best, and most timely, opportunity for the US to advance the vital national interest of creating a truly liberal, technically sophisticated e-commerce trading framework. And while Trump officials on trade can often believe "six impossible things before breakfast," a la the White Queen in Alice in Wonderland, they do seem to understand the signal importance of building a new e-commerce regime as part of the imminent negotiations with Mexico and Canada. Secretary of Commerce Wilbur Ross and US Trade Representative Robert Lighthizer have both pledged to give e-commerce top priority when the formal negotiations begin later this summer.

U.S. Secretary of Agriculture Sonny Perdue (C) along with counterparts, Agriculture Minister for Canada Lawrence MacAulay (2nd R) and the Secretary of Agriculture for Mexico José Calzada Rovirosa (R) observe ship-to-shore operations. Reuters.

That both Canada and Mexico agreed to key e-commerce rules in the TPP negotiations, the digital trade provisions ratified in that proposed agreement should provide the baseline for the upcoming NAFTA negotiations. The novel e-commerce provisions include the following TPP foundational elements:

- Prohibits restrictions on cross-border data flows and data localization requirements;

- Prohibits forced disclosure of source codes;
- Prohibits forced technology transfer;
- Provides that no TPP members can enact customs duties on electronic transmissions;
- Requires TPP members to enact online consumer protection laws;
- Indirectly, through the TPP services agreement, provide that future internet services be automatically granted national treatment (foreign providers equal treatment with domestic service providers); and
- Requires TPP members to enact legislation providing criminal penalties for trade secret cybertheft.

Some US corporations and trade observers are pushing for rules that go beyond TPP provisions. Among the suggestions put forward are: mandating that Mexico join the World Trade Organization Information Technology Agreement, requiring Canada to make certain changes in its domestic intellectual property laws, and adding additional safeguards against liability for internet service providers. Certainly, the US has the right to advance additional proposals, with the following two notes of caution.

First, the top priority for the US must be to achieve the core principles described above in the new NAFTA agreement: Pressing too hard for additional US "offensive" trade negotiating objectives should not be allowed to jeopardize the basic TPP commitments. And second, US negotiators will quickly be made aware that both Mexico and Canada have stated that "nothing is free" — that is, if the US introduces additional priorities, it must be prepared to pay for them with concessions regarding Mexican or Canadian additional requirements.

In sum, with the NAFTA negotiations, the Trump administration has the opportunity to regain at least some of the initiative for a future pro-market digital trade regime that was lost when it withdrew from the TPP. Hopefully, it won't be deflected from this strategic goal.

Claude Barfield is a resident scholar in economic policy studies at the American Enterprise Institute.

Where are we now on NAFTA

Claude Barfield | June 27, 2017 | USKI Washington Review

The trilateral NAFTA renegotiation process has now entered a crucial phase. The Trump administration's mid-May notification to Congress started the NAFTA renegotiation clock ticking, and under US law formal talks can begin after 90 days (mid-August). Mexico and Canada have both signaled that they are ready to move ahead with dispatch. Given the highly erratic statements and actions of the Trump administration, and continuing divisions within the White House and the Republican party over trade policy, it is impossible to know what the US will put on the table—or how open it will be to compromise on its demands or the counter proposals from Mexico and Canada. That being established, what follows are potential scenarios for the negotiations.

Ultimately, the smartest course for the Trump trade team—admittedly entailing dissembling and fancy rhetorical footwork—would be to adopt as a base template many of the liberalizing provisions of the Trans-Pacific Partnership agreement (from which it had foolishly withdrawn). In essence, the TPP constituted the "modernizing" of NAFTA that the forthcoming trilateral negotiations aim to achieve. Such a course, whatever its hypocrisy, would have the political virtue of starting with core issues that all three countries had formally settled. Among the major TPP advances that could be incorporated: tariff reductions (18,000); E-commerce; labor and the environment; state-owned-enterprises (SOEs); intellectual property (biologic patents); services; and promotion of small and medium-sized businesses through trade facilitation measures.

One potentially new area for advanced liberalization, of great importance to all three countries, is the energy sector. With Mexico's unilateral energy reforms, and the move toward greater energy independence in both the US and Canada, the time may be ripe for the creation of a North American market in energy production and distribution.

The greatest danger to accommodation among the three trading partners is overreach by the Trump administration. If the President and his trade adviser insist on some of their most "illiberal" and retrograde proposals, Mexico, in particular, and Canada may be forced politically to resist fiercely.

Examples of such deal killers would be: (1) a trade balance chapter that would allow US to impose penalties for continued or increased bilateral trade deficits; (2) refusal of US to accept current NAFTA Chapter 19 which grants special appeals for trade remedies cases; (3) US insistence on a new currency manipulation chapter with legal penalties; (4) attempt to resolve ongoing separate issues such as Canadian softwood lumber and dairy management through NAFTA; (5) refusal to exempt Mexico and Canada from any future draconian "Buy America" legislation passed by the US Congress.

The TPP-based strategy described above would give the Trump administration a clear shot at an important political victory on trade and, indeed, enhance the president's promise of increased economic growth. Unfortunately, at this writing, the chances for such an outcome are slim. More likely, we will see a protracted, difficult—and possibly corrosive—NAFTA renegotiation over the coming year (or longer).

Claude Barfield is a resident scholar in economic policy studies at the American Enterprise Institute.

**ADVAMED PROPOSALS
FOR NAFTA RENEGOTIATION**

Overview

AdvaMed supports the North American Free Trade Agreement (NAFTA) and believes that it is an important and foundational free trade agreement (FTA) for increasing U.S. economic growth and well-paying U.S. jobs. Maintaining the NAFTA's market access should be the overriding U.S. objective in a renegotiation.

However, since the Administration has announced its intention to modernize the NAFTA, we believe improvements can be made that will support good, high-paying research and manufacturing jobs in the United States – helping to address the U.S. trade deficit in medical devices with Mexico. While NAFTA was the most comprehensive, cutting-edge U.S. FTA when it was negotiated, subsequent U.S. FTAs included some important improvements and enhancements. Every FTA the United States has negotiated has striven to set higher standards and cover more issues important to U.S. stakeholders. We believe strongly that this process of improvements should continue for FTAs – whether new or renegotiated, including NAFTA. Each successful FTA should include advancements that can be viewed as precedents for subsequent FTA templates.

In that same vein, we recommend that the NAFTA remain a trilateral FTA. After over twenty years, supply chains have developed that rely on the ability to achieve a dynamic interaction among the NAFTA partners.

