

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 Steel on the Trade Agreement, reflecting a consensus advisory opinion on the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Davis Nelsen II", with a long horizontal flourish extending to the right.

C. Davis Nelsen II
Chair
Industry Trade Advisory Committee on Steel (ITAC 7)

Trade Agreement

**Report of the
Industry Trade Advisory Committee on Steel**

September 27, 2018

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Industry Trade Advisory Committee on Steel (ITAC 7)

**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, requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with a report 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.

On August 31, 2018, the President notified Congress of his intent to sign a Trade Agreement, and the USTR posted text of the Trade Agreement to its secure website (although some provisions have not yet been posted). The USTR has also held several briefings for cleared advisors, which have been greatly appreciated by the members of the Committee who have been able to participate. Based on the information available to the Committee, and pursuant to the foregoing statutory requirements, the Industry Trade Advisory Committee on Steel (“ITAC 7”) hereby submits the following report on the Trade Agreement.

II. Executive Summary of Committee Report

As noted above, ITAC 7 must render an advisory opinion as to whether the Trade Agreement promotes the economic interests of the United States, achieves the applicable overall and principle negotiating objectives, and provides for equity and reciprocity within the sectoral or functional area represented by the Committee.

As a template for an agreement to update and succeed the North American Free Trade Agreement (“NAFTA”), the Trade Agreement contains many provisions that ITAC 7 supports. However, because the Trade Agreement does not currently include Canada, ITAC 7 cannot make a full evaluation of the Trade Agreement without further information on whether Canada will become a party to the Trade Agreement, or understanding the implications for the future of NAFTA if Canada does not join the Trade Agreement.

In a letter dated June 28, 2017, our predecessor ITAC (then ITAC 12) outlined priorities for the steel industry in the negotiations to improve and modernize NAFTA. As noted in that letter, NAFTA has provided significant benefits to U.S. steel industry. Since NAFTA entered into force, trade in steel mill products between NAFTA countries has increased by 117.2 percent, more than doubling. Indeed, today the vast majority of North American steel exports are made within the region – 97 percent of Canadian steel exports are to the United States and Mexico, 90 percent of U.S. steel exports are to Canada and Mexico, and 76 percent of Mexican steel exports are to Canada and the United States. Further, NAFTA has resulted in a strong trade policy and enforcement relationship with Canada and Mexico. But many of these benefits would be lost if Canada did not continue to be party to a free trade agreement with the United States and Mexico, especially given the fact that Canada is the largest single export market for American steel products and many steel-intensive manufactured goods have value chains that cross the U.S.-Canada border.

As also noted in the June 2017 letter, however, changes in global steel trade dynamics compelled a review of certain provisions in NAFTA, and the Committee appreciates that many of its concerns have been addressed in the Trade Agreement. Accordingly, on issues of specific concern to ITAC 7, the Committee focused our analysis on how the Trade Agreement addresses the long-standing concerns of the steel industry, especially on rules of origin, trade enforcement, domestic sourcing rules for government procurement, currency and state-owned enterprises, and whether the Trade Agreement provides for equity and reciprocity within the steel sector:

- ITAC 7 has long had serious concerns regarding rules of origin in trade agreements, especially for steel-intensive goods. The Committee strongly supports the new strengthened rules of origin established in this Trade Agreement for automobiles, auto parts and other non-automotive steel-intensive goods. These rules of origin establish enhanced regional value content (RVC) requirements for a number of steel-intensive products, which will increase incentives for the use of North American steel in these products. However, the Committee does not believe the two- and three-year implementation periods for meeting RVC levels on steel-intensive goods is necessary. Moreover, in the case of automobiles and auto parts, the new rules of origin will only be viable if the final Trade Agreement is a trilateral agreement between the U.S., Canada and Mexico, as existing North American auto supply chains extend to all three countries.
- ITAC 7 views trade enforcement as essential to the success of any trade agreement. The Committee has serious reservations regarding the Safeguards section of the Trade Remedies chapter of the Trade Agreement, which provides that goods from Mexico shall be exempted from any U.S. global safeguard (section 201) action. This is a significant weakening of the rules established in the original NAFTA, which permitted inclusion of imports from another NAFTA party in a global safeguard action where the imports, considered individually, accounted for a substantial share of total imports and contributed importantly to the serious injury or threat thereof caused by imports. The Committee believes this change in the treatment of imports from NAFTA parties under section 201 will be damaging to the interests of domestic steel producers, and cannot support the proposed exclusion of Mexico (and potentially other Trade Agreement parties) from global safeguard remedies.

