



AMERICAN PETROLEUM INSTITUTE

Kyle Isakower

Vice President

1220 L Street, NW
Washington, DC 20005-4070
Telephone (202) 682-8314
Fax (202) 682-8408
Email isakowerk@api.org
www.api.org

June 12, 2017

The Honorable Robert E. Lighthizer

United States Trade Representative
Office of the United States Trade Representative (USTR)
600 17th St., NW
Washington DC 20006

Subject: Comments on Negotiating Objectives Regarding Modernization of the North America Free Trade Agreement with Canada and Mexico

Dear Ambassador Lighthizer,

On behalf of its members, the American Petroleum Institute (API) would like to submit comments with regard to the modernization and renegotiation of the North American Free Trade Agreement (NAFTA). In addition to this executive summary, API is submitting supporting documentation, detailing the benefits of NAFTA that our industry currently relies upon and would like preserved. The first and second documents cover integrated and interdependent North American energy markets, and the third shows ways in which NAFTA facilitates several energy benefits. API member companies recommend that among the negotiating objectives for a modernized NAFTA, the enhancement of the integration and interdependence of energy markets and enhancement of the energy benefits from these integrated markets remain priorities.

For API and its industry members, there is a strong desire to see the provisions of the current NAFTA remain in place. The overall functionality of the current NAFTA agreement works for the oil and natural gas industry. API and its industry members therefore wish to ensure that as NAFTA is modernized, the provisions of the current agreement remain in place in a new NAFTA. Such provisions include the ones that API raises in this letter.

API is the only national trade association representing all facets of the oil and natural gas industry, which supports 9.8 million jobs and 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, marine businesses, and service and supply firms.

Zero or Reduced Tariffs

API supports the integrated energy markets that thrive for the oil and natural gas industry across US borders with Canada and Mexico. Part of the reason for this successful integration lies in the lack of tariffs on goods exchanged across those borders. It facilitates substantial trade and

investment, and ensures a wider variety of products available for consumers across North America. Any changes that would increase tariffs above the current zero rate would dramatically impair current trade flows, increase costs for North American companies and, in turn, raise product costs for US consumers. Therefore, API requests that duty-free treatment remain the rule for commodities and products currently at zero. API also requests that any tariffs still in place under the current NAFTA be either reduced or eliminated under any new trade agreement.

Investor Protections

The current NAFTA contains substantive investment provisions supported by a robust Investor-State Dispute Settlement (ISDS) mechanism. These provisions include rules that require the payment of prompt, adequate, and effective compensation for expropriation of investments. They also provide for a neutral forum for the resolution of disputes that arise between investors and host governments. In order to encourage investment, these provisions provide a level of security for companies and a means by which they can adequately protect those investments. If negotiators seek to modernize these provisions, API recommends they incorporate the provisions of the 2012 Model US Bilateral Investment Treaty (BIT). A modernized NAFTA must incorporate the current NAFTA's substantive protections and ISDS to protect industry investments in Canada and Mexico.

Trade Liberalization

NAFTA liberalizes trade in energy between the US, Canada and Mexico, including the automatic liberalization, per the US Natural Gas Act, of US natural gas exports to Canada and Mexico by virtue of NAFTA being a free trade agreement between the parties. This directly benefits US companies and creates investment opportunities that otherwise would not be available. API supports the liberalization of all trade of crude oil, gas, liquefied natural gas (LNG) and all refined products and petrochemicals or other energy intensive manufactured goods reliant on natural gas between all three countries.

Market Access

Although Mexico's hydrocarbon market was excluded originally in NAFTA, Mexico's subsequent energy reforms trigger a "ratchet clause" in NAFTA that provides national treatment for US investors' market access to Mexico, on par with such access provided in NAFTA to Canada's oil and natural gas market. This measure gives US companies a competitive advantage. API supports market access to foreign investors in domestic markets, without exceptions.

Additional Key Provisions

- ***Co-existence Clauses*** – API supports co-existence clauses in a modernized NAFTA that preserve the strongest investment protections and free trade provisions among overlapping agreements between parties. These clauses ensure stability and security.
- ***Intellectual Property Rights Protections*** – API supports intellectual property rules that adhere to the norms laid out by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

- ***Labor Mobility*** – API advocates that a modernized NAFTA include provisions that would allow for the mobility of oil and natural gas industry personnel, including for emergency response, across US-Mexico-Canada borders.
- ***Trade Remedy Measures*** – API supports trade remedy measures that are consistent with Article VI of GATT which prohibits the “dumping” of products that causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.
- ***Duty Drawback*** – Full duty drawback provisions help put US companies on a level playing field with other foreign companies, but there are restrictions in the current NAFTA. API and its industry members support new language that allows for full access to all duty drawback provisions.
- ***Rules of Origin and Diluent*** – API and its industry members would like to see new, more flexible language for rules of origin and diluent in a modernized NAFTA. Diluent acts as a sort of lubricant and it primarily applies to heavy Canadian crude imported by US refineries.
- ***Regulatory Cooperation & Coherence*** – API member companies request for a new NAFTA to include a Regulatory Coherence Chapter that preserves regulatory autonomy for the parties – including mutual recognition of Mexican, US and Canadian regulatory regimes for oil and natural gas. We support a NAFTA Regulatory Coherence Chapter that establishes or fortifies a regulatory cooperation process, with strong mechanisms to promote regulations that are risk-based; use sound science and data; incorporate cost-benefit analysis; and that are product of increased transparency, accountability, enhanced information quality and timely stakeholder consultation.

On behalf of its member companies, API appreciates the opportunity to share its perspectives on NAFTA and items to include as the US, Canada, and Mexico approach negotiations for a new trade agreement between them. API also requests to testify at the June 27th public hearing, and we have included our written comments as an attachment to this letter submission. We look forward to working with you to modernize NAFTA and to continue improved trade relations with our North American allies.

Sincerely,



Vice President, Regulatory & Economic Policy
American Petroleum Institute (API)

Enclosures: (1) *North America Energy Market Interdependence & Integration*
(2) *NAFTA: North America’s Trade Agreement & Energy Market Facilitator*
(3) *North American Energy*
(4) Written Comments of API Testimony for June 27th Hearing