

October 24, 2018

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

Dear Ambassador Lighthizer:

I am pleased to transmit an addendum on the U.S.–Mexico–Canada Agreement (USMCA) to the report submitted on September 28, 2018 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 by the ITAC on Automotive Equipment and Capital Goods (ITAC-2), reflecting the industry representatives' amended and supplemental comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles D. Uthus".

Charles D. Uthus
Chair
ITAC on Automotive Equipment and Capital Goods (ITAC-2)

U.S.-Mexico-Canada Agreement (USMCA Agreement)

**Addendum to the Earlier (September 28, 2018) Report of the
Industry Trade Advisory Committee on Automotive Equipment and Capital Goods**

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Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC-2) Addendum to the Earlier (September 28, 2018) Report to the President, the Congress, and the United States Trade Representative on a U.S.-Mexico-Canada Agreement (USMCA Agreement)

I. Introduction

The industry representatives of the Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC-2),¹ respectfully provide the following addendum to the draft text of a U.S.-Mexico-Canada Agreement (USMCA) dated October 1, 2018. This addendum represents the view of the industry representatives on the committee.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of this Advisory Committee must include:

- An advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States.
- Achieves the applicable overall and principal negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.
- Whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC-2) hereby submits the following addendum to the earlier (September 28, 2018) report.

II. Summary

The initial report by ITAC-2, which was submitted September 28, 2018, is already out-of-date due to the inclusion of Canada and other significant changes related to bringing Canada into the USMCA on September 30, 2018. The uncertainty regarding Canada's status cast a shadow over the rest of the agreement, and the September 28, 2018 report by this Committee. Therefore, with Canada now included, the ITAC-2 industry representatives determined that an addendum to the initial report is warranted.

We reaffirm our long-standing view that after almost 25 years there was a need to update and modernize the original NAFTA. Our support for modernizing NAFTA is, in large part, a result of the significant changes that have taken place in the U.S. automotive and capital goods sectors since 1994.

We also would like to reiterate our appreciation for the efforts of the negotiators to work closely with the affected parties and stakeholders.

¹ While "automotive" is in the title of the ITAC-2, please note in the context of our comments, we deem the term "automotive" to include the entire spectrum of light and heavy vehicles (passenger vehicles, light trucks, and heavy trucks) as well as the automotive parts and components used for those vehicles as new original equipment and aftermarket (auto parts).

The ITAC-2 industry representatives are pleased with – in some cases the entire chapter, and in other cases key provisions – of the following USMCA agreement Chapters (updated list):

- National Treatment and Market Access, with respect to Remanufactured Goods (Chapter 2)
- Locking in U.S. MFN tariffs for USMCA trade partners (Chapter 2 – Annex 2-C)
- Rules of Origin for Automotive Goods (Chapter 4)
- Rules of Origin Procedures (Chapter 5)
- Customs and Trade Facilitation (Chapter 7)
- Trade Remedies, with respect to AD/CVD Review (Chapter 10)
- Technical Barriers to Trade (Chapter 11)
- Sectoral Annex: U.S.-Mexico Bilateral Side Letter on Automotive Safety Standards (Chapter 12)
- Sectoral Annex on Energy Performance Standards (Chapter 12)
- Intellectual Property (Chapter 20)
- Small and Medium-Sized Enterprises (Chapter 25)
- Good Regulatory Practices (Chapter 28)
- Publication and Administration (Chapter 29)
- Macro-economic and Exchange Rate Matters(Chapter 33)
- Auto-related Side Letters (re: Potential Section 232 tariffs on Automotive and Automotive Parts)

Albeit a much shorter list now, there remain, some Chapters, and key provisions of Chapters, and related U.S. trade policy initiatives that the ITAC-2 industry representatives believe still warrant a careful review and/or improvement.

- Section 232 Steel and Aluminum Tariffs (as applied to Canada and Mexico)
- National Treatment and Market Access, with respect to Duty Drawback (Chapter 2)
- Rules of Origin for Capital Goods and Product Specific Rules for “Steel-Intensive Products”
- Government Procurement (Chapter 13, with respect to Canada)
- Investment, with respect to Investor State Dispute Settlement (Chapter 14)
- Final Provisions, with respect to Performance Review and Termination (Chapter 34)

The following are the areas of the previous report we believe warranted supplemental comments, concluding with the ITAC-2 industry representatives’ overall views regarding the USMCA agreement and assessment of whether it meets the negotiating objectives.