- ITAC 7 supports the inclusion of other provisions in the Trade Remedies chapter of the Trade Agreement to improve coordination and cooperation between Parties to the Trade Agreement in addressing circumvention and evasion of trade remedy orders. This was an important priority of the Committee in the negotiations.
- ITAC 7 has long advocated that trade agreements include remedies for currency manipulation. The Trade Agreement does for the first time include provisions on currency manipulation in the body of the Agreement which are subject to the dispute settlement procedures for the agreement. This is an important improvement over previous agreements. However, the value of these provisions is significantly limited by the fact that only certain transparency and reporting requirements of the Agreement are enforceable. The substantive provisions prohibiting manipulation of currency values simply restate commitments already made in the context of the International Monetary Fund (IMF) and these provisions are not subject to enforcement action under the dispute settlement provisions of the Trade Agreement.
- ITAC 7 has long advocated for disciplines on state-owned, controlled or influenced entities that engage in commercial activities in competition with private firms. ITAC 7 is pleased that the Trade Agreement includes disciplines on a defined class of state-owned enterprises (SOEs) which are more robust than those proposed in the Trans-Pacific Partnership (TPP). This is an important step forward in establishing new disciplines on SOEs; although the Committee remains concerned that the disciplines do not extend to sub-federal entities.
- ITAC 7 strongly supports existing Buy America and Buy American preferences that have been an integral part of domestic government procurement practices for decades. These provisions are especially important to the use of domestically produced and fabricated steel. Based on the limited information provided to ITAC 7 to date, the Committee is unable to determine whether these preferences have been weakened in the Trade Agreement. Moreover, the Committee is concerned that Canada has long made greater access to U.S. government procurement opportunities a significant negotiating priority, and urges that no concessions be made to weaken Buy America or Buy American preferences if the Trade Agreement is modified to include Canada at some point in the future.

Based on the foregoing, the Committee is unable at this time to reach a conclusion on whether the Trade Agreement will provide for greater equity and reciprocity in the steel sector within North America. In significant part, this is due to the fact that ITAC 7 can only fully support adoption of the Trade Agreement if Canada is also a Party to the Agreement, with no further concessions on the issues identified above.

III. Brief Description of the Mandate of ITAC 7

The Industry Trade Advisory Committee on Steel is established by the Secretary of Commerce and the United States Trade Representative pursuant to the authority of section 135(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. sec. 2155), as delegated by Executive Order 11846, as amended. In establishing the Committee, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in section 135(c)(2)(B) of the Trade Act. ITAC 7 is established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

ITAC 7 shall perform such functions and duties and prepare such reports as may be required by section 135 of the Trade Act with respect to industry trade advisory committees. ITAC 7 advises the Secretary and the USTR concerning 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 Act.

ITAC 7 functions solely as an advisory committee in accordance with the provisions of the Federal Advisory Committee Act, with the exceptions set forth in the Trade Act. In particular, ITAC 7 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 sector; and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of ITAC 7

As noted above, the members of the Industry Trade Advisory Committee on Steel (then ITAC 12) submitted a letter dated June 28, 2017, to the Secretary and the USTR the Committee's priorities for negotiations to improve and modernize NAFTA. We noted that we support free trade where market forces determine the commercial arrangements in international trade, and also noted that the NAFTA negotiations were occurring in a time of unprecedented pressure on the domestic steel industry rooted in trade-distorting practices pursued by many other countries. Foreign government subsidies and other market-distorting policies in the steel sector resulted in massive global steel overcapacity, which, combined with sluggish world demand and import barriers in other markets, resulted in significant levels of steel imports entering into the U.S. market, capturing a historically-high percentage of U.S. market share and resulting in thousands of U.S. job losses and numerous plant closures throughout the steelmaking supply chain.

