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Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

RE: NAFTA Negotiations, USTR-2017-0006

Dear Mr. Gresser:

In response to a request from the United States Trade Representative,[1] the American Iron and Steel Institute (AISI), on behalf of its U.S. producer members, is pleased to submit the following comments regarding matters relevant to the modernization of the North American Free Trade Agreement (NAFTA).

NAFTA has provided significant benefits for the steel industry in North America since it went into effect on January 1, 1994. The Agreement has resulted in strengthened manufacturing supply chains, especially with key customer groups like the automotive industry. It has contributed to increases in intra-NAFTA trade and investment, which have helped the U.S. steel industry remain globally competitive. And it has resulted in a stronger relationship with Canada and Mexico, which has been beneficial as the three countries work together on issues like the ongoing global steel overcapacity crisis and China's bid for market economy status.

The American steel industry views NAFTA as a successful agreement, but after 23 years, one that can also be modernized and strengthened. Below are the steel industry's views on the Agreement, as well as ideas for improving and modernizing it.

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1 See Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico, Federal Register Number: 2017-10603 (United States Trade Representative, May 23, 2017)

I. Introduction

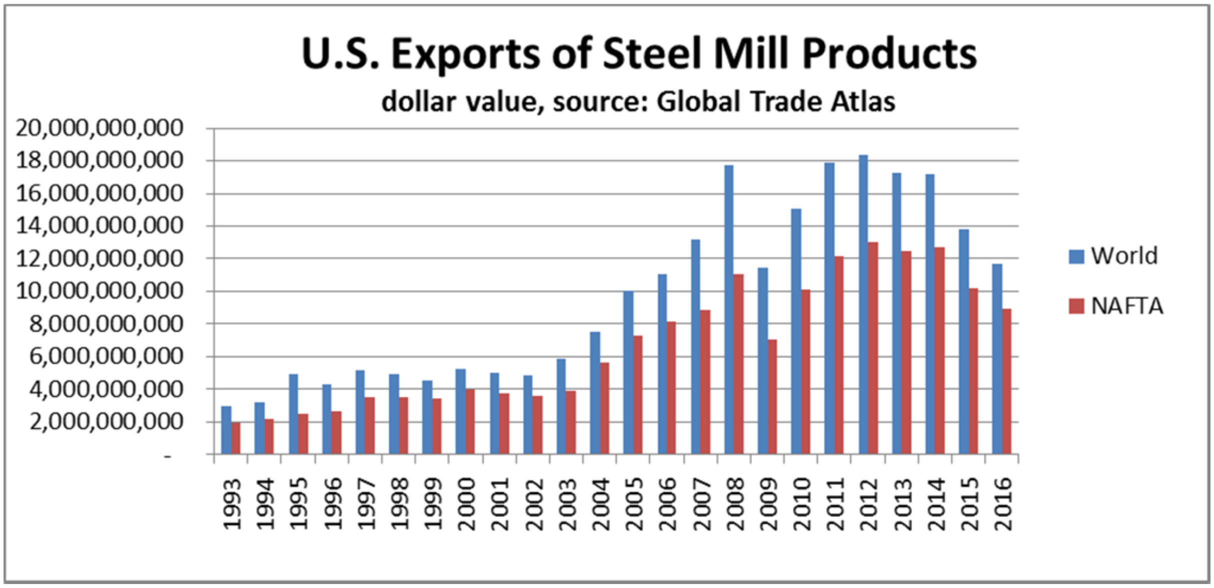
There are six stated objectives of NAFTA:[2]

- eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
- promote conditions of fair competition in the free trade area;
- increase substantially investment opportunities in the territories of the Parties;
- provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
- create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
- establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

