

The Honorable Robert E. Lighthizer
United States Trade Representative
Executive Office of the President
Washington, D.C. 20508

October 25, 2018

Dear Ambassador Lighthizer:

I am pleased to transmit an addendum on the U.S. – Mexico – Canada Agreement (USMCA) to our report submitted on September 26, 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 Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Service (ITAC 3), reflecting additional advisory committee opinion on the USMCA.

Our additional comments center on two issues:

Investor-State Dispute Settlement (ISDS)

This is an arbitration process that allows a foreign investor in a country to make claims directly against the host government if it feels the government has violated the provisions of the investment chapter of the agreement. Under the original NAFTA, U.S. chemicals manufacturers could make a full set of claims if Canada and Mexico violated the investment provisions. In fact, our sector has used ISDS successfully in the NAFTA region. Under USMCA, Canada has opted out of these provisions, which will be phased out over three years, although investments made prior to 1994 will still receive limited protections. For Mexico, U.S. chemical manufacturers will not be able to make a full set of claims - they will only be able to make claims if there is a physical expropriation of an investment (e.g. nationalization of a plant) or if there is a post-investment violation of the national treatment and most favored nation provisions. Given that a wide range of claims or impacts on US investors, as well as our supply chains, can be regulatory in nature, this is a NAFTA-minus outcome for the U.S. chemicals sector. It could lead to a less certain environment for U.S. chemicals manufacturers invested in Canada and Mexico.

Non-Market Country FTA – Article 32.10

Additionally, ITAC 3 would appreciate greater clarity on the implications of this provision. As stated, this section would allow USMCA partners to withdraw from the USMCA 60 days after

such an agreement with a Non-Market Economy was concluded. However, the provision does not describe how this provision would be implemented. ITAC 3 would welcome a deeper understanding and specific clarifications that could ensure this general provision does not create undue uncertainty.

Sincerely,

V. M. (Jim) DeLisi

V.M. (Jim) DeLisi, Chairman
ITAC 3

cc: Secretary Wilbur Ross