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UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT

DECEMBER 19, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5430]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5430) to implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North American Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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99–006

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 5430, the United States-Mexico-Canada Agreement Implementation Act, as ordered reported by the Committee on Ways and Means on December 17, 2019, implements the United States-Mexico-Canada Agreement.

B. BACKGROUND

The North American Free Trade Agreement (NAFTA) was signed by the United States, Mexico, and Canada in 1992. The NAFTA Implementation Act was enacted by Congress and signed by the President in the following year. In the decades following its implementation, Members of Congress raised numerous concerns regarding the NAFTA's impact on the U.S. economy, particularly its failure to raise labor and environmental standards in Mexico. Many also noted that the NAFTA had become outdated.

In 2017, the Administration notified Congress of its intent to renegotiate the NAFTA. After negotiations concluded, the United States, Mexico, and Canada signed the United States-Mexico-Canada Agreement (hereinafter "USMCA" or "the Agreement"), on November 30, 2018. Chairman Neal sent a letter to the Administration on April 9, 2019, regarding his concerns with the Agreement.[1] Committee Democrats sent letters to the Administration highlighting specific concerns in four key areas of the Agreement: labor

[1] April 9, 2019 letter from Chairman Richard Neal to Ambassador Robert Lighthizer. Available at: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/2019.04._Ltr_%20from_%20Chairman_%20Neal_%20to_%20Amb._%20Lighthizer_%20re%20NAFTA_%20Replacemen....pdf.

(April 11, 2019),[2] environment (April 17, 2019),[3] enforcement (April 25, 2019),[4] and access to medicines (May 3, 2019).[5]

In response to these concerns, Speaker Pelosi appointed a Working Group of House Democrats, led by Chairman Neal, to lead negotiations with the Administration on these issues. The Working Group issued a progress report to Speaker Pelosi regarding negotiations with the Administration on July 26, 2019.[6]

As a result of these negotiations, the USMCA was amended on December 10, 2019 to incorporate changes to the Agreement achieved through the Protocol of Amendment ("the Protocol") to the USMCA, which, together with an accord between House Democrats and the Administration, comprise the "December 10th Agreement."[7] [8] The December 10th Agreement achieves transformative changes to the USMCA that bolster the U.S. economy, strengthen enforcement and the enforceability of the Agreement, protect workers and the environment, and improve access to affordable prescription medicines.

The U.S. International Trade Commission ("USITC") issued a report on the likely impact of the USMCA on the U.S. economy in April 2019.[9] Based on two key assumptions, the USITC estimated that the USMCA would have a positive economic effect. First, the USITC assumed that the Agreement would be fully enforced; and second, it assumed that some of the Agreement's provisions would reduce uncertainty and spur economic activity. The December 10th Agreement has made these theoretical assumptions a reality for American workers and families. The December 10th Agreement makes key changes to the USMCA in the areas of (i) enforcement; (ii) labor; (iii) environment; and (iv) access to medicines. The following are key aspects of the USMCA, beginning with the improvements obtained under the December 10th Agreement.

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[2] April 11, 2019 letter from Chairman Richard Neal to Ambassador Robert Lighthizer. Available at: https://waysandmeans.house.gov/sites/democrats._waysandmeans.house.gov/_files/documents/_2019.04.11_%20WM_%20Dem_%20Ltr_%20to_%20Amb_%20Lighthizer_%20re_%20NAFTA%20Labor.pdf.

[3] April 17, 2019 letter from Chairman Richard Neal to Ambassador Robert Lighthizer. Available at https://waysandmeans.house.gov/sites/_democrats.waysandmeans._house.gov/files/documents/_2019.04.17_%20WM_%20Dem_%20Ltr_%20to_%20Amb_%20Lighthizer_%20re_%20NAFTA_%20Environment.pdf.

[4] April 25, 2019 letter from Chairman Richard Neal to Ambassador Robert Lighthizer. Available at: https://waysandmeans.house.gov/_sites/democrats.waysandmeans._house.gov/_files/documents/_2019.04.25%20WM_%20Dem_%20Ltr%20to_%20Amb%20Lighthizer_%20re%20NAFTA-_%20Enforcement.pdf.

[5] May 3, 2019 letter from Chairman Richard Neal to Ambassador Robert Lighthizer. Available at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/_files/documents/_2019.05.03_%20WM%20Dem_%20Ltr%20to_%20Amb%20Lighthizer_%20re%20NAFTA_%20Medicines.pdf.