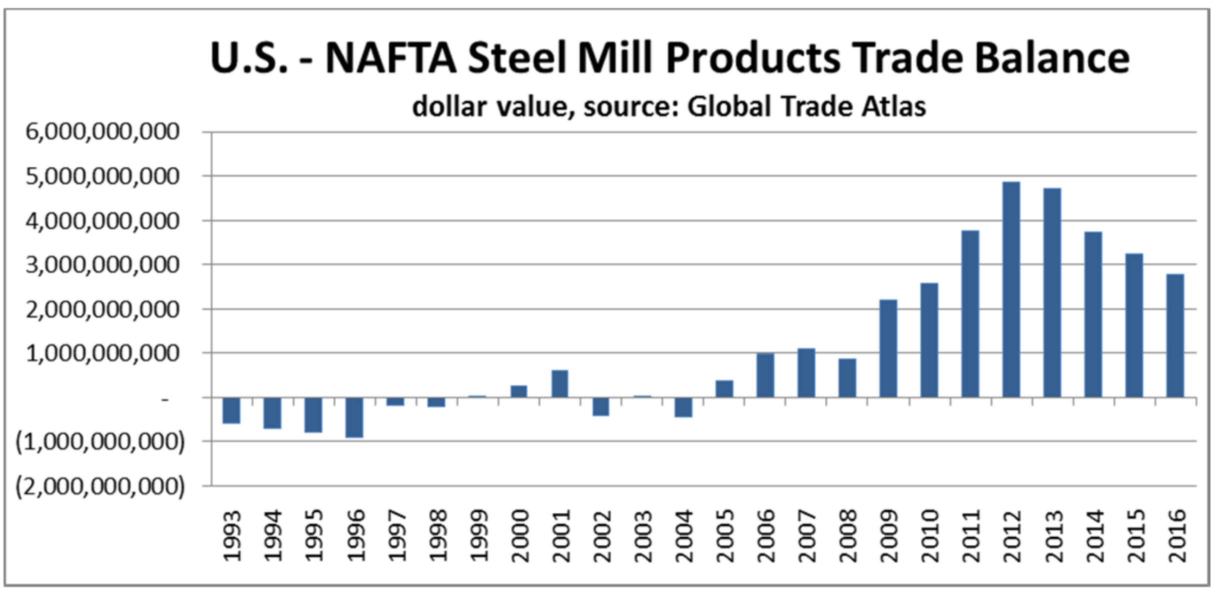
The Agreement has largely met these objectives.

As it relates to the steel industry, NAFTA is the steel industry’s most important free trade agreement, as 90 percent of all U.S. steel mill product exports by volume in 2016 were to Canada and Mexico. The trade statistics for steel since the Agreement’s implementation are striking. Between 1993, the year before NAFTA went into force, and 2016, U.S. steel exports to Canada and Mexico have increased substantially.

[2] North American Free Trade Agreement, Article 102: Objectives, available at https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/North-American-Free-Trade-Agreement?mvid=1&secid=5a1b5f25-8904-4553-bf16-fef94186749e



Not only have steel exports to Canada and Mexico increased, but in the years since the NAFTA entered into effect, the United States has moved from a steel trade deficit with Canada and Mexico to a steel trade surplus in recent years.



Indeed, from both a steel industry and a broader manufacturing perspective, NAFTA has promoted a strong and robust U.S. trade and investment relationship with Mexico and Canada.

Mexico is the United States' third largest overall goods trading partner and its second largest destination for manufactured goods exports. The overall relationship is relatively balanced, particularly given the high degree of input trade crossing the border and the high value-added of manufactured goods imports from Mexico.

While the United States had a bilateral goods trade deficit of $63 billion with Mexico in 2016 according to Census Bureau data, a significant portion of that deficit is due to trade in transportation equipment and machinery, two steel-intensive goods categories. American steel is a major input into Mexican automotive and machinery production. Thus, Mexican manufactured goods exports to the United States contain significant U.S. steel content, due to the integrated nature of North American steel and manufactured goods supply chains.

In part due to the significant American steel exports to Mexico for automotive production, Census data show the United States had a trade surplus with Mexico in steel of $1.7 billion in 2016, with U.S. exports averaging $4.2 billion a year over the last three years. Mexico is the U.S. steel industry's second largest export market after Canada.

The U.S.-Canada trade relationship is also a strong and balanced one. Canada is the United States top export market for manufactured goods generally, and also the top export market for U.S. steel products. While the Census data show the United States running a goods trade deficit of approximately $12.1 billion in 2016, a review of the breakdown of this deficit shows that it is driven by U.S. imports of oil and gas from Canada, and the United States runs a manufactured goods surplus with Canada.

In steel mill products, U.S.-Canada trade is remarkably balanced and robust. Canada is the largest export market for American steel products, with U.S. exports averaging over $5.5 billion per year over the last three years. As Census data show, while the United States runs a slight steel trade deficit with Canada in volume (tonnage) terms, the United States has a steel trade surplus in value (dollars) terms of $542 million for 2016. This reflects the overall strength of the U.S.-Canada trade relationship that is built upon our shared commitment to open markets and market-based competition.

Overall, the NAFTA has created an environment where the steel industries of all three North American countries have benefitted from strengthened steel and manufacturing supply chains. Since the NAFTA entered into force, trade in steel products between NAFTA countries has more than doubled, and today the vast majority of North American steel exports are made within the region – by volume, 96 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. Combined, 88 percent of all North American steel exports are within the region, making tariff-free trade within North America critical to the industry's success.

II. Recommendations for Modernizing the NAFTA

The following are the AISI's recommendations for improvements that could be made as part of an effort to modernize the NAFTA.

