

September 27, 2018

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

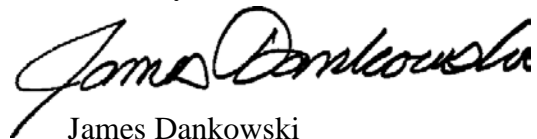
Dear Ambassador Lighthizer:

In accordance with section 105(b)(4) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, and section 135(e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Industry Trade Advisory Committee on Energy and Energy Services on the Trade Agreement with Mexico and potentially Canada, reflecting consensus from a majority advisory opinions on the proposed Agreement.

The strength and endurance of the original NAFTA reflected the strong economic benefits which resulted from the linking of the United States, Mexican and Canadian economies. This benefit has not been diminished through the modernization process. While we applaud the effort to finalize a harmonized agreement with Mexico, we ask that continuing efforts to bring Canada aboard be forthcoming.

The Industry Trade Advisory Committee on Energy and Energy Services welcome your comments, questions or concerns in regards to our report.

Sincerely,

A handwritten signature in black ink, appearing to read "James Dankowski". The signature is fluid and cursive, written over a white background.

James Dankowski
Chair
Industry Trade Advisory Committee
on Energy and Energy Services

A Trade Agreement with Mexico and potentially Canada

**Report of the
Industry Trade Advisory Committee on Energy and Energy Services**

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Industry Trade Advisory Committee on Energy and Energy Services
Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the Trade Agreement.

I. Purpose of the Committee Report

Section 105(b)(4) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, and section 135(e)(1) of the Trade Act of 1974, as amended, require that advisory committees provide the President, the Congress, and the U.S. Trade Representative with reports not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Energy and Energy Services hereby submits the following report.

II. Executive Summary of Committee Report

The Industry Trade Advisory Committee on Energy and Energy Services has reviewed the Trade Agreement with Mexico and potentially Canada with the focus on the potential positive and negative effects on the United States Energy Industry. Although our committee represent a wide discipline of energy businesses, from fuels, such as oil, gas, biofuels and coal to electrical power generation and distribution, our approach is to provide comments of agreement, concerns and remedies, where appropriate.

The Industry Trade Advisory Committee on Energy and Energy Services has provided inputs for Ambassador Lighthizer to consider in regards to the current agreement and future negotiations with Mexico and potentially with Canada.

III. Brief Description of the Mandate of (Committee)

The Industry Trade Advisory Committee on Energy and Energy Services shall perform such functions and duties and prepare such reports as may be required by section 135 of the Trade Act with respect to the industry trade advisory committees. The Committee advises the Secretary and the USTR concerning the trade matters referred to in section 135(a)(1) of the Trade Act, and is consulted regarding the matters referred to in section 135(a)(2) of the Trade Act.

The Industrial Trade Advisory Committee for Energy and Energy Services functions solely as an advisory committee in accordance with the provisions of the FACA, as amended, 5 U.S.C. App., with the exceptions set forth in the Trade Act.

In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting its sectors; and performs such other advisory functions relevant to United States trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of (Committee)

After a review of the Trade Agreement with Mexico and potentially Canada, the Industrial Trade Advisory Committee for Energy and Energy Services focused on addressing the following areas:

- Investor State Dispute Settlement (ISDS)
- Sunset Provision: Review and Term-Extension for Final Provisions
- Market Access
- Energy Efficiency Performance Standards
- Energy Regulatory Measures and Regulatory Transparency

V. Advisory Committee Opinion on Agreement

Investor State Dispute Settlement (ISDS):

The existing NAFTA Agreement included a full suite of ISDS investor provisions that protected current and future United States investment in Canada and Mexico. It allowed the United States energy industry to mitigate the risks associated with large scale, capital intensive and long-term projects. The new renegotiated agreement with Mexico has scaled back those ISDS provisions considerably. While it is greatly appreciated that the major importance of the Trade Agreement with Mexico and potentially Canada, ISDS protections for the oil & gas, infrastructure, energy generation and telecommunications sectors has been recognized and added to the new agreement, we would further recommend that a more inclusive list of energy sources receive the full suite of protections to help mitigate investment risk. For example, coal and uranium extraction and exploration also require long-term, highly capital-intensive upfront investment. In addition, these resources must be extracted in the places where they are available and commercially exploitable. This level of protection is also important to the future of other free trade agreements.