Congress provided the President authority to negotiate trade agreements and listed specific objectives. AdvaMed supported Trade Promotion Authority (TPA). The negotiating objectives in TPA should drive the NAFTA negotiations, including opposition to price controls.

In terms of timing, we hope the renegotiation can be concluded no later than mid-2018. While we acknowledge that this is a very rapid pace for an FTA negotiation, we believe that ensuring continuity and stability is very important. By using the best of existing or proposed provisions in other FTAs as the foundation for modernizing NAFTA, we think this timetable can be achieved.

Outlined below are provisions which the medical technology industry requests be included in a renegotiated NAFTA. These provisions are important to the U.S. medical device industry's ability to grow, improve patients' lives, make positive contributions to the U.S. economy, and create and sustain jobs in the United States.

The Medical Technology Industry

The medical technology industry, an American success story and a highly competitive global industry, is responsible directly and indirectly for nearly 2 million high-paying U.S. jobs and 9,800 manufacturing facilities, across the 50 states and around the world. Our industry's wages are an average of 30% above those of other manufacturing jobs. We are a research intensive industry, with some members spending as much as 20 percent of revenue on R&D to provide patients the most innovative technologies and to compete in a highly competitive global market.

Our industry is the clear world leader and is one of the few U.S. manufacturing industries that has consistently run a U.S. trade surplus, with 2016 exports of almost $51 billion and imports approaching $50.3 billion. The industry also has substantial trade with our NAFTA partners. These flows represent a dramatic increase in trade with both Canada and Mexico since 1994, when U.S. exports to Mexico were about $382 million, and U.S. imports were $425 million; U.S. exports to Canada were $1 billion, and U.S. imports were $166 million.

The U.S. medical technology industry is global in scope – both in terms of our supply chain and the patients we serve. Our goal is to provide the patient – whether in the United States or in a foreign country – the best and highest quality product to treat his/her individual condition. The industry's products, regardless of origin, are subject to internationally recognized quality processes and standards, including those supported by the U.S. Food and Drug Administration.

The value of medical technology to patients has increased dramatically in terms of the range of products available to diagnose and treat diseases and the vastly improved outcomes that patients experience; indeed, many medical technologies available today were not even invented, or were in a much more primitive stage, during the NAFTA negotiations. (AdvaMed's website www.LifeChangingInnovation.org provides many concrete examples.) In the highly competitive U.S. healthcare market, since 1992 the share of medical device spending as a percent of U.S. healthcare costs has been essentially flat at about 6.0 percent.

The U.S. medical technology industry has been able to achieve these remarkable results in part due to our global supply chain. AdvaMed members source from thousands of suppliers spread around the United States and abroad. This global sourcing model enables us to manufacture efficiently and serve patients effectively.

AdvaMed NAFTA Proposals

Import Tariffs

As a result of NAFTA, U.S. exports of medical technology to Mexico and Canada enjoys duty free treatment, and vice versa. Most medical devices entering the U.S. from Mexico and all other WTO members encounter zero duties on a Most Favored Nation (MFN) basis. AdvaMed opposes any change in this market access provision.

Rules of Origin

The NAFTA rules of origin for medical technology are based on an approach that may be outdated, especially since the medical technology industry has become much more diverse and sophisticated since the NAFTA negotiation. These rules are among the tightest of any FTA worldwide. As noted above, there are medical technologies on the market today that were not even invented by the conclusion of the NAFTA. The U.S. medical technology industry relies on a wide-ranging and complex supply chain to achieve efficiencies.

We oppose "tightening" the rules of origin criteria for medical technology products. More stringent criteria coupled with strict application of content requirements, including in public hospital tenders for medical devices for example, can adversely affect a company's ability to sell products in the NAFTA markets. Stricter criteria could be particularly problematic for companies that source multi-component products from a combination of different countries to be manufactured as final products in the NAFTA region. This change would have the potential to undermine the sale of products containing U.S. content in Mexico, as well as the U.S. jobs that are responsible for manufacturing this content.

In addition, more stringent rules of origin requirements have the potential to impose significant compliance costs in the industry, including customs fees. Such costs might outweigh NAFTA benefits, leading to manufacturers foregoing any tariff preferences – especially for the many products that are MFN duty free.

Services

Parties to the NAFTA commit to national treatment and schedule their cross-border services commitments on "negative list" approach – i.e., the sector is assumed to be covered unless it is listed for exclusion under a "non-conforming measure (NCM). AdvaMed supports this system, as it ensures the maximum liberalization over time. (AdvaMed members recognize that government procurement provisions are treated in a separate chapter of NAFTA.)

However, all of the NAFTA parties exclude medical services from their services commitments (as well as in the WTO) if the service is delivered as a social service for public purposes. This means that U.S. medical technology companies' protection under NAFTA's national treatment obligations is subject to debate: if they sell their healthcare services: (1) from the United States into the other NAFTA parties; (2) to a Mexican or Canadian in the United States; or (3) to a Mexican or Canadian who has a presence in Mexico or Canada.

Many medical technology firms provide some services with the sale of their products. For example, firms selling cardio vascular or orthopedic implants train physicians on the latest surgical techniques. Capital equipment manufacturers maintain and repair and/or train local representatives. Some firms provide credit financing for purchases of their products. These services are "traditional" in the sense that they are provided as part of the sale of the product. Temporary entry of business people would also appear to be under the Parties' NCMs, if the services are for "public purpose."

An increasing number of U.S. medical technology companies are combining the provision of a range of services and the sale of products. This "new" model involves the medical technology company providing services, some unrelated to the sale of a specific product (and which the company did not manufacture), with the objective of improving the efficiency of the hospital setting. We can provide an indicative list of the services companies might provide.

NAFTA provisions should ensure that services can be provided under both the "traditional" and "new" models. We have proposed to U.S. negotiators some possible methods.

Technical Barriers to Trade (TBT)

To address the challenge of non-tariff trade barriers, the NAFTA should contain provisions that build on the WTO TBT Agreement. These improvements should ensure that standards-setting, conformity assessment procedures, and technical regulations are developed in a fair and transparent manner, with opportunities for "bottom-up" participation by stakeholders.

Though not NAFTA specific, also we recommend that U.S trade agreements prohibit bans on the importation of refurbished or remanufactured medical equipment, at least for equipment that meet the specifications of the original manufacturer. This provision could serve as a template for future FTAs.