The Committee also noted that while the NAFTA has provided significant benefits to the U.S. steel industry, no agreement is perfect, and NAFTA could be modernized and strengthened. Therefore, the Committee set forth specific priorities for the NAFTA negotiation:

- **Strengthen Rules of Origin (ROO) and Enhance Regional Value Content (RVC) Requirements:** The three countries should agree to updated ROO and RVC requirements that incentivize investment and job growth in the region. In particular, ROO and RVC provisions for steel-containing goods should ensure that North American manufactured goods are built with North American steel.

- **Promote trade enforcement cooperation and coordination:** Importation of unfairly traded steel in any NAFTA country injures all North American steel producers, workers and local economies. Accordingly, the three governments should strengthen existing procedures and create new procedures to address circumvention and evasion of antidumping and countervailing duty orders, while also facilitating the implementation of third-country dumping actions where appropriate. The three countries should closely collaborate to develop stronger and better-aligned trade remedies to combat unfair trade practices from non-NAFTA countries.
- **Maintain and Support Domestic Sourcing Rules:** ITAC 7 strongly supports existing Buy America and Buy American preferences that have been an integral part of domestic government procurement practices for decades. These provisions are especially important to the use of domestically produced and fabricated steel, and should not be weakened in any future trade agreement, including an updated NAFTA.
- **Establish enforceable currency disciplines:** Currency manipulation makes exports more expensive and imports cheaper, and in the process undermines some of the economic benefits of free and fair trade. Canada, Mexico and the United States do not manipulate their currencies; however, an enforceable currency discipline in an updated NAFTA would establish an important precedent for future trade agreements.
- **Establish disciplines on the conduct of State-Owned Enterprises (SOEs):** SOEs often receive non-market advantages that create market distortions and lead to anti-competitive practices, creating an un-level playing field for market-based competitors. The three NAFTA governments should agree to implement strong and enforceable disciplines on SOEs that prevent unfair subsidization and other forms of government support and ensure market access for private producers. Like a currency discipline, this would create an important precedent for future free trade agreements.
- **Improve customs procedures operation & coordination; Upgrade border infrastructure:** For many industries, especially those engaged in just-in-time manufacturing, shipping and receiving steel in a timely and efficient manner is critical. To maximize efficiencies, an updated NAFTA agreement should streamline existing customs procedures to ensure the free, fair and fast flow of commercial goods between nations. Additionally, infrastructure upgrades, specifically to ports and border-crossing facilities, would further facilitate efficiencies and limit bottlenecking.

The Committee appreciates that the USTR considered and addressed many of these concerns and priorities in the Trade Agreement.

V. Advisory Committee Opinion on Agreement

General Comments -- The members of ITAC 7 take their responsibilities to review trade agreements very seriously. Each member of ITAC 7 has been subjected to a rigorous security clearance and vetting process in order to serve. We have been briefed on our obligations to protect classified and sensitive information, and have observed all restrictions and limits placed

upon us with respect information disclosed to us in order to fulfill our statutory obligations. We also appreciate the willingness of USTR and DOC staff to hold briefings for Committee members at our regularly scheduled meetings and on other occasions when requested, and specifically on the Trade Agreement during this 30-day deliberation window. However, it must also be noted that access to some agreement text has been limited, especially on issues that may remain under negotiation with Canada. Without more specific information on the participation of Canada, or provisions that have not been provided for review, ITAC 7 cannot make a full evaluation of the Trade Agreement without further information on whether Canada will become a party to the Trade Agreement, or understanding the implications for the future of NAFTA if Canada does not join the Trade Agreement. That concern makes it somewhat difficult for the Committee to fulfill the role that Congress originally envisaged for trade advisory committees generally.

