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

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Lisa R. Barton, Secretary to the Commission
US International Trade Commission
500 E Street, SW
Washington, DC 20436

Subject: API Comments on the United States Mexico Canada Agreement (USMCA): Likely Impact on the US Economy and on Specific Industry Sectors

Dear Secretary Barton, ITC Commissioners, and Co-Project Leads for Investigation No. TPA-105-003:

On behalf of its members, the American Petroleum Institute (API) would like to submit comments on the ITC investigation No. TPA-105-003. We highlight the benefits of integrated and interdependent US-Canada-Mexico energy markets and the provisions of the North American Free Trade Agreement (NAFTA), and now the US-Mexico-Canada Agreement (USMCA), that underpin these benefits. We provide several recommendations to the ITC Investigation Team regarding methodology and how to capture accurately the provisions of the USMCA that are most relevant to the energy sector of the US economy.

API is the only national trade association representing all facets of the natural gas and oil industry, which supports 10.3 million US jobs and nearly 8 percent of the US economy. API's more than 600 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms.

Overall: USMCA Energy Benefits for US

API member companies support the USMCA. A trilateral trade agreement between the United States, Mexico, and Canada is vital to retain and enhance the continued economic benefits of the integrated North America oil and natural gas market. The attached map graphic depicts this integrated North American energy market, in which there are flows of crude oil, natural gas, refined products, and electricity to-and-from the US and Canada and the US and Mexico.

API supported many of the provisions in the NAFTA and took the position of a "do no harm" approach to negotiations of the USMCA. Now, API member companies believe that, overall, the USMCA retains most of the critical provisions in the NAFTA that underpin energy benefits to the US economy:

- Continued market access for US natural gas and oil products, and US natural gas and oil investments, in Canada and Mexico;
- Continued liberalized trade of and zero tariffs on natural gas and oil products; and
- Continued Investment Protections, to which all countries commit, and the eligibility for Investor-State Dispute Settlement (ISDS) for US natural gas and oil companies investing in Mexico.

In addition, the USMCA contains two additional provisions that should enhance energy benefits in the future:

- A requirement that Mexico retain at least the current level of openness to US energy investment; and
- A provision allowing customs authorities flexibility to accept alternative documentation to certify that imports of natural gas and oil have originated in USMCA countries.

We expand on each of these below, and we also provide recommendations regarding the investigation's methodology.

Investigation Methodology

API recommends that the ITC Investigation Team take into account the following recommendations in order to define accurately the energy effects of the USMCA:

- The NAFTA should be the baseline point of reference or base case, not a "no NAFTA" or "no USMCA" scenario. Such a "no NAFTA" or "no USMCA" scenario would not accurately depict current market conditions.
- The ITC USMCA analysis should be consistent and transparent about the modeling of current Section 232 tariffs on US imports of steel products from Mexico and Canada and associated retaliatory tariffs implemented by Mexico and Canada. API assumes that the baseline *and* the "with USMCA" future scenario will account for these tariffs and retaliatory tariffs because these reflect current market conditions and because the USMCA agreement does not remove these tariffs and retaliatory tariffs. API will continue to advocate strongly that such steel products import restrictions be removed entirely by the US; in the meantime the ITC modeling must reflect that they are in place, as just noted.
- The ITC USMCA analysis should be consistent and transparent in accounting for the state of openness to foreign investment of Mexico's energy market, including the modeling of any related sensitivity analysis of the level of openness of Mexico's energy sector to foreign investment currently vs. in the future. The current state of openness of Mexico's energy market should be the baseline. Mexico re-opened its energy market starting in 2013, and many foreign – including US – investors have gained access to Mexico's market since then.
- Additional cross-border North America trade in hydrocarbons can be expected, given continued rising production and refining of hydrocarbons in the US, the current state of openness of Mexico's energy market, and the expected continued development of cross-border infrastructure and logistics.

- Consideration should be given to offshore natural gas and oil production in the US Gulf of Mexico – including a mature market on the US side and a newly-opened market on the Mexico side.
- The ITC investigation should seek to quantify the USMCA's benefits whenever possible and make transparent the ways in which the quantified impacts of the USMCA have been determined. The ITC investigation should also be transparent about provisions of the USMCA that cannot be quantified or estimated. To the maximum extent possible, the USMCA analysis should reflect the views in the economics literature.

Zero Tariffs & Trade Liberalization

The USMCA retains the current zero rates for tariffs, which were established by the NAFTA, for crude oil, gasoline, kerosene-type jet fuel and other refined products, and for energy-intensive manufactured goods. The USMCA also will continue liberalized 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 the USMCA being a free trade agreement between the parties. This directly benefits US energy consumers and companies.