TBT Medical Technology Annex

In as much as the NAFTA is likely to provide precedent for future FTAs, we should seek a separate medical technology annex with the following regulatory provisions that would call on the parties to: (1) improve the alignment of medical device regulations; (2) consider relevant internationally-developed guidance documents when developing or implementing laws and regulations on the approval of medical devices; (3) use a risk-based approach that distinguishes between classes of medical devices; (4) base approvals solely on information related to safety, effectiveness, labeling, and design/manufacturing quality (and not pricing requirements); (5)n administer the approval process in a timely, reasonable, objective, transparent, and impartial manner; and (6) allow decisions to be subject to an appeal process.

Good Regulatory Practices

We encourage the U.S. proposal to include a separate section which applies broadly to the development of regulations and other governmental decisions across the economy. This approach, similar to the U.S. Administrative Procedures Act, is designed to promote good governance through greater transparency, participation, and accountability in the development of regulations and other government decisions.

These provisions would go beyond NAFTA to require governments to promptly publish or update laws, regulations, administrative rulings of general application, and other procedures that benefit market access, trade and investment. They would also provide for policies that increase regulatory accountability and require evidence-based decision making. They should ensure opportunities for stakeholder comment on measures – and serious consideration of those comments by regulators – before they are adopted and finalized. Including such provisions in NAFTA would be an excellent foundation for other U.S. FTAs. We also believe that harmonization of good regulatory practices would improve administrative procedures that conduct intergovernmental coordination of rulemaking activity and impact assessment.

To be clear, these provisions are important to the medical technology industry because the development of regulations is always a work-in-progress in NAFTA members, as well as in most countries around the world. Having a sound foundation of good regulatory practices greatly helps structure improved regulatory systems for medical technology.

As an example of a specific regulatory convergence issue, we urge that labeling regulations be clear, concise and allow consumers to receive meaningful information about the safe use of products, while avoiding unnecessary requirements that provide little value to consumers. Labeling statements and contents should be aligned as closely as possible so consistent labeling can be used.

Regulatory Conformity Assessment

Medical technology products must be evaluated for safety and effectiveness in each of the three countries. Each country has a regulatory authority that oversees these requirements – U.S. FDA, Health Canada, and COFEPRIS. We believe all regulatory authorities could benefit from closer regulatory harmonization, which would reduce regulatory redundancy and industry's costs.

The United States and Canada are participating in a Medical Device Single Audit Program (MDSAP). AdvaMed supports the MDSAP program, as it is being implemented in the context of the International Medical Device Regulators' Forum, and believes it should be in NAFTA.

We believe that the three NAFTA partners could go further and adopt a mutual recognition agreement, allowing mutual recognition of their respective approval procedures. The ultimate objective should be a single North American market, in which a medical device approved in one of the NAFTA partners are accepted in all. Recognizing that Health Canada and U.S.

Transparency and Procedure Fairness (TPF)

Governments make decisions on whether to pay for specific products and, if so, the reimbursement levels for those products – i.e., the price the government is willing to pay, either directly or to the providers – for a specific device. In many cases, the government's decision is not based on objective criteria but simply on a perceived need to save funds by cutting prices. Such decisions can adversely impact patient access and companies' ability to sell the product.

The purpose of a TPF chapter for medical technology – like the provisions in KORUS – is to give the manufacturer the opportunity to understand the basis for a reimbursement decision and to provide evidence to the government body making the reimbursement decision. Consistent with previous AdvaMed positions, we should seek provisions that are designed to provide transparency to the process by which national (but not state or provincial) health care authorities in the NAFTA countries set reimbursement rates for medical devices at the national level.

The NAFTA should also include as an objective that the value of the medical technology be taken into account and that market forces would be allowed to influence prices – i.e., similar to KORUS.. However, the agreement would not require that covered products be reimbursed or that the reimbursement be set at specific levels.

The procedures should require that: (1) countries act within a reasonable time period in making reimbursement decisions; (2) the rules they use to make these decisions are made public; (3)

applicants can provide comments at appropriate times in the decision process; (4) the basis for decisions is made available to the applicants; and (5) an appeals process be available.

Government Procurement

AdvaMed supports a government procurement (GP) chapter that opens further the Mexican and Canadian markets. Both countries have government-run healthcare systems, with over half of patients treated in public facilities. Having access to procurement by these hospitals is an extremely important market access issue and can help improve U.S. exports. We also believe improved access is necessary not only for the NAFTA but also as a sound precedent for future U.S. FTAs. In this respect, the NAFTA should ensure that healthcare related entities are covered, and that medical technology goods and services supplied to these entities are not excluded. A GP chapter should be based on the most recent U.S. FTAs – so that NAFTA is updated accordingly

A specific barrier our manufacturers face is that Mexico bans the procurement of refurbished medical equipment within its public hospitals. We recommend that this ban be lifted and all equipment that can meet the specifications of the original manufacturer should be admitted.

We believe the NAFTA tendering procedures, which are generally good, could be updated to incorporate WTO GPA provisions and on the basis of new World Bank procurement principles.

Investment

The NAFTA should include investment provisions consistent with newer U.S. FTAs. While there are no known cases of an AdvaMed member encountering investment restrictions or discrimination in Canada or Mexico, updated provisions – consistent with new FTAs – would set a good precedent going forward.

Intellectual Property (IP) Rights

AdvaMed supports strong IP protection for patents, copyright, and trade secrets. The IP chapter should be updated and clarified to reflect improvements in scope and coverage contained in later U.S. FTAs since NAFTA was concluded.

State Owned Enterprises

While members have not complained about monopolies or state-owned enterprises (SOEs) in Canada or Mexico, a new NAFTA should include provisions that address potential abuse – especially with an eye to China. In general SOEs should not be allowed to discriminate on the basis of nationality of the enterprise or product (except for purposes of government procurement, which is covered separately). Also, the NAFTA provisions should also apply to sub-central SOEs (again, considering provinces in China).

Electronic Data Flows and Privacy

Medical technology firms understand the sensitivity of private data and the need to protect privacy. In addition, confidential clinical data and proprietary business information must be protected. At the same time, the most efficient means to provide expert advice (either on the medical technology itself or directly to patients) might be by sending data across borders – which is especially the case as healthcare relies more on "big data" and medical devices and diagnostics become even more connected to the cloud. The balance between smooth flow of data and protection of personal privacy should be struck in a way that allows efficiency and patient-centered outcomes to be realized in NAFTA.

Anti-Corruption

AdvaMed has a strong code that delineates the practices members should follow when working with healthcare providers. The NAFTA should contain robust and detailed provisions to combat corruption and support the rule of law. These provisions should discourage corruption, including through enforcement of domestic anticorruption laws and regulations, as well as through international anticorruption efforts. They should also call for the establishment of codes of conduct to promote high ethical standards among public officials – consistent with AdvaMed's work in this area.