A. Strengthen Rules of Origin and Enhance Regional Value Content Requirements

The three countries should agree to update rules of origin (ROO) and regional value content (RVC) requirements to further incentivize investment and job growth in the North American region. For example, the rules regarding traced materials for automobiles should be amended to ensure the use of North American steel in NAFTA originating vehicles. NAFTA's 62.5 percent RVC for finished vehicles is the highest of any American free trade agreement and it has encouraged the use of North American parts and manufacturing. But while a number of traced materials are steel intensive, steel itself is not a traced material, so NAFTA currently provides no incentive for North American producers of steel-intensive traced materials to use North American steel in their production, or for North American automotive companies to prefer traced goods made with North American steel.

B. Promote Trade Enforcement and Coordination

Steel imports into the United States took a record 29 percent of the U.S. market in 2015, before declining in 2016 as a result of a number of significant antidumping and countervailing duty cases. Unfortunately, imports in the first quarter of 2017 are on the rise again, with total imports up 19 percent compared to the same period in 2016, and finished steel imports taking 26 percent of the market. This is in large part due to foreign government subsidies and other market-distorting policies. These imports eat into production and market share and contribute to severe job losses. Approximately 14,000 U.S. jobs in the steel industry were lost in 2015 and 2016, before a slight tick upwards in the first part of 2017.

A significant part of this import problem can be attributed to the global overcapacity crisis. The Organisation for Economic Co-operation and Development (OECD) estimates that there is more than 700 million metric tons of global excess capacity[3] and AISI estimates that China accounts for 425 million metric tons of it. This excess capacity harms all three countries' steel industries. As the Office of the United States Trade

[3] Organisation for Economic Co-operation and Development, High-level meeting on excess capacity in steel sector, (April 18, 2016), available at http://www.oecd.org/newsroom/high-level-meeting-on-excess-capacity-in-steel-sector.htm

Representative said in its annual report to Congress: "Chinese government actions and financial support in manufacturing industries like steel and aluminum have contributed to massive excess capacity in China, with the resulting over-production distorting global markets and hurting U.S. producers and workers in both the United States and third country markets such as Canada and Mexico, where U.S. exports compete with Chinese exports."[4]

The steel industries in Canada and Mexico face similar import-related injury due to unfairly traded steel imports from offshore. The U.S., Canadian and Mexican steel industries and their governments collaborate on common steel-related trade issues in the North American Steel Trade Committee. The three governments also work together in the Global Forum on Steel Excess Capacity, as well as in other forums. This collaboration has been productive and helped achieve one of NAFTA's stated objectives – establishing a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement. A renegotiated NAFTA offers an opportunity for the three governments to further collaborate on effective ways to respond to foreign government unfair trade practices and to urge reform of other foreign governments' subsidies and market-distorting policies.

Additionally, the United States should work with Canada and Mexico to strengthen existing procedures and create new procedures to address circumvention and evasion of antidumping and countervailing duty orders, and facilitate implementation of third-country dumping actions where appropriate. By establishing new procedures, the three countries can more effectively act to remedy the injury caused by dumped and subsidized steel imports into the North American marketplace and combat unfair trade practices from non-NAFTA countries.

C. Establish Enforceable Currency Disciplines

Currency manipulation makes exports more expensive, imports cheaper, and can subsidize cheaper prices for exports to third-markets. The International Monetary Fund (IMF) has provisions against currency manipulation, but the lack of an enforcement mechanism has limited their effectiveness.

A renegotiated NAFTA should build on IMF commitments and add enforceable currency disciplines in the renegotiated NAFTA. While the United States, Canada and Mexico do not manipulate their currencies, as C. Fred Bergsten, Senior Fellow and

[4] United States Trade Representative, 2016 Report to Congress on China's WTO Compliance (January 2017) at 13, available at https://ustr.gov/sites/default/files/2016-China-Report-to-Congress.pdf.

Director Emeritus of the Peterson Institute for International Economics, wrote: "this should make it relatively easy to add currency to the new NAFTA and thus set a useful precedent for other trade agreements where it might be more relevant (e.g., Japan or a revived Trans-Pacific Partnership).

"Trade and currency policies have traditionally been conducted separately by the United States and most other countries. That bifurcation is no longer viable in the United States, however, as demonstrated by the central role played by concerns over currency manipulation, based on its very substantial costs to the US economy and in the political backlash against trade agreements and globalization more broadly.

