

**Labor Advisor Committee
On
Trade Negotiations and Trade Policy**

October 25, 2018

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

Dear Ambassador Lighthizer:

I am pleased to submit this addendum to the September 27, 2018 report reflecting the opinions of the Labor Advisory Committee (LAC) on the renegotiated North American Free Trade Agreement (NAFTA).

The LAC appreciates all the work that has gone into the negotiating process and the level of your engagement and that of the Administration and the opportunity to provide additional comments to the report to reflect changes made subsequent to our initial submission. Despite having additional information, we continue to reserve judgment on the renegotiated North American Free Trade Agreement (NAFTA) at this time. We reiterate that while there are positive provisions in the renegotiated NAFTA, there are also provisions in the agreement which undermine the interests of workers and consumers. Among other things, we continue to stress the need to effectively curtail the illegal suppression of wages in Mexico, which leads to the outsourcing of quality, family-supporting jobs and puts downward pressure on wages and standards in the U.S. and Canada.

Canada's inclusion is a critical improvement over the proposed bilateral deal we reviewed a month ago. Given the close integration of the automotive sector among the original NAFTA parties, and Canada's status as the United States' closest trading partner, a NAFTA without Canada would have made little economic or political sense. Therefore, this is a key improvement.

However, the LAC notes with disappointment that despite the inclusion of Canada in the final agreement, it continues to face steel and aluminum tariffs (232s). The LAC recommends working with both Canada and Mexico to reach a resolution that will result in joint action to address the global glut in steel and aluminum that addresses the interests of our neighbors and their workers while defending America's steel and aluminum workers and those in downstream industries. This can only improve the prospects for our already highly integrated auto supply chain.

The auto rule of origin is now in final form, rather than draft form. While we appreciate the opportunity to review the text, we continue to have questions and concerns about the rule's potential to have a meaningful impact on the creation and retention of high-wage, high skilled auto sector jobs in the United States. In particular, we note the following in the Appendix to Annex 4-B:

Table A.1: Core Parts for Passenger Vehicles and Light Trucks

- Table A.1 fails to include electric motors or anything relating to autonomous vehicles (e.g., CPUs, semiconductors, lidar modules). On an AV/EV vehicle, this provision would lose most of its meaning. Article 4-B.3.10 allows for other items to be added later, but why not front load these items to give direction to the industry?
- Table A.1 appears to exclude heavy trucks from its coverage. If heavy trucks have no core parts, this appears to be a serious oversight.

Article 4-B.6 Steel and Aluminum

- Though this section includes a helpful requirement that automakers purchase 70% of the steel and aluminum they use from North American sources, it does not require those purchases to be originating by requiring a “melted and poured” standard for steel or a similar standard for aluminum. The lack of robustness in this standard will result in some automakers continuing to use steel and aluminum from North American producers who import steel slabs or semi-finished aluminum from China and elsewhere, doing minimal U.S. work and creating few U.S. jobs.

Article 4-B.7 Labor Value Content

- The \$16/hr. standard is arguably too low to make a significant difference in production location decisions such that new, family-wage jobs would more likely than not be created within the territory of the United States.
- The \$16/hr. standard is not tied to inflation. Within 10 years, the provision could be relatively meaningless. It is conceivable that some producers may simply wait out inflation, continuing to locate new production in Mexico in hopes that inflation will catch up.
- The \$16/hr. standard is an average, rather than a minimum, which blunts its impact. For example, manufacturing facilities will continue to be able to pay workers less than \$16/hr. so long as there are enough higher wage workers to raise the average. When there is near universal agreement that a minimum reasonable wage in the United States is \$15/hr., establishing \$16 as an average instead of a threshold seems unlikely to create the significant new family-wage jobs promised.
- As we noted in the original LAC report, without a strong labor chapter, this provision could backfire, actually increasing pressure on Mexican workers to keep wages, benefits, and safety costs down, aggravating current levels of outsourcing.
- The R&D and IT expenditures described in Article 4-B.7.3 do not include a \$16 requirement. The LAC believes it is wrong to assume that R&D and IT expenditures will always meet a \$16/hr. minimum. As the provision currently reads, original equipment manufacturers could expand the already substantial R&D and IT footprint in Mexico or relocate U.S.-based R&D or IT functions there, and these operations will qualify ***no matter what the wage level***. If we are reading this correctly, Article 4-B.7.3(b) is counterproductive.
- The labor content for heavy trucks has no “phase-in.” In contrast, pursuant to Article 4-B.7.6, the \$16/hr. manufacturing expenditures above 30 percentage points can be used as credits towards its regional content requirement in 4-B.4.1 for the first seven years of the agreement, undermining potential gains.
- The LAC continues to have questions about how labor value content standards will be certified and how manufacturers will be held accountable. Without strict accountability and meaningful penalties, producers seem likely to cut corners, which would undermine the intent of the rule.