Small and Medium-sized Enterprises (SMEs)

About three-quarters of AdvaMed members are SMEs, and an even larger share of the industry in the United States would be so classified. The NAFTA should include a chapter that is specifically designed to address issues that create particular challenges for SMEs.

Conclusion

AdvaMed members support the NAFTA and want to see this important agreement continue. Lower trade barriers, whether in the United States or in other countries, help U.S. medical technology manufactures source most efficiently, provide patients high quality products, and compete effectively in a highly competitive global market. We have provided some proposals for U.S. Government consideration as it seeks to modernize the NAFTA. If adopted, these proposals would have a positive impact on the U.S. trade balance in medical technology with Mexico and support good, high-paying research and manufacturing jobs in the United States. We would welcome the opportunity to provide additional information.

AcuityBrands.
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August 1, 2017

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
1102 Longworth HOB
Washington D.C., 20515

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
1139E Longworth HOB
Washington D.C., 20515

Dear Chairman Brady and Ranking Member Neal,

Acuity Brands appreciates this opportunity to provide comments to the Committee regarding the pending renegotiation of the North American Free Trade Agreement ("NAFTA"). As a leading manufacturer of lighting and building management solutions for commercial and residential applications both in the U.S. and around the world, Acuity depends on NAFTA for continued growth—including our ability to offer more good-paying jobs to hard-working Americans. While we appreciate that NAFTA may be due for some technical modifications and modernizations—some of which Acuity Brands fully supports, as discussed below—for the reasons provided herein, Acuity Brands urges Congress to "do no harm" by refraining from supporting substantial changes to NAFTA, which would undermine the competitiveness of Acuity's U.S. employment base and NAFTA's fundamental free trade structure.

I. BACKGROUND

Acuity Brands, Inc. (NYSE: AYI) is the North American market leader and one of the world's foremost manufacturers of lighting and controls equipment. Headquartered in Atlanta, Georgia, Acuity currently has over 4,300 employees in the U.S. and has operations throughout North America and across the globe. Acuity's fiscal year 2016 net sales were $3.3 billion.

Acuity's lighting and building management solutions vary from individual devices to intelligent network systems. Individual devices include luminaires, lighting controls, lighting components, controllers for various building systems (including HVAC, lighting, shades, and access control), power supplies, and prismatic skylights. Intelligent network systems, meanwhile, can optimize energy efficiency and comfort, as well as enhance the occupant experience for various indoor and outdoor applications, all while reducing operating costs. Additionally, Acuity continues to expand its solutions portfolio, including software and services, to enable data analytics that support the "Internet of Things" and the advancement of smart buildings, smart cities, and the smart grid.

Acuity is also focused on creating American jobs and finding efficiencies and cost-savings for American businesses and consumers. Specifically, our U.S. presence boasts:

- U.S. regional production centers with over 700 employees across five states (IL, CA, PA, TX, GA);
- Five additional manufacturing locations located in IN, OH, CA, IL, MN that have over 2,200 employees; and
- Additional production capability being added in our Crawfordsville, IN production facility.

Our century of tradition, our current financial strength, and our commitment to a sustainable future provide us with an opportunity to grow, innovate, and further capture the rapidly growing market opportunities before us. In order to do so, however, Acuity relies upon the existing U.S. trade regime, and particularly NAFTA, to continue growing our business.

II. NAFTA BENEFITS

Since NAFTA went into effect in 1994, U.S. trade flows with Canada and Mexico have tripled, reaching the $1 trillion threshold in 2011. In addition, in 2016, Canada and Mexico accounted for more than one-third of U.S. exports. Acuity Brands—along with countless other U.S. businesses—has benefitted from this expansion in trade relations and has substantially increased the number of the U.S. employees working for Acuity since the mid 1990's when NAFTA was instituted. These positions are good-paying jobs that focus on manufacturing technology, engineering, R&D, and customer engagement. NAFTA has been essential to the proliferation of these jobs; Acuity has been able to invest in the U.S. due to supply chain efficiencies created by NAFTA that help to streamline costs and operations between our U.S. and international facilities.

For instance, Acuity Brands has benefitted significantly from the existing tariff shift rules under NAFTA, which allow our Mexican facilities to support enhanced investment in U.S. operations. Specifically, tariff shift rules help us to streamline our manufacturing processes and avoid paying costly duties when we send products between our facilities in Mexico and the U.S. This allows Acuity to be competitive in the marketplace and invest further in U.S. facilities and jobs, all while passing the benefit of duty savings to our customers.

Given that manufacturing businesses are highly dependent on, and sensitive to, labor and supply chain costs, changes to tariff shift rules and corresponding increases in tariffs could have a devastating impact on Acuity, the manufacturing sector in general, and consumers. For example, increased tariffs or new import quotas could spark retaliation from other countries, resulting in fewer purchases of American-made products abroad, which is harmful to American workers.

Additionally, if Mexico is excessively burdened with increased tariffs under a renegotiation, it is likely that the manufacturing sector will seek out the lowest-cost alternative (in terms of labor, tariffs, and supply chain efficiencies), which may shift manufacturing activity to other countries, rather than increasing U.S. jobs. In many cases, new facilities could be located in countries where it does not make sense for them to work so closely with American facilities. This would disincentivize further U.S. expansion, increase consumer costs, and lead to loss of future U.S. jobs. It is critical that these good-paying jobs remain in the U.S. so that workers across the country can support their families.

Moreover, as NAFTA has allowed Acuity to more easily shift goods cross-border, Acuity's Mexico facilities have been able to specialize in different production capabilities than the U.S. facilities. Acuity's Mexico facilities produce high-volume products and parts, which supports and enhances the effectiveness of our U.S. labor force. For example, providing high-volume finished goods from Mexico enables Acuity Brands to invest in our U.S. regional production centers, whose personnel includes nearly 700 employees across five states. Those centers also support five additional manufacturing locations that have over 2,200 employees in total. Without NAFTA, such investment in U.S. facilities would be significantly more difficult, if not impossible.

Furthermore, the supply chain efficiencies created by NAFTA have allowed us to bring products to the marketplace at lower initial cost, which benefits Acuity's customers and allows Acuity's employee base to be more competitive in the U.S. Specifically, these efficiencies enable us to utilize the highest quality components in our product solutions and to effectively compete with imports from other parts of the globe (while maintaining the marketplace's price expectations). Acuity Brands estimates that NAFTA in its current form allows us to offer consumer products at a cost that is competitive world-wide. As such, significant changes to the existing agreement could cause consumer costs to increase.