The US is now the world's largest producer of oil and natural gas, and the North American energy market is highly integrated and interdependent with Canada and Mexico – all supporting more than 10.3 million American jobs tied to natural gas and oil. The North American market also has broad and robust demand for and supply of energy-intensive manufactured goods, such as plastics, petrochemicals, and fertilizers. Integrated energy markets benefit the US by increasing efficiency, expanding the size of energy markets, and creating economies of scale that ultimately reduce energy costs for consumers.

Mexico serves as the number one export market for US natural gas and refined products and the fourth largest export market for US upstream oil and gas equipment. Likewise, Canada, as a major producer of heavy crude oil, supplies virtually all the heavy oil processed at US refineries, with a large and increasing share going to refineries in the US Gulf Coast. These US Gulf Coast refineries also import heavy crude oil from Mexico, produce refined products from this crude oil from Mexico, and some cases exported these refined products back to Mexico. These interdependencies create efficiencies and a legacy by which refineries in the US have been configured to process heavier crude oil from Canada and Mexico.

Market Access

Although foreign investment in Mexico's hydrocarbon market was excluded originally in the NAFTA, Mexico's subsequent energy reforms triggered a "ratchet clause" in the NAFTA that committed Mexico to allow US investors access to Mexico's energy market, as such access is defined in Mexico's reforms. The USMCA codifies this by requiring that Mexico retain at least its current level of openness to US energy investment. API member companies expect that this USMCA measure will retain the benefits of the opening of Mexico's energy market and convey benefits to the US economy through US foreign investment in Mexico and the economic impacts that this is expected to produce back in the US.

Investment Protections and Investor-State Dispute Settlement

The USMCA retains the NAFTA's Investment Protections, to which all countries commit, and the eligibility for Investor-State Dispute Settlement (ISDS) for US natural gas and oil companies investing in Mexico. For example, these investment provisions of the USCMA retain rules that require the payment of prompt, adequate, and effective compensation for expropriation of investments. For US natural gas and oil companies that invest in Mexico through a "covered government contract" with a "national authority," the USMCA also retains the provision for ISDS, a neutral forum for the resolution of disputes that arise between investors and host governments. However, the USMCA does not retain ISDS for US investors in Canada, with the exception of a three-year grandfathering.

As ITC did in its analysis of the Trans-Pacific Partnership (TPP), API recommends that ITC evaluate the impact for the US economy of the USMCA's investment provisions as they relate to energy and to natural gas and oil specifically. This analysis should be transparent and consistent with existing economics literature.

Rules of Origin and Diluent

API member companies expect that the USMCA's provision for allowing customs authorities the flexibility to accept alternative documentation for certification of origin will increase economic benefits because it will be easier for US imports of natural gas and oil, primarily from Canada, to be deemed USMCA-originating and allowed to enter the US duty free. This primarily applies to heavy crude oil from Canada imported for processing by US refineries in the middle of the country and along the Gulf Coast and to natural gas from Canada imported for use in New England. API member companies support implementing legislation for the USMCA that will require Customs and Border Protection (CBP) to accept all documentation of certification of origin, as defined in the USMCA Origin Procedures chapter.

Concerns about Import Restrictions on Steel

For the US natural gas and oil industry, the current Sec. 232 tariffs on steel imports from Canada and Mexico run contrary to the free trade benefits retained through USMCA. US import restrictions on steel, including tariffs and hard quotas even more so, are harmful to the US natural gas and oil industry because they disrupt supply chains and the delivery of steel products that are not manufactured in the United States in sufficient quantities, if at all, or to the quality and delivery schedule specifications needed – all of which impairs the execution of natural gas and oil projects.

The US natural gas and oil industry relies on steel products from Canada, Mexico and other countries, including line pipe used for pipelines; oil country tubular goods (OCTG) used as well casing in drilling and production; steel for line pipe (including slab and hot-rolled coil); and industrial pipe, including structural pipe and tubing and standard pipe, used in a variety of industrial facilities such as liquefied natural gas (LNG) terminals, petrochemicals plants, and refineries. API member companies systematically oppose Sec. 232 tariffs, and in light of the completed USMCA, oppose hard quotas to a greater degree. Hard quotas stop cross-border supply chains and can stop projects that rely on imported steel that cannot be sourced competitively or at all from within the US.

Conclusion

API member companies believe the USMCA will continue to serve America's economic interests by preserving many of the benefits of integrated North American energy markets. API looks forward to working cooperatively with the administration and with Congress to ensure that this agreement is ultimately approved.

Sincerely,

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

Enclosure: Figure 1. *North America Energy Market Interdependence & Integration*

Figure 1. North America Energy Market Integration & Interdependence (2017 data)