III. Supplemental Comments:

Inclusion of Canada in the Agreement: Due to the high-level of integration of the U.S. and Canadian automotive and capital goods sectors, we applaud the Administration for recognizing the importance of including Canada, which was expressed by ITAC-2 and many other ITACs, and for working up to the deadline to successfully bring Canada into the USMCA. Canada’s inclusion places the agreement into a different context, and this new context has transformed the ITAC-2 industry’s overall views of this new agreement and smoothed the way for the ITAC-2 industry representatives to express our overall support for the USMCA agreement. Having a three-party agreement adds a higher-level of stability and continuity that will allow North

American manufacturers to utilize and benefit from its highly integrated supply chain and, more importantly, to remain globally competitive.

Section 232 Steel and Aluminum: We strongly encourage the parties to move with urgency to quickly develop a workable solution to the Section 232 Steel and Aluminum tariffs currently impacting our steel and aluminum consuming industries throughout the supply chain. The ITAC-2 industry representatives are disappointed that the tariffs of 25 percent on steel and of 10 percent on aluminum imported from Canada and Mexico imposed on June 1, 2018 pursuant to Section 232,² remain in place despite the successful conclusion of the USMCA. We maintain our position that these tariffs are inconsistent with the spirit of a renewed trade agreement, will lead to a net loss of U.S. jobs and economic growth, and, ultimately will serve to harm – not help – the global competitiveness of the steel and aluminum consuming industries in the United States. The adverse impact of these tariffs and the retaliation that they have triggered in foreign markets significantly reduces – and may even nullify – the economic benefits of the USMCA.

We are very encouraged by the momentum that the USMCA talks have given to finding a solution to this policy initiative. We are also encouraged by the actions taken by Canada to prevent any imports into Canada from third parties that are intended for the United States and thus circumventing the intent of the Section 232 tariffs. Given the adverse impact these tariffs are imposing on industry representative members of this committee, and the broader consuming industries in the United States, plus the actions being taken to prevent circumvention by other parties, we strongly recommend that the administration lift the Section 232 tariffs imposed on imports from Canada and Mexico as soon as possible.

Furthermore, we urge that Canada and Mexico are fully exempt from the tariffs without quotas. Quotas present challenges and uncertainty for consuming industries – particularly for planning automotive production cycles. While our first strong preference is full exemption of Canada and Mexico, it is our understanding that there are discussions about setting up steel and aluminum quotas with Canada and Mexico. If that is the direction taken, then we strongly recommend establishment of quotas that are set at a level well above the U.S. import levels last year. In this way, the concern of a spike in imports from Canada and Mexico can be addressed, while minimizing the damage any limitation has on steel and aluminum consuming industries.

Automotive Side Letters (Section 232 Auto tariffs): The ITAC-2 industry representatives remain seriously concerned about the potential imposition of Section 232 tariffs on autos and automotive parts. However, we are pleased that the benefits of the USMCA, which could have been significantly undermined through the potential increase of tariffs pursuant to a Section 232 automotive and automotive parts investigation, have been safeguarded by addressing the potential imposition of these tariffs in side letters with Canada and Mexico. Although the side letters do not fully exempt the imposition of potential Section 232 tariffs, they do limit the scope of the tariffs through a cap on imports of passenger vehicles and automotive parts that would be exempt from a potential imposition of tariffs stemming from the Section 232 Auto investigation, and fully exempt light-trucks (< 5MT GVW).

² Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862)

We were also pleased to see that the letters each provide for an opportunity for the Parties to review periodically and address any adjustments or revisions to the terms. However, some important questions remain on how the import cap on passenger cars would be allocated, managed and implemented. Additionally, when automotive part import levels approach the cap, it could add a layer of uncertainty.