This would harm not only residential customers, but also industry consumers—including the building and infrastructure industries (roadways, bridges, underpasses, parks, education facilities, etc.), which Acuity supplies with timely, high-quality lighting products. As such, U.S. building stock and overall efficiency goals could also be harmed by major changes to the agreement. Without the benefit of NAFTA we would be looking at lower-cost manufacturing locations to build our products and passing those duties on to the consumer, thus slowing down the building and infrastructure markets due to increased costs or investing in increased automation.

Finally, with one of the highest corporate tax rates and most complex regulatory regimes in the world, operating in the U.S. presents a challenging landscape for businesses. In the face of these unique U.S.-based challenges, participation in free trade agreements such as NAFTA is critical to help American companies, such as Acuity Brands, compete internationally.

III. SUGGESTED IMPROVEMENTS

In light of the foregoing, the U.S.'s first and most important priority in the NAFTA renegotiation should be to do no harm to our current manufacturing industrial base. NAFTA is already working—and working well from our perspective—and any renegotiation that compromises free trade with Mexico and Canada would erode manufacturing efficiency and may not result in benefits for the U.S. workforce.

However, as noted above, we do understand the desire to modify some more technical aspects of the agreement to ensure it is updated and as beneficial as possible to U.S. interests. To those ends, we strongly support simplifying burdensome documentation requirements under NAFTA and taking into account technological advances that would allow for further use of electronic documentation.

Specifically, we recommend that the documentation burden of obtaining Manufacturer's Affidavits from suppliers every year should be moved to every 2-3 years. The requirement under NAFTA that requires a supplier to provide notification if a product is no longer eligible should be able to support the move to a 2-3 year supplier solicitation process. We also suggest that the requirement for original blue ink-signed NAFTA certificates of origin be eliminated and instead replaced by electronic signature and transmission of signed NAFTA forms, and that a company's corporate location be allowed to be used as the Exporter or Importer name and address on NAFTA forms without the tax ID number requirement. This will help to streamline paperwork requirements, as a company with multiple physical locations will not have to issue the same NAFTA certificate of origin multiple times for each location in order for the company to be considered as the importer of the product.

We further recommend redefining and simplifying the Rules of Origin. Current complexities and ambiguities in the Rules, which help to determine which goods qualify for preferential tariffs, make them difficult for businesses to fully utilize and undermine the underlying purpose of the preferential tariffs. Streamlining the Rules and increasing definitional clarity, therefore, would help NAFTA to function more effectively from a U.S. business perspective.

We support aligning the Rules of Origin from various Free Trade Agreements (FTAs), especially for Regional Content Value (RVC) calculations. Currently, most software programs used by businesses need to have a different module for various FTAs due to differences in the Rules of Origin. Simplifying the Rules, and particularly the RVC calculations, would help to improve companies' system automation and improve compliance with the FTA. We also ask that the de minimis level be raised to 10 percent or more and that the related RVC requirement be eliminated.

While recommending these improvements to ensure that NAFTA continues working well for U.S. businesses, we urge you to not make concessions that could hurt the current, successful free trade environment. Acuity has been able to utilize supply chain efficiencies under NAFTA to grow our business, increase the number of good-paying, American jobs at our company, and better supply our customer with lower-cost, higher-quality items. Changes to NAFTA that harm our—and other manufacturers'—ability to do business would be harmful for the American economy.

IV. CONCLUSION

In sum, undermining NAFTA would have a devastating impact on our company and industry, and could negatively impact the competitiveness of Acuity's U.S. employment base, as well as American consumers across the country. We do encourage you to support a strengthened agreement where possible—including improvements and simplifications to the Rules of Origin and other paperwork requirements—but we strongly oppose any efforts to substantially renegotiate the agreement. Ultimately, we hope you will maintain the principles of the current agreement that have lowered tariffs, made U.S. companies more competitive domestically and internationally, and reduced the prices of goods for consumers at home in the U.S.

Thank you for the opportunity to provide these comments. If you have any questions or if we can be of any assistance, please free feel to contact me; Kristen Lane, Acuity Brands' Director of Trade Compliance; or Kate Jensen, Acuity Brands' legislative and policy counsel, at any time. We very much appreciate your attention to this matter.

Sincerely,

Cheryl R English

Cheryl English
VP, Government & Industry Relations
Acuity Brands

CC: The Honorable David Reichert
Chairman
Subcommittee on Trade
Committee on Ways and Means
1103 Longworth HOB
Washington D.C., 20515

The Honorable Bill Pascrell, Jr.
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
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American Chemistry Council

American Chemistry Council
Statement for the Record
House Ways and Means Committee
Subcommittee on Trade
"Modernization of the North American Free Trade Agreement"

July 15, 2017

The American Chemistry Council (ACC) appreciates the opportunity to submit comments for the hearing of the Subcommittee on Trade of the House Ways and Means Committee entitled, "Modernization of the North American Free Trade Agreement." ACC represents a diverse set of companies engaged in the business of chemistry – a $797 billion enterprise.

The chemical industry is one of the nation's most important trading sectors, with exports of $121.4 billion in 2016 (excluding pharmaceuticals), representing 10 percent of total U.S. goods exports. Thirty percent of the 810,000 jobs in the business of chemistry in the U.S. are export dependent. The U.S. has a large and growing trade surplus in industrial chemicals, of $28.2 billion in 2016. That surplus is likely to grow significantly as increased production from more than $185 billion in announced new investment in domestic chemical manufacturing comes on stream. A 2015 ACC report projects that exports of specific key chemistries directly linked to shale gas, such as polymers, plastics resins, and specialty chemicals will more than double, from $60 billion in 2014 to $123 billion by 2030.[1]

Over the past two decades, NAFTA has provided enormous benefit for the chemical sectors in Canada, Mexico and the United States. NAFTA has facilitated expanded economic growth and job creation, and enhanced North American competitiveness in the global marketplace. Since NAFTA entered into force, trade in chemicals between NAFTA countries has more than tripled, from $20 billion in 1994 to $63 billion in 2014.

NAFTA's success lies in the economic partnerships and supply chain synergies and efficiencies that have been created through reduced barriers to trade. The interconnectivity between the three NAFTA economies has not only lowered the cost of chemical production, it has also strengthened the sector's relevance in the region's overall manufacturing economy. More than 95 percent of manufactured goods — from

[1] https://www.americanchemistry.com/Policy/Trade/Fueling-Export-Growth-US-Net-Export-Trade- Forecast-for-Key-Chemistries-to-2030.pdf

textiles, to electronics, to automobiles — are touched by chemistry. As a result, the chemical industry has a multiplier effect on job creation and economic growth in the region. The chemical industry's oversized share of economic activity in North America is a direct outcome of NAFTA's effectiveness in reducing barriers to trade. This includes trade in energy products, particularly natural gas – a critical building block for chemical production. More than 10 percent of NAFTA trade is in energy products, and there are more than 100 cross-border energy infrastructure projects in place among the three economies.