ITAC-7 Comments on the Trade Agreement ---The Committee offers comments on the following specific Trade Agreement chapters or issues.

1. Rules of Origin

General -- The Committee has not been given access to the full set of annexes for the rules of origin under the Trade Agreement and therefore cannot comment on the provisions impacting basic iron and steel products classifiable in Chapter 72 of the Harmonized Tariff System (“HTS”). Our comments therefore relate only to the annexes setting the product-specific rules (“PSRs”) for certain steel-intensive products and for automobiles and auto parts.

Steel-Intensive Goods (non-automotive) – As compared to the original NAFTA, the Trade Agreement provides new, more stringent rules for determining the origin of various steel products classified under Chapter 73. The Committee especially appreciates the express inclusion of fabricated steel products in the rules of origin section. As a general matter, the rules require that (1) that the product under consideration undergo a “tariff-shift” from outside certain steel tariff codes in Chapters 72 and 73, or (2) that if the tariff-shift is only from the designated steel tariff codes in Chapters 72 and 73, that at least 70 percent by weight of the inputs from the relevant steel tariff codes in Chapters 72 and 73 originate with the Trade Agreement countries, or (3) processing in a Trade Agreement country has added a certain level of “regional value content” (“RVC”) to the product (generally 65-75 percent by the transaction value method or 55-65 percent by the net cost method).

These new rules apply to welded pipe and tube, butt welding fittings, tool joints, iron and steel structures and parts thereof, stranded wire, barbed wire and wire fencing, steel cloth, nails, tacks, drawing pins, corrugated nails, staples and similar articles of iron or steel.

In addition, the Trade Agreement includes new rules of origin requiring an RVC for electrical transformers and cores of 65 percent by the transaction value method or 55 percent by the net cost method whenever the tariff-shift is from headings 72.25, 72.26 or 73.26.

The Trade Agreement also requires new rules of origin for Railway or Tramway Freight Cars in chapter 86 that require that (1) that the product under consideration undergo a “tariff-shift” from

outside certain steel tariff codes in Chapters 72 and 73, or (2) that if the tariff-shift is only from the designated steel tariff codes in Chapters 72 and 73, that at least 70 percent by weight of the inputs from the relevant steel tariff codes in Chapters 72 and 73 originate with the Trade Agreement countries, or (3) processing in a Trade Agreement country has added a certain level of RVC to the product (70 percent by the transaction value method or 60 percent by the net cost method).

The addition of the new requirements that 70 percent of the inputs by weight originate within the Trade Agreement countries or that the processing has added a significant level of regional value content for these products where the tariff shift is from a basic steel mill product should provide significant incentives to manufacture these products from steel produced within the Trade Agreement countries. This represents a significant improvement over the existing NAFTA rules of origin that were premised largely only on a simple tariff-shift approach and should benefit North American steel producers and downstream fabricators and manufacturers.

Automotive -- While ITAC 7 recognizes that other ITACs have considerable expertise and interest in the automotive rules of origin, the automotive market is enormously important to the health of the domestic steel industry. AISI estimates that total 2017 steel shipments by domestic mills, service centers and processors to the auto industry at 24.5 million tons. This represents 27 percent of all 2017 domestic shipments.

As with the non-automotive steel-intensive goods discussed above, the rules of origin for automotive goods in the new Trade Agreement are significantly stronger than the original NAFTA from a steel industry perspective. Whereas currently an automotive good generally requires 62.5 percent regional value content for automobiles (60 percent for parts) in order to be considered NAFTA origin, the new Trade Agreement rules require 75 percent regional value content using the net cost method for both automobiles and core automotive parts, and 65-70 percent RVC for other auto parts. In addition, 70 percent of a vehicle producer's purchases of steel must originate within the Trade Agreement countries for the vehicle to be originating.