Our general support for the side letters should not be interpreted as support for the imposition of Section 232 tariffs on autos and auto parts. On the contrary, we fail to see any justification for an increase in tariffs on autos and auto parts. We believe imposing such tariffs would have a grave economic impact on the automotive industry, our workers and American consumers. Moreover, other U.S. industry sectors would experience collateral damage, as they would face retaliatory tariffs in markets impacted by the Section 232 tariffs. In the end, the adverse impact associated with the imposition of the tariffs would be severe. The ITAC-2 industry representatives urge the administration to refrain from proceeding with these tariffs.

National Treatment and Market Access, with respect to Duty Drawback: The ITAC-2 members want to bring to your attention the fact that the USMCA does not modify NAFTA's duty drawback provisions. This is a missed opportunity to address this anomaly in U.S. free trade agreements. The "lesser of two" rule, is unique in U.S. trade agreements and undermines U.S. manufacturers in comparison to our North American competitors. Mexico and Canada have found ways to minimize these restrictions using regimes that target duty-rate reductions for inputs used in specific export industries, thus putting U.S. exporters at a disadvantage. The ITAC-2 industry representatives recommend that the restrictive duty drawback provisions in the Agreement be modified consistent with most other U.S. trade agreements.

Rules of Origin for Automotive Goods: While the specific automotive rules of origin draft text have not changed significantly, the overall context of having Canada as part of the agreement has, and more information on industry's views has been brought to the attention of ITAC-2 automotive industry members. Taking that into account, the following reflects an update on our assessment. We appreciate the efforts by the parties to update the automotive rules of origin for the new USMCA agreement, and, in particular, the U.S. negotiators' close collaboration with industry in a manner that helped ensure that those new rules were workable and manageable. While the changes to the automotive rules of origin methodology and the increases in the Regional Value Content (RVC) levels present challenges,³ and increased costs in the near term,⁴ ITAC-2 automotive industry representatives appreciate that helpful flexibilities were maintained in the automotive rules of origin that temper some of those challenges and minimizes many of the longer-term administrative burdens and costs. In large part, this was successfully accomplished through the U.S. negotiators' close consultations with stakeholders.

While even more streamlined rules of origin with longer transitions would be welcome, the ITAC-2 industry members can work within these new rules and support adoption of the new USMCA automotive rules of origin text. The final success of these new rules now hinge on

³ The challenges cited here are in comparison to the original NAFTA rules of origin, not the initial position posted by the U.S. negotiators during the talks. These new challenges include implementing a more complex RVC, and new steel and aluminum and labor content value requirements not found in the original NAFTA.

⁴ The up-front cost of developing new rules of origin compliance systems can be significant, but once established the cost of compliance would be expected to drop over time.

whether the implementing details and protocols are similarly manageable and workable. We look forward to continuing the productive government-industry cooperation efforts to accomplish that objective.

Rules of Origin for Capital Goods: The ITAC-2 wishes to correct a misunderstanding in the initial September 28 ITAC-2 report regarding a concern that the automotive rules of origin on automotive parts and components could impact the capital goods sector. We now recognize that the USMCA text makes it clear that the changes to the automotive rules of origin only apply for automotive or heavy truck end-use and therefore would not apply to capital goods, such as tractors or earth-moving equipment.

Separately, the ITAC-2 capital goods industry representatives would like to reaffirm our recommendation that the USMCA agreement be modified to allow for the elimination or simplification of the “tracing list” procedures on the parts/components used by the non-automotive capital goods industry. With regards to the Product Specific Rules for “Steel-Intensive Products,” we restate our question regarding *Iron and steel structures and parts thereof*. It remains unclear to the ITAC-2 members what practical achievements are intended with this rule change, given that the current U.S. MFN applied tariff rate is zero.

Stability and Predictability: There are several changes to the original NAFTA that we are concerned could adversely impact the stability and predictability of the business environment in North America.

- **Investor State Dispute Settlement:** This includes the USMCA agreement omitting the inclusion of the original NAFTA’s investor-state dispute settlement (ISDS) and the agreement’s review and termination provisions. The ITAC-2 industry representatives encourage the reconsideration of these important mechanisms found in the original agreement.
- **Termination Clause:** The ITAC-2 capital goods industry representatives reiterate the concern outlined in our earlier report that the text of the agreement leaves open the real possibility that the USMCA agreement could be terminated after only 16 years. Business decisions are not tied to a 16-year cycle; instead they are based on market conditions that are underpinned by legal stability and predictability. While the Committee welcomes the commitment by the Parties to review the agreement six-years following entry into force, we emphasize this review should be directed toward and result in actions that support North American manufacturing and trade rather than actions that weaken the industries’ and workers’ global competitiveness by fostering greater uncertainty.