After more than 20 years, modernization of NAFTA is an opportunity to upgrade the agreement to address inefficiencies and reflect procedures adopted or proposed in subsequent negotiations. The agreement should be modernized to facilitate digital trade, especially establishing strong protections for cross border data flows, an essential element of global value chains. NAFTA should also codify process on regulatory coherence and simplification, including cooperation on embodying sound science, and promoting risk assessment principles and mutual recognition of chemical approvals. A modernized NAFTA would especially benefit from enhanced trade and customs facilitation, including streamlining duty drawback procedures and prioritizing infrastructure projects that support export growth, for example more border crossings (especially between Canada and Michigan) to eliminate bottlenecks. ACC's overriding objective is for a modernized NAFTA to result in efficiencies that deepen economic integration, and make North America's co-produced products and services more globally competitive.

Tariffs and Market Access

All chemicals trade between Canada, Mexico and the U.S. is currently duty free for qualified products, and this must remain the case in a modernized NAFTA. Canada is the single largest national market for U.S. chemical exports ($24 billion in 2016, a $1.9 billion trade surplus) and Mexico is the second largest ($21 billion, a $14.6 billion trade surplus). A large proportion of chemicals trade within NAFTA is intra-company, which enables companies to realize significant savings on intra-company shipments within North America. ACC estimates that intra-company trade makes up 50 percent of U.S. chemical exports and 70 percent of chemical imports. Imposing tariffs or other trade barriers on trade in chemicals would be like putting a wall in the middle of a factory.

Rules of Origin

The current NAFTA rules of origin should be modernized to bring them into line with rules adopted in subsequent U.S. trade agreements, such as the Korea-U.S. Free Trade Agreement (KORUS). This would reduce the burden of gathering and reviewing vendor certificates and cost information in order to determine whether a good qualifies for duty-free treatment under NAFTA. In particular, the current NAFTA rules should be revised to eliminate the Regional Value Content (RVC) requirement, and provide for greater flexibility in determining origin, beginning with tariff shift and proceeding through a menu of options including substantial transformation, chemical reaction, purification, changes in particle size, etc. The "de minimis" amount under NAFTA should be revised to 10% (from 7%), which would bring NAFTA into alignment with other U.S. FTAs. ACC also recommends that the polymer content rule should be consistent with the language negotiated for the Trans-Pacific Partnership (TPP).

Customs/Trade Facilitation

ACC recommends that the U.S. should pursue a World Trade Organization (WTO) Trade Facilitation Agreement "plus" approach to customs and trade facilitation efforts under a modernized NAFTA. This includes:

- Updating paper filing and auditing requirements to allow for electronic filing and digital signature.
- Establishing mechanisms to provide for the free flow of cross-border data.
- Targeting infrastructure projects to remove bottlenecks on the movement of exports (e.g. Michigan-Ontario bridge, cross-border pipelines).
- Modernizing transport security requirements to allow for the same drivers or single forms of transport across borders.
- Harmonizing clearance procedures within NAFTA, e.g. single window, information required, and standardizing documents such as CBP434.
- Expanding the unified cargo processing program between the U.S. and Mexico.
- Unifying low value shipment criteria to minimize inconsistencies across members.
- Extending the validity period of blanket certificates beyond one year – three (3) years would be advantageous especially if the originating process is static.
- Instituting a pre-clearance pilot program to facilitate easier border crossings.

Regulatory Coherence & Good Regulatory Practices

A modernized NAFTA should strengthen regulatory coherence and implementation of Good Regulatory Practices (GRPs). Horizontal issues (relevant across all sectors) addressed in the Regulatory Coherence chapter should include: addressing areas of regulatory divergence and options for narrowing them, developing mechanisms to ensure that potential future areas of regulatory divergence are identified and addressed, determining whether differing regulatory approaches are equivalent in meeting a similar regulatory objective, and promoting greater regulatory transparency, including in regulator-to-regulator dialogue. These all contribute to a more efficient and transparent North American regulatory environment, which will boost innovation, growth and job creation, while ensuring that regulatory objectives are achieved.

Regulatory Cooperation and Alignment

A modernized NAFTA should promote a more integrated and efficient regulatory environment within North America. Regulatory cooperation can help eliminate unnecessary burdens on cross-border trade and provide more certainty for businesses and the public. Done well, regulatory cooperation can help boost innovation, growth and job creation while maintaining high levels of protection for human health and the environment. ACC would support the establishment of a Regulatory Cooperation Council under NAFTA, along the lines of that envisaged under the TPP. Such a Council would help to set overall priorities, and coordinate regulatory cooperation and coherence efforts on a sectoral basis. To be clear, ACC believes that existing bilateral regulatory cooperation efforts (such as the U.S.-Canada Regulatory Cooperation Council) should continue at their own pace outside of the NAFTA agreement. Results from these bilateral efforts, where appropriate, could then be extended throughout North America under NAFTA.

ACC's top priority for enhancing regulatory cooperation under NAFTA is to strengthen and align the risk- and science-based approach to chemical regulation adopted in the U.S. and Canada throughout the region. The Canadian Chemical Management Plan (CMP) and the U.S. Toxic Substances Control Act (TSCA) – recently updated in June 2016 – rely upon a common set of concepts and principles to ensure appropriate health and environmental protections while preventing the imposition of regulatory barriers to trade, reducing costs and creating other efficiencies for regulators and industry. In promoting such a "North American model" for chemical regulation, NAFTA could help provide a model for other countries and regions around the world considering developing or updating their own chemical regulations, and push back against the spread of more hazard-based approaches. Specific improvements that might be pursued to enhance chemical regulatory cooperation under NAFTA include:

- Extending the TCSA/CMP model for chemical regulation to Mexico.In doing so, the first step could be having Mexico adopt either the U.S. or Canada's chemical inventory instead of trying to compiling their own. Secondary options would be to consider mutual recognition for Mexico – for example if a chemical is on either the U.S. or Canadian inventories, it is automatically on the Mexican inventory. ACC is also working with Mexico to align their new chemicals program with those of the U.S. and Canada.
- Extending U.S.-Canada alignment on their implementation of the UN Globally Harmonized System for Classification and Labeling (GHS) – to Mexico.
- Reducing or eliminating other variances between the U.S. and Canadian adoption of GHS. Examples include reporting requirements for changes to Safety Data Sheets, labeling requirements, procedures for protecting Confidential Business Information (CBI), and requirements applicable to combustible dust.
- Companies face a set of challenging options under Canada's revised Workplace Hazardous Materials Information System (WHMIS) for SDS: companies must provide the government with sensitive business information (either exact chemical concentrations or product-specific concentration ranges), or they must pay a per-product application fee for review and approval of the confidentiality of chemical concentrations, an option that quickly becomes expensive. These

requirements do not align with both corresponding U.S. and European regulations.