The Trade Agreement defines core automotive parts to include the most steel-intensive parts such as key components of the engine, transmission, body and chassis, axle, suspension and steering systems.

ITAC 7 believes that these rules are likely to lead to greater use of U.S. and other North American steel in vehicles and automotive goods, which is a positive result for both U.S. steel companies and U.S. manufacturing in general. However, these new rules of origin will only be viable if the final Trade Agreement is a trilateral agreement between the United States, Canada and Mexico, as existing North American auto supply chains extend to all three countries.

2. Trade Remedies

Global Safeguards -- ITAC 7 views trade enforcement as essential to the success of any trade agreement. The Committee has serious reservations regarding the Safeguards section of the Trade Remedies chapter of the Trade Agreement, which provides that goods from Mexico (and potentially Canada) be exempted from any U.S. global safeguard (section 201) action.

This is a significant weakening of the rules established in the original NAFTA, which permitted inclusion of imports from another NAFTA party in a global safeguard action where the imports, considered individually, (1) accounted for a substantial share of total imports and (2) contributed importantly to the serious injury or threat thereof caused by imports. The Committee believes that the original NAFTA provision properly protected the interest of domestic producers in being able to obtain full safeguard relief where imports from another NAFTA Party accounted for a substantial share of the imports in question and contributed importantly to the injury to the domestic industry. The proposed change in the treatment of Trade Agreement parties under section 201 will be damaging to the interests of domestic steel producers, as under no circumstances will domestic producers have access to full safeguard relief in a case where imports from another Trade Agreement party played a significant role in the surge of imports causing serious injury. ITAC 7 is particularly concerned that this concession was granted by U.S. negotiators without any consultation with our Committee.

Antidumping and Countervailing Duties -- ITAC 7 supports the inclusion of other provisions in the Trade Remedies chapter of the Trade Agreement to improve transparency and cooperation between Parties to the Trade Agreement in addressing evasion of trade remedy orders.

The Trade Remedies chapter explicitly does not alter any of the rights or obligations of Parties' antidumping and countervailing duty laws. It is important that the Agreement does not weaken any existing U.S. AD/CVD laws, which need to remain strong to allow for maximum protection against dumped and subsidized steel imports. While not obligating other Parties to change their AD/CVD laws, the Agreement does include language recognizing the importance of key procedural and due process protections, including adequate notifications, maintenance of public files, and disclosure of key facts on which decisions were based. These assurances can only help U.S. steel producers participating in foreign AD/CVD proceedings.

In particular, ITAC 7 is pleased to see the provisions promoting increased cooperation and information sharing between the Parties to the Trade Agreement to address evasion of trade remedy orders and to facilitate consideration of third country dumping allegations. Of significant value are the provisions permitting a Party to request another Party to undertake a duty evasion verification, the provisions that state that a Party undertaking such a verification normally shall grant the Party requesting the verification access to its territory to participate in the duty evasion verification, and the provisions permitting the sharing of confidential information for purpose of determining whether duty evasion exists. This increased coordination and cooperation to promote more effective enforcement of trade remedy laws in the face of widespread efforts by foreign exporters and importers to circumvent and evade legitimate trade remedy actions was an important priority of the Committee in the negotiations.

3. Currency Manipulation

The problem of currency manipulation is one of the most pressing issues facing the United States in the area of international economic policy. ITAC 7 has a long history of urging that trade agreements include provisions on currency manipulation. The predecessor ITAC for Steel (ITAC-12) cited the issue as a major deficiency in its April 27, 2007, report on the United States-

Korea Free Trade Agreement, and in its addendum to the report dated February 17, 2011. ITAC-12 reiterated its position in its July 21, 2015, position paper on trade agreement negotiating objectives, and in its December 3, 2015, report on the Trans-Pacific Partnership Agreement.