"Manipulation is now largely in remission but much more forceful policy responses to its possible return will almost certainly be a necessary component of any sustainable new political foundation for an open foreign economic policy in the United States. One part of that response should be inclusion of enforceable currency disciplines in new US trade agreements, starting with the renegotiation of NAFTA."[5]

D. Establish Disciplines on the Conduct of State-Owned Enterprises

State-owned enterprises (SOEs) create market distortions and an un-level playing field for market-based competitors. NAFTA's SOE provisions, as described by former USTR Ambassador Charlene Barshefsky, are "limited and do not reflect the full range of concerns about discriminatory preferences for SOEs that have come to the fore since NAFTA was signed."[6]

The NAFTA provisions on SOEs in Article 1503 provide the following:

- Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

- Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or

[5] C. Fred Bergsten, Currency Manipulation in the NAFTA Renegotiation, Peterson Institute for International Economics (May 19, 2017) available at https://piie.com/blogs/trade-investment-policy-watch/currency-manipulation-nafta-renegotiation

[6] Ambassador Charlene Barshefsky, Rob Lehman, David J. Ross, Jeffrey I. Kessler, What to Expect From a Trump Administration Trade Policy: Revisiting NAFTA, WilmerHale, (December 16, 2016) available at https://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=17179883448

establishes acts in a manner that is not inconsistent with the Party's obligations under Chapters Eleven (Investment) and Fourteen (Financial Services) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

- Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of another Party.[7]

While there are a relatively small number of SOEs in North America, they are much more common in other parts of the world. The Trans-Pacific Partnership (TPP) included a chapter on SOEs that was stronger than the NAFTA chapter, and negotiations offer the opportunity to build upon the TPP text. Such disciplines should include an expansive definition of SOEs and aim to ensure that those that compete with private sector companies do not receive financing or other benefits that unfairly advantage them, do not receive preferential legal or regulatory treatment, and observe a high degree of transparency. This would help level the playing field and set an important template for future trade agreements.

E. Improve Customs Procedures Operation and Coordination, and Upgrade Border Infrastructure

For steel producers and their customers in steel-using industries, especially those that use just-in-time manufacturing, shipping and receiving steel in a timely manner is critical. NAFTA negotiations present an opportunity to streamline existing customs procedures and to ensure that manufacturers can ship and receive steel in an efficient manner. Reducing burdensome and in some cases redundant reporting requirements would facilitate trade, make manufacturing more efficient, and enhance border security by allowing resources to be used in a more effective manner.

Upgrading border infrastructure and limiting bottlenecking would also facilitate North American trade and economic growth, make trade along the borders more efficient, and create jobs. As Christopher Wilson, Deputy Director at the Woodrow Wilson Institute, wrote: "… insufficient investment in cross-border infrastructure have added new costs and long waits for the shipment of goods across the U.S. land borders... Complicated

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7 North American Free Trade Agreement, Article 1503: State Enterprises, available at https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/North-American-Free-Trade-Agreement?mvid=1&secid=323701f4-4dd8-493b-bcc6-3698200bbeae

customs rules and paperwork requirements for imports and exports cut further into regional competitiveness, particularly because the transaction costs must be paid each time that a part or input crosses the border during the manufacturing process… infrastructure investment and a streamlining of customs and security measures at the borders are needed to boost the competitiveness of regional industry."[8]

III. Conclusion

When NAFTA was negotiated, the International Trade Commission concluded, in-part based on a submission from AISI, that "[t]he overall impact of NAFTA is expected to be beneficial to the U.S. steel industry… The U.S. industry's greater product range, technical expertise, and steel-making capacity relative to those of Mexico will provide a U.S. advantage in supplying the anticipated NAFTA encouraged growth in the Mexican steel market, and enable the industry to benefit from NAFTA tariff and government procurement provisions. NAFTA is expected to increase U.S. steel exports to Mexico…"[9]

AISI believes this analysis and projection was accurate – NAFTA has been a beneficial agreement for the U.S. steel industry. The agreement has resulted in stronger and more efficient supply chains, increased exports and investments, and helped the industry remain globally competitive. It has also encouraged and facilitated better cooperation with Canada and Mexico to address common problems we face with other trading partners.

While the Agreement as implemented has been beneficial for the steel industry, AISI also believes the recommendations outlined above would improve it, make the U.S. steel industry stronger, and create jobs in the process.

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8 Christopher Wilson, NAFTA's Next 20 Years: In Face Of Chinese Competition, Bonds Must Be Strengthened, Forbes (January 6, 2014) available at https://www.forbes.com/sites/themexicoinstitute/2014/01/06/the-next-twenty-years-of-nafta/#abe9021748e1

9 Peg MacKnight and Dan Shepherdson, Potential Impact on the U.S. Economy And Selected Industries of the North American Free Trade Agreement, United States International Trade Commission (January 1993) at 10-1, available at https://www.usitc.gov/publications/332/pub2596.pdf

AISI appreciates the opportunity to provide comments on matters relevant to the modernization of the North American Free Trade Agreement, and we look forward to working with the United States Government to ensure that the upcoming negotiations to modernize the NAFTA result in an improved Agreement that benefits U.S. manufacturers, their workers and their communities.

Sincerely,

Thomas J. Gibson