- Harmonizing documentation by government regulatory agencies across NAFTA (e.g. uniform permits, certificates, Chemical Data Reporting (CDR), chemical nomenclature rules, and regulatory controls (e.g., TSCA Section 6 requirements versus Ministerial Conditions and Prohibitions in Canada);

- In this regard, EPA, Health Canada, and Environment and Climate Change Canada have a Regulatory Cooperation Council (RCC) working group to align New Substance Notifications (NSNs), risk evaluations and classifications, Significant New Use Rules (SNURs) and Significant New Activity (SNAcs). Similarly, these agencies are also working to further align their processes for chemical risk assessments under a separate RCC working group. A more formalized process for the RCC would be welcome in relation to all of these matters, to ensure timely and consistent results. Such work could also be expanded to include Mexico.
- At the same time, Environment Canada is considering an export regulation akin to TSCA 12(b), so efforts to align the two system from the outset would help to avoid complicated and potentially competing regulatory requirements.
- Canada maintains strict rules to define hazardous waste that crosses its borders, disrupting trade in the chemical industry with the U.S. Specifically, the Canadian federal government does not provide any exemption to allow empty containers with hazardous waste residue to bypass the substantial Basel Convention paperwork requirements that normally accompany transit of hazardous waste – even though many of its provinces, and many other governments (including the U.S.) do so. Such policies mean that any containers transiting the border for cleaning have to go through onerous and time- consuming transboundary paperwork requirements, impacting not only makers of chemicals and paints, but downstream industries that use those products as well as hazardous waste cleaning facilities on both sides of the border. Alignment on a definition of "empty" containers would increase regulatory efficiency while relieving industry of a burdensome regulatory requirement that provides no benefit to human health, safety, or the environment.

Conclusion

ACC strongly supports the launch and timely completion of negotiations on modernizing NAFTA. For the chemical industry, and for the broader economy, it has the potential to provide a significant boost to growth and job creation, which in turn would promote innovation and strengthen the international competiveness of U.S. exporters. A successful conclusion of negotiations on modernizing NAFTA would also send an important signal to the rest of the world, particularly in terms of promoting risk and science-based decision making. ACC looks forward to maintaining a dialogue with negotiators and regulators as the NAFTA negotiations proceed.

July 15, 2017
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http://www.americanchemistry.com

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $797 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

AmericanCoatings ASSOCIATION℠

July 28, 2017

The Honorable Dave Reichert, Chair
Ways and Means Subcommittee on Trade
U.S. House of Representatives
Washington, D.C.

The Honorable Bill Pascrell, Ranking Member
Ways and Means Subcommittee on Trade
U.S. House of Representatives
Washington, DC

RE: Hearing on the Modernization of the North American Free Trade Agreement (NAFTA), July 18, 2017; Written Testimony on behalf of the American Coatings Association, Inc.

Dear Chairman Reichert:

The American Coatings Association ("ACA") is pleased to submit this statement on the success of the North American Free Trade Agreement (NAFTA) and suggestions on modernizing and updating NAFTA to improve issues affecting U.S. workers, businesses, and consumers in today's economy.

ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA's membership represents over 90% of the total domestic production of paints and coatings in the country.

ACA supports the Administration's objectives of modernizing and strengthening the North American Free Trade Agreement (NAFTA), and we appreciate the opportunity to share our priorities for the negotiations. We understand the importance of updating this two-decade-old trade agreement to further benefit the U.S. economy and American businesses, workers and consumers. We also urge that these negotiations be accomplished in way that preserves the very real benefits that the coatings industry has seen from this trade agreement over the past two decades. We are prepared to work with you, the Administration, and the International Trade Administration to achieve a successful negotiation.

Background

The North American Free Trade Agreement (NAFTA) entered force on January 1, 1994, following its approval by Congress on November 20, 1993.[1] NAFTA, along with other trade issues, became a point of

[1] The NAFTA Implementation Act was signed into law by President William J. Clinton on December 8, 1993 (P.L. 103-182).

contention in the recent elections, with then candidate (and now President) Donald Trump promising to end or renegotiate NAFTA if elected. On May 18, 2017, the U.S. Trade Representative (USTR) sent a 90-day notification to Congress of its intent to begin talks with Canada and Mexico to renegotiate the NAFTA, as required by the 2015 Trade Promotion Authority (TPA) (P.L. 114-26).

On May 18, 2017, the Office of the U.S. Trade Representative notified the Congressional Leadership that it intended to initiate negotiations with Canada and Mexico regarding modernization of NAFTA under the authority of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Subsequently, on May 23, 2017, the Administration asked for public comment on this issue.

The Coatings Industry and NAFTA

The U.S. coatings industry (NAICS 32551) is a highly efficient, internationally competitive industry that features not only many key global marker leaders, but numerous SMEs who compete in a variety of market sectors. The U.S. market is roughly evenly divided between architectural (decorative) coatings, along with industrial coatings, most of which are sold for OEM applications, but some of which are categorized as special purpose coatings, such as automotive refinish coatings. According to the Census, the U.S. coatings manufacturing industry had a total value of shipments and receipts for services of $27.7 billion, and it employs approximately 33,933 persons, and has an annual payroll of $2.231 billion, along with $612 million in fringe benefits.[2]

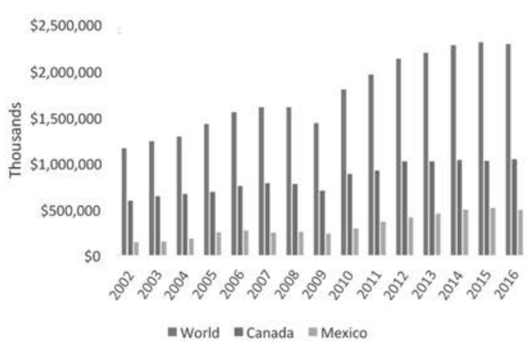

Figure 1: US Coatings Exports, 2002-16. Source, International Trade Administration