Overall, while it appears that the auto rules of origin could cause some production shifts to the United States, those production shifts could be offset in other places. For example, a vehicle manufactured in Hermosillo may add more U.S. content to meet the standard, but that content could easily be offset by a U.S. produced vehicle including more Mexican content than it does currently. In short, while the auto rules of origin are certainly a step up from the current dysfunctional rules, the LAC continues to seek additional information to provide a more robust analysis of the rules' likely impacts. We reiterate our recommendation that the U.S. International Trade Commission's report address these critical auto issues in a robust and thoughtful manner, outside the severe limitations of its usual computable general equilibrium approach.

The LAC also notes that the binational panels to review antidumping and countervailing duty determinations (formerly known as "Chapter 19" panels) have been reinstated to the agreement. Accordingly, we amend the answer to the question "Does NAFTA 2018 eliminate Chapter 19 obstacles to trade enforcement?" (posed on page 9 of the LAC Report) from "Yes" to "No."

The LAC has also now had an opportunity to review the government procurement obligations of NAFTA 2018. These obligations exist only for Mexico and are extremely broad. The decision to retain in NAFTA the obligation to provide bidders of Mexico the same "Buy American" preferences that United States bidders enjoy undermines the ability of the federal government to use public spending to create jobs within the territory of the United States, which is particularly important in times of recession and depression. Accordingly, we amend the answer to the question "Does NAFTA 2018 protect responsible government purchasing and "Buy American" policies?" (posed on page 8 of the LAC Report) from "Unknown" to "No."

We note that the "Medpharm Annex" referenced on pages 10 and 25 of the original report has been renamed "Chapter 29, Section B: Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices" and that the intellectual property provisions discussed at page 24 of the LAC Report have been renumbered to begin with "20" instead of "18". Similarly, the reference to Footnote 2 of the Labor Chapter (on page 20 of the LAC Report) corresponds to Footnote 3 in the latest NAFTA 2018 text. Our concerns about the contents of all these provisions remain the same.

The LAC is pleased to see that Annex 14-E has clearer limitations on the government contractors who may access the full version of ISDS and has excluded dams from coverage; nevertheless, we continue to object to Annex 14-E as a whole. There is no need to undermine our democracy by including private justice for foreign investors in the new NAFTA.

With respect to Cross-Border Trade in Services, the LAC objects to Annex 15-A, Article 6(b), which prohibits a party from charging a fee that would help offset the costs of universal service provided by its postal monopoly. With respect the sectoral annexes on chemicals and cosmetics in Chapter 12, the LAC notes the repeated promotion of a risk-based standard as opposed to a precautionary standard and emphasizes that we continue to object to using trade agreements to impose such an approach. We note that prospective trading partners such as the European Union use a precautionary approach, which is far more protective to workers, families and the environment.

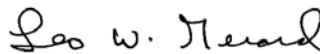
With respect to the LAC recommendation to engage in robust enforcement, including through the Parties working cooperatively to address joint trade threats, the LAC recognizes and appreciates the language in Section B of Chapter 7 (Cooperation and Enforcement) and Section

C of Chapter 10 (Cooperation on Preventing Duty Evasion of Trade Remedy Laws), but notes that neither these sections nor Chapter 33 (Macroeconomic Policies and Exchange Rate Matters) creates an infrastructure through which the Parties can jointly address trade threats facing all three NAFTA parties (e.g., overcapacity in steel or currency manipulation or misalignment by non-NAFTA parties). Encouraging parties to cooperate will simply not be as effective as creating avenues for joint action.

The LAC stands by the original LAC report in its entirety, subject to any modifications and additions made in this addendum. As such, we continue to view the current agreement as including both positive and negative changes to the status quo under NAFTA 1994. We will continue to withhold a final evaluation as a number of issues remain unknown. We continue to view both Mexico's labor law reform (both passage and implementation) and the U.S. implementing bill for NAFTA 2018 as integral pieces of the entire NAFTA 2018 package—pieces that could substantially alter NAFTA 2018's expected impacts for good or for ill. In addition, we will continue to press for improvements in the text of the agreement itself—including but not limited to labor enforcement provisions—hopeful that we can improve upon the current, unsigned text.

We will continue to work to improve U.S. trade policy, including replacing NAFTA 1994 with a better deal, to advance the interests of our members and all working families subject to its rules. To that end, we will work with legislative and executive branch officials of any NAFTA Party who share our goal to make trade work for working families.

Sincerely,



Leo W. Gerard

Chair

Labor Advisory Committee on Trade Negotiations and Trade Policy (LAC)

International President
United Steelworkers (USW)