The Trade Promotion Authority law contains principal negotiating objectives for both “Currency” and “Foreign Currency Manipulation” (Bipartisan Congressional Trade Priorities and Accountability Act of 2015, 19 USC 4202(b)(11 & 12)). Section 4202(b)(12) states that the negotiating objective “with respect to unfair currency practices is to seek to establish accountability through enforceable rules, transparency, reporting, monitoring, cooperative mechanisms, or other means to address exchange rate manipulation involving protracted large scale intervention in one direction in the exchange markets and a persistently under-valued foreign exchange rate to gain an unfair competitive advantage in trade over other parties to a trade agreement . . .”

The new Trade Agreement for the first time includes provisions on currency manipulation in the body of the Agreement which is subject to the dispute settlement procedures for the Agreement. This is a significant improvement over previous agreements. In the currency provisions, each Party confirms that it is bound under the Articles of Agreement of the IMF to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage. The provisions go on to specify that each Party should (1) maintain a market-determined exchange rate system, (2) refrain from competitive devaluation, including through intervention in the foreign exchange market, and (3) strengthen underlying economic fundamentals. The provisions also include a number of transparency and reporting requirements related to exchange rate data and interventions.

However, the value of these provisions is significantly limited by the fact that only the transparency and reporting requirements of the Trade Agreement are enforceable through the Agreement. The substantive provisions prohibiting manipulation of currency values simply restate commitments already made in the context of the Articles of Agreement of the IMF and these provisions are not subject to enforcement action under the dispute settlement provisions of the Trade Agreement.

While the Agreement’s currency provisions are a positive development, in the opinion of ITAC 7, the absence of an enforceable currency manipulation provision represents a serious flaw in the Agreement. This is a flaw that should be remedied by Congressional action in implementing legislation, or stand-alone legislation to confirm that currency manipulation is actionable under U.S. trade remedy laws.

4. State-Owned Enterprises

ITAC 7 commends the Trade Agreement’s important contribution of a chapter specifically designed to govern the conduct of state-owned enterprises (“SOEs”) in the global marketplace. The chapter’s overarching recognition of the commercial distortions caused by governments’ preferential treatment of SOEs is particularly important to ITAC 7’s members, who have been harmed by competition with foreign state-owned steel producers.

The rules in this chapter make a number of important advances that should help to remedy certain harmful distortions, by:

- Requiring SOEs to operate in accordance with commercial considerations;
- Applying most-favored nation and national treatment principles to the commercial operations of SOEs;
- Limiting the provision of non-commercial assistance to SOEs that causes adverse effects to other Parties;
- Applying these rules not only to SOEs operating in their home countries, but also to covered SOE investments in the territory of other Parties and to SOEs operating in the territory of non-Parties; and
- Creating transparency requirements, which could be an important means of identifying and addressing problematic SOE conduct.

ITAC 7 is also pleased that in certain respects the Trade Agreement's SOE chapter addresses some of the flaws the Committee had identified in the earlier TPP chapter on SOEs. In particular, the chapter defines SOEs more broadly than the TPP, as enterprises "principally engaged in commercial activities" and in which a government (1) directly or indirectly owns more than 50 percent of the share capital; (2) controls, through direct or indirect ownership interests, more than 50 percent of the voting rights; (3) holds the power to control the enterprise through any other ownership interest, including indirect or minority ownership; or (4) holds the power to appoint a majority of the members of the board of directors. In particular, the recognition that a government can control an enterprise through indirect or minority ownership is a significance improvement over the TPP text.

In other respects, however, certain of the limitations identified with respect to the TPP SOE chapter continue to be a concern in the new Trade Agreement.

For example, Annex D to the chapter provides expansive exemptions from rules governing commercial considerations, non-discrimination, and non-commercial assistance for sub-central SOEs for all Parties. There does not appear to be any clear economic logic behind exempting SOEs from these critical disciplines simply because they are not owned by the central government. ITAC 7 believes that the monetary thresholds under Annex A adequately limit application of the rules to SOEs of a certain commercial scope. The exemptions for sub-central SOEs thus become a loophole that threatens the effectiveness of the entire chapter. We urge the U.S. government to limit these exemptions to the greatest extent possible in further negotiations pursuant to Annex C.