Sunset Provision: Review and Term-Extension for Final Provisions

The Industry Trade Advisory Committee on Energy and Energy Services opposes the new “Review and Term-Extension” provision that could lead to the termination or “sunset” of the Trade Agreement with Mexico and potentially Canada. The United States energy and energy services industry seeks long-term durability of trade agreements to correspond in-kind with long term energy investments in the United States, Mexico and in Canada that can stretch to 40 plus years. The “Review and Term-Extension” provision could lead to the termination of the Trade Agreement with Mexico and potentially Canada in as short as sixteen (16) years.

The Industry Trade Advisory Committee on Energy and Energy Services believes that other provisions of the Trade Agreement with Mexico and potentially Canada are sufficient to update the agreement over time and preclude the need for a “Review and Term-Extension” provision: (1) the ability of the parties to update certain terms without needing to terminate or renegotiate the entirety of the agreement, (2) any party’s right to request negotiations to update the agreement wholly, and (3) the provision allowing for a party to withdraw from the Trade Agreement with Mexico and potentially Canada

The Industry Trade Advisory Committee on Energy and Energy Services believes that any sunset or “Review and Term-Extension” provision should: (a) include a term for the agreement of greater than 40 years to match the longest term investment time horizons of the energy industry, (b) that termination can only triggered by 2 of the 3 parties “opting-out” and with majority concurrence by the parliament/Congress of each “opting out” party, (c) have a “start of the clock” on the term be entry into force of the agreement, and (d) define the basis required of any party “opting-out” as non-compliance or breaches of the commitments in the agreement.

Market Access

Overview: The Industrial Trade Advisory Committee for Energy and Energy Services supports all efforts to deepen the cross-border ties of the transportation fuel and energy sectors. When these ties allow for the near seamless flow of these vital products across our borders to our NAFTA partners, suppliers and consumers throughout the region are benefited.

Drawback and Duty Referral Programs: The Industry Trade Advisory Committee on Energy and Energy Services opposes the Trade Agreement with Mexico and potentially Canada provision on “Drawback and Duty Referral Programs” that continues to restrict duty drawback, or the refund of duties paid on imported goods from non-NAFTA countries that are used to manufacture in the United States articles that are exported to NAFTA countries. Duty drawback is important to United States refineries that import crude oil from non-NAFTA countries and export refined products to Canada and Mexico. Drawback is a GATT/WTO-sanctioned mechanism, and it is used by customs authorities around the world. The absence of duty drawback in the Trade Agreement with Mexico and potentially Canada disadvantages United States refineries that export to Canada and Mexico vis-à-vis their competitors globally.

Energy Efficiency Performance Standards

The Industrial Trade Advisory Committee for Energy and Energy Services supports the approach to the “preparation, adoption and application of technical regulations by central government bodies in energy performance standards (EPS) and related test procedures”.

Recommendations for consideration during future negotiations include:

- Based on this scope, the authorities that have oversight of these standards should be appointed in a timely manner. This will assist both Mexico and the United States in staying competitive due to the rapid harmonizing of standards that is happening globally.
- Due to the scope of products and services offered, we would recommend that the authorities for the United States and Mexico have national responsibility from their respective countries when addressing harmonization of standards. This initial step would address the acceptable standards from each country for harmonization which establishes a baseline for energy performance standards (EPS) and related test procedures acceptable throughout each country avoiding potential regional conflicts.

Energy Regulatory Measures and Regulatory Transparency

The Industrial Trade Advisory Committee for Energy and Energy Services supports the “energy regulatory measures proposed, maintained, or adopted by a Party’s central level of government”.

Recommendations for consideration during future negotiations include:

- Based on this objective, the establish regulatory authorities should be appointed in a timely manner to avoid delays or conflict in regards to trade compliance and market access.
- The requirements for an authorization to participate in energy-related activities should take into consideration an industry accepted time line from the initial application to final permitting and approval. Also, consideration should be given to the cost associate with this process. This will eliminate any risks as expectation are defined by each party and those associated with the process for permitting.

VI. Membership of Committee

Ms. Leslie L. Coleman
Assistant Vice President, Statistical Services
National Mining Association

Mr. James E. Dankowski
Federal Government Marketing Director
Eaton Corporation

Ms. Shannon S.S. Herzfeld
Vice President, Government Relations
Archer Daniels Midland Company

Aaron P. Padilla, Ph.D.
Senior Advisor, International Policy
American Petroleum Institute

Mr. Dixon E. Sabin
Director, International Trade Compliance
Law Department
Halliburton Energy Services, Inc.

Mr. Steven J. Sarnecki
Vice President, Federal and Public Sector
OSIsoft, LLC

James R. Thompson
Manager, International Government Affairs
Chevron Corporation

Ms. Barbara B. Tyran
Executive Director, Government and External Relations
Electric Power Research Institute