The ITAC-2 capital goods industry strongly encourages the U.S. negotiators to reconsider and remove this termination provision from the agreement and replace it with a clear commitment by the Parties to regularly review and modernize the agreement.

Government Procurement: ITAC-2 industry representatives are concerned with the final outcome of the Government Procurement (GP) negotiations. Government procurement is an especially important part of market access for the capital goods sector.

The United States and Canada decided to downgrade access to their respective GP markets by not carrying forward the original NAFTA commitments. As a result, the countries will provide

reciprocal access under their schedules appended to the World Trade Organization’s Government Procurement Agreement (WTO/GPA). This decision results in a loss of market access in Canada with serious implications for U.S. capital goods manufacturers who sell to the Canadian federal and provincial governments. These concerns include that:

- U.S. exporters to Canada would enjoy less access to Canadian government tenders than potential bidders in the European Union or Trans Pacific Partnership (TPP) member countries (including major competitors like Japan, Singapore and Australia) enjoy.
- If the Administration were to withdraw the U.S. from the WTO/GPA, which is not inconceivable, U.S. exporters would have no access to the Canadian government market. Our free trade agreements should ensure that we do not have to rely on WTO rights.
- Finally, finalizing a new trade agreement without binding GP commitments on one of the parties sets a bad precedent, as it would be the first such case in recent U.S. trade history.

Macro-economic and Exchange Rate Matters “Currency Manipulation”: The ITAC-2 vehicle manufacturer and worker representatives reaffirm our support for the inclusion in the body of this agreement a provision that addresses this harmful distortion of trade, and they are encouraged that it is actionable (albeit on a significantly limited basis) under the agreement’s dispute settlement provisions. The inclusion of these provisions is groundbreaking and very much appreciated. These representatives, however, are disappointed that many of the commitments in this section are restated language from agreements already made under the International Monetary Fund, and that the actionable provisions of the agreement are very limited (e.g., only with respect to transparency and reporting).

The auto manufacturer and worker representatives on ITAC-2 note the absence of a commitment to coordinate with our USMCA partners on the intervention of third parties in the foreign exchange rate markets. We respectfully request that a commitment to coordinate action in opposition to currency manipulation by parties outside of the Agreement be added.

State Owned Enterprises (SOEs): The ITAC-2 applauds the inclusion of the provision addressing SOEs in the USMCA. Non-North American SOEs are competing unfairly in some industry sectors in North American markets, by utilizing cheap credit from state banks and massive government subsidies that allow them to make ultra-low bids until they have been successful in pushing-out competitors. Their business decisions, unlike U.S. companies, are driven by national economic objectives rather than market incentives.

IV. Updated Conclusion

In its advice provided to the Administration in June 2017, the ITAC-2 provided a set of four unanimous “basic principles” it recommended the Administration adhere to in its efforts to modernize and improve the operation of NAFTA. They were:

- “Create a model for future trade deals with other countries”;
 - “Aim to advance stronger disciplines and outcomes that will enhance manufacturing success”;
 - “Avoid harming U.S. manufacturing success by adding unnecessary costs and red tape”;
- and,

- Negotiate an agreement including “the three North American countries.”

ITAC-2 industry representatives agree that overall the USMCA agreement meets the four basic principles this Committee set forth in advance of these talks.

Also, as noted above, under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committees must include:

- An advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States;
- Achieves the applicable overall and principal negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015; and,
- Whether the agreement provides for equity and reciprocity within the sectoral or functional area.

There is sufficient information available now to provide our assessment of the agreement. In the final analysis, the ITAC -2 industry representatives believe that the USMCA agreement “*promotes the economic interests of the United States,*” and “*provides for equity and reciprocity within the automotive and capital goods sectors.*” We also believe that the USMCA substantially achieves the applicable overall and principal negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

The ITAC-2 members sincerely appreciate the opportunity to update our views and recommendations. We look forward to working with the Administration to finalize the agreement text and implementation details and proceed with the approval process.

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V. Membership of Committee

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