Furthermore, the chapter's transparency rules appear to provide Parties with significant discretion in claiming confidential treatment for any information provided pursuant to another

Party's request. These rules should aim not only to increase transparency among governments, but also to increase transparency among the general public and the industries that must compete with SOEs in global markets. ITAC 7 understands the need to respect confidentiality of legitimate business proprietary and national security information, but the rules do not appear to allow Parties to request this type of sensitive information. Any request for confidential treatment should be justified by a clear need to protect proprietary information or information related to the national security of the Party responding to the request.

In addition, all Parties have claimed exceptions (or non-conforming measures (NCMs)) to these new disciplines on SOEs.

While ITAC 7 sees the SOE chapter as a significant improvement over prior U.S. trade agreements, the Committee believes additional steps are necessary to ensure that its disciplines are effective in practice. In addition, we urge the United States to pursue even more aggressive disciplines on SOEs in future negotiations. Extension of the scope to sub-federal entities and limitations on the ability of Parties to claim confidential treatment of information should also be pursued.

5. Government Procurement

One of the primary negotiating objectives adopted by ITAC 7 is to protect and promote U.S. interests through the strong and consistent application of Buy America and Buy American provisions that have been an integral part of domestic government procurement practices for decades. These provisions are especially important to the use of domestically produced and fabricated steel.

Similar to prior free trade agreements, the Trade Agreement excludes from the coverage of the Government Procurement chapter "non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements" unless the assistance is otherwise provided for in a Party's schedule under Annex A of the chapter. Absent additional commitments in the annexes to this chapter of the Trade Agreement, this language should exclude from the coverage of the Government Procurement chapter the Buy America requirements attached to federal funds for state and local mass transit, highway, and water projects; small business and other set-asides; procurement of transportation services; and other programs. However, as ITAC 7 has not been given access to the annexes to this chapter, the Committee is unable to determine whether these preferences have been weakened in the Trade Agreement.

Furthermore, ITAC 7 believes that the Trade Agreement should not cover procurement by U.S. state and local governments. Again, however, as ITAC 7 has not been given access to the annexes to this chapter, the Committee is unable to determine whether the United States made any commitments to cover state or local government procurement under the Trade Agreement.

Beyond the treatment of Buy America preferences, the Trade Agreement's Government Procurement chapter is consistent with prior free trade agreements in including a core

commitment on national treatment and most-favored-nation treatment. This chapter requires that procurement is fair and transparent, and that procurement opportunities are communicated clearly and in a timely manner. In addition, the chapter provides for flexible and non-discriminatory technical specifications that focus on performance and functional requirements, are based on available international standards, and do not create unnecessary barriers to trade. ITAC 7 believes that, with proper implementation, these commitments should help to ensure that U.S. exporters are able to fully and fairly compete for foreign government procurement opportunities, and that U.S. companies and workers are able to benefit from this Agreement.

6. Dispute Settlement

ITAC 7 believes that dispute resolution provisions of the Trade Agreement are likely to promote the economic interests of the United States by providing an effective, timely and transparent dispute settlement mechanism.

The dispute settlement mechanism of the Trade Agreement provides for the resolution of disputes that arise between sovereign states (*i.e.*, governments or Parties). The Agreement enables Parties to have recourse to an independent panel that has the ability to determine whether a Party has failed to meet its obligations under the Trade Agreement. This mechanism also allows for a suspension of benefits if a panel finds that a Party has failed to meet its obligations under the Trade Agreement or is nullifying or impairing the benefits of the Agreement and the Parties are unable to agree on a resolution to the dispute.