The U.S. coatings industry also enjoys a strong trade position, both within NAFTA and globally. In 2016, the U.S. exported coatings products valued at $1,531,842,275 to our NAFTA partners Canada and Mexico, with $1,040,857,987 of that total going to Canada and $490,984,288 to Mexico. These figures are comprised of a mix of waterborne,[3] solventborne,[4] and miscellaneous coatings

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[2] Source: U.S. Census Bureau, 2015 Annual Survey of Manufactures.
[3] These are represented by HS Code 3209, "Paints and varnishes (including enamels and lacquers) based on synthetic or chemically modified natural polymers, dispersed or dissolved in an aqueous medium."
[4] These are represented by HS Code 3208, "Paints, varnishes; (enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium."

products[5] that are sold to both Canadian and Mexican consumers as well as industrial and commercial users and manufacturers. While the U.S. market did import coatings products from NAFTA as well, trade in coatings products resulted in a positive trade balance of $1,146,662,347 in our transactions within the NAFTA framework (these include a positive trade balance of $734,324,057 with Canada and $412,338,290 with Mexico).[6]

As noted, the coatings products traded in the NAFTA region include both consumer paints, as well as coatings that are used as intermediate goods within in the manufacturing setting. Of particular importance to our industry is the North American market for the manufacturing of motor vehicles. U.S. manufacturers, along with their global competitors, assemble cars, light trucks, and heavy vehicles at many locations in the United States, Canada, and Mexico. The extremely complex supply chains that support this manufacturing activity involve Tier 1 and Tier 2 suppliers within NAFTA and elsewhere. This trade in intermediate goods works in both direction, with U.S. suppliers selling to Canadian and Mexican manufacturers, and vice versa. As the Brookings Institution recently observed, "advanced manufacturing in many states greatly depends on intermediate imports from Canada and Mexico. Michigan's automotive industry has long relied on suppliers in Canada and Mexico who provide 61 percent of Michigan's total intermediate imports."[7]

In the case of the coatings industry, NAFTA has proven to be highly beneficial, and U.S. coatings producers have been successful over the past two decades in selling into the Canadian and Mexican markets, both to Canadian and Mexican manufacturers and consumers. Thus, ACA's believes that the upcoming negotiations should not produce outcomes that lead to either Canada or Mexico erecting new trade barriers that hinder these currently beneficial trade flows, particularly those involving coatings as an input into the manufacturing process. Specifically, re-negotiation of any of the existing trade agreement positions that affect the listed categories of coatings good that could result in increased import duty rates into Canada and Mexico will adversely affect American manufacturing operations, considering the large coatings export volumes to Canada and Mexico.

Specific Improvements that can be Achieved during Re-Negotiation

1. **Reimportation of Goods**

The re-importation of goods often arises in the context of exported merchandise which is deemed defective or obsolete, which would ordinarily result in the return of the merchandise to the producer. In the case of U.S.- origin products, the process of re-importation into to the United States is straightforward as U.S. import procedures permit duty free re-importation. In contrast, the procedure for returning Canadian goods back to their Canadian manufacturer duty-free is very cumbersome in practice. The complexities result in some companies deciding not to return defective or obsolete

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[5] These are represented by HS Code 3210, "Paints and varnishes (including enamels, lacquers and distempers), excluding those of heading no. 3209, prepared water pigments of a kind used for finishing leather."
[6] The comparable global numbers are total exports of $2,284,383,233, with a net trade surplus of $1,453,069,036. Source: International Trade Administration.
[7] "How US states rely on the NAFTA supply chain," Joseph Parilla, The Brookings Institution, March 30, 2017

Canadian merchandise to Canada and results in U.S. customers holding those goods having to find a market, such as a salvage outlet, or having to liquidate or dispose of those goods in the United States. ACA urges the Committee to ensure that the re-negotiation strategy includes simplification of Canadian goods return procedures by Canadian customs. This will result in U.S. customers being able to successfully ship Canadian-origin products back to Canadian producers on the same basis as they would with U.S. suppliers.

2. Customs and Trade Facilitation

Generally, import and export administrative procedures between Canada and the United States are well streamlined. In practice, the routine exchange of substantial trade information between Canada and the United States, results in the waiver of certain procedures (for example, U.S. export declarations), which simplifies and facilitates the border crossing process considerably. In contrast, the import and export administrative procedures between Mexico and the United States are more cumbersome and require more paperwork. These extra steps result in longer clearance and border crossing times. ACA urges the Committee to make elimination of this divergence in customs procedures a priority when reviewing a new agreement.

3. Rules of Origin or Origin Procedures for NAFTA Qualifying Goods

While not specifically coatings, key raw material inputs classified, for example, under HS 3907[8] are used in coatings and in some cases, are also manufactured by coatings producers as inputs into coatings formulations. In practice, importing these products requires producers to apply (1) tariff shift rules and (2) regional value content calculations. This requirement places a considerable administrative burden on manufacturers, who must solicit supporting NAFTA certificates from suppliers of raw materials. Simplifying this procedure and allowing importers to apply either tariff shift rules or regional value content calculations rather than both could considerably simplify the overall process of importation.

4. Harmonization of Standards for Transport of Dangerous Goods

It is widely understood that harmonized regulations enhance the safety and efficiency of cross-border shipments of dangerous goods. Typically, these standards are discussed and debated at the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UN SCE TDG) with the participation of countries and non-governmental organizations, including the International Paint and Printing Ink Council (IPPIC) for which ACA serves as the Secretariat. The UN SCE TDG issues revisions to its model regulations every two years and participating countries may then adopt these changes into their country regulations for transport of dangerous goods. While NAFTA already contains international harmonization standards under Article 906, these principles have not been embraced by Mexico nor applied to cross border traffic in dangerous goods between the United States and Mexico. Consequently, ACA member companies experience delays at the southern border related to differing regulatory structures. ACA encourages the Committee to pay special attention to the issue of harmonization of standards to alleviate these unnecessary delays.

[8] HS 3907 is defined as "polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms."

Ways and Means Trade Subcommittee
Modernization of the North America Free Trade Agreement
July 18, 2017

Conclusion

While there are clearly areas in which NAFTA could be improved and modernized, ACA urges the Committee to engage in these negotiations and any resulting agreement with a "do no harm" approach. The current arrangement is largely beneficial to U.S. consumer, the U.S. manufacturing sector and workforce, and the U.S.-based coatings industry. We believe you share our view that maintaining this beneficial agreement in a trilateral form is the best outcome, and again, we stand ready to assist in any way we can.

Best regards,

Allen Irish
Senior Counsel, Esq.

Heidi K. McAuliffe, Esq.
Vice President, Government Affairs