The Dispute Settlement chapter applies to a full range of issues, including market access, labor, environment, services trade, cross-border data flows, state-owned enterprises (“SOEs”), and intellectual property rights. Among the features of the Trade Agreement’s dispute resolution provisions are:

- Transparency requirements that ensure that submissions are made publicly available, hearings are open to the public, written submissions are made public, final decisions by panels are made publicly available, and non-governmental entities have the right to request making written submissions to panels during disputes;
- Specified timeframes for consultations between the disputing Parties, selection of panelists, presentation of the panel’s initial report to the disputing Parties, presentation of a final report to the Parties, and public release of the final report;
- Dispute settlement panels composed of individuals who are objective international trade and subject-matter experts;
- Requirement that panelists adhere to a code of conduct to which the Parties agree, which ensures the integrity of the proceeding;
- Use of trade retaliation (*i.e.*, suspension of benefits) if a panel finds that a Party has failed to meet its obligations under the Trade Agreement or is nullifying or impairing the

benefits of the Agreement and the Parties are unable to agree on a resolution to the dispute; and

- Inability of a Party to provide for a private right of action under its domestic law, against any other Party, for failure to carry out obligations under the Trade Agreement.

ITAC 7 emphasizes the ability of the dispute resolution provisions to create strong and enforceable rules over SOEs in particular. SOEs may not operate on market principles and therefore have the potential to create market distortions and carry out anti-competitive behavior. Thus, the ability for a non-governmental entity to make written submissions to panels is a commendable provision of the Dispute Settlement chapter that should be encouraged and asserted in practice.

VI. Closing and ITAC 7 Opinion on Trade Agreement

In closing, based on the results achieved in the chapters on rules of origin, currency manipulation and state-owned enterprises, as well as the improvements with regard to cooperation between the Parties to address evasion of trade remedy actions, ITAC 7 believes the Trade Agreement makes a number of important improvements to the original NAFTA text. These improvements must be balanced, however, against the weakening of the global safeguard remedy with respect to Mexico in the Trade Remedies chapter, and the continued uncertainty with respect to the final terms of the government procurement chapter. Given these concerns, especially when coupled with the fact that the Trade Agreement does not currently include Canada, leads ITAC 7 to the opinion that it cannot make a full evaluation of the Trade Agreement without further information on the final status of certain open terms of the Agreement and especially on whether Canada will become a party to the Trade Agreement.

VII. Membership of Committee

Chairman

Mr. C. Davis Nelsen II
Chairman and Chief Executive Officer
Nelsen Steel Company, L.P.

Mr. Billy D. Milligan
Director, Marketing
Commercial Metals Company

Primary Vice-Chairman

Mr. Kevin M. Dempsey
Senior Vice President, Public Policy
and General Counsel
American Iron and Steel Institute's
Council of U.S. Producers

Mr. Raymond W. Monroe
Executive Vice President
Steel Founders' Society of America

Mr. Bradford D. Muller
Vice President, Marketing
Charlotte Pipe and Foundry Company

Secondary Vice-Chairman

Mr. David Zalesne
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Owen Steel Company, Inc.

Mr. Michael A. Salamon
President
Optima Specialty Steel
Representing The Cold Finished Steel
Bar Institute

Mr. John R. Bass
General Manager, Public Affairs
Nucor Corporation

Mr. M. Robert Weidner, III
President and Chief Executive Officer
Metals Service Center Institute

Mr. Philip K. Bell
President
Steel Manufacturers Association

Ms. Robin K. Wiener
President
Institute of Scrap Recycling Industries,
Inc.

Mr. Dana A. Beyeler
Senior Vice President - Defense
Engagement
Ellwood Group, Inc.

Mr. David A. Wolfort
President and Chief Operating Officer
Olympic Steel, Inc.

Mr. William M. Hickey, Jr.
President
Lapham-Hickey Steel Company

Mr. Howard O. Woltz III
Chairman, President and Chief Executive
Officer
Insteel Industries, Inc.

Mr. Marcus J. Lyons III
International Sales Manager
American Cast Iron Pipe Company