[6] July 26, 2019 Chairman Neal Letter to Speaker Pelosi. Available at: https://waysandmeans.house.gov/sites/_democrats.waysandmeans._house.gov/files/documents/_20190726_Ltr_from_Working_Group_to_Speaker_Pelosi_re_NAFTA_Status_Report.pdf.

[7] The December 10th Agreement is reflected in the Protocol, the Environment Cooperation and Customs Verification Agreement between the United States and Mexico, dated December 10, 2019, and the United States-Mexico-Canada Agreement Implementation Act Title III, Subtitle c—United States-Mexico Cross-border Long-haul Trucking Services; Title VII—Labor Monitoring and Enforcement; Title VIII—Monitoring and Enforcement Relating to Environment; and Title IX—USMCA Supplemental Appropriations Act, 2019.

[8] *See* Protocol of Amendment to the United States-Mexico-Canada Agreement, available at: https://ustr.gov/ sites/ default/ files/files/ agreements/FTA/USMCA/ Protocol-of- Amendments-to-the-United-States-Mexico-Canada-Agreement.pdf.

[9] USITC, "U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and Specific Industry Sectors," Publication No. 4889, April 2019.

a. Enforcement

Without enforceability and enforcement, any agreement is just words on a page. Given the lacking enforcement record in the NAFTA, the December 10th Agreement fixed procedures in the NAFTA's and original USMCA's state-to-state dispute settlement mechanism that have allowed parties to block the formation of an arbitral panel and frustrate formal enforcement of all obligations. It also established enhanced enforcement mechanisms to secure compliance with the new labor and environmental rules. The December 10th Agreement includes the following enforcement-related improvements:

1. Prevent panel blocking and improve the efficiency of the state-to-state dispute settlement mechanism

The December 10th Agreement removes the requirement for the Free Trade Commission to convene before a panel is established and allows the complaining party to appoint the panelists if the defending party refused to participate in or does not show up to the choosing by lot procedure. The Agreement thus fixes procedural loopholes to help ensure that the USMCA is fully enforceable.

2. Create enhanced enforcement for labor and environment provision

As detailed below, the December 10th Agreement creates enhanced mechanisms to assist in the full enforcement of these provisions.

3. Require the development of rules of evidence for use in all enforcement mechanisms

The December 10th Agreement requires the development of rules of evidence for use in all enforcement mechanisms. The rules of evidence will allow disputing parties to submit anonymous testimony, redacted evidence, testimony in person, via declaration, affidavit, report, teleconference, or videoconference. In addition, the Panel will be permitted to accept evidentiary stipulations in advance of the hearing, request the production of documents, and take an adverse inference for non-responses. The revised USMCA will be the first U.S. trade agreement to require the development of rules of evidence for use in dispute settlement proceedings—an important step in ensuring that trade agreements are fully enforceable.

b. Labor

1. Strengthening Rules

The labor rules in U.S. trade agreements have proven difficult, if not impossible, to enforce. Five key changes strengthen the rules with a view to improving their enforceability.

• *Create a presumption that violations occur in "a manner affecting trade or investment between the Parties.* As decisions under previous trade agreements have demonstrated,[10] the

[10] *See* In the Matter of Guatemala—Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA–DR, Final Report of the Panel, June 14, 2017. Available at: https://

"manner affecting trade . . ." language has created a hurdle to labor enforcement. The December 10th Agreement includes a provision that creates a presumption that violations affect trade and requires that the other Party demonstrate otherwise:

- *Strengthen language in the Forced Labor provision to make it effectively enforceable.* The December 10th Agreement removes the phrase "through measures it considers appropriate" and the USMCA footnote regarding potential inconsistencies with other international obligations.
- *Remove "sustained or recurring course of action or inaction" from the provision on violence.* Acts of violence and intimidation should not need to be repeated in order to be actionable as a denial of freedom of association or the right to collective bargaining.
- *Strengthen steel rules of origin in the automotive sector to support U.S. manufacturing.* After a transition period, the December 10th Agreement ensures that steel used in the automotive sector will only receive preferential treatment under the USMCA if it is melted and poured in the region.
- *Create a new enforcement mechanism to address unfair trade in trucking services.* Building on the exception negotiated in the Services chapter of the USMCA, and consistent with the December 10th Agreement, the implementing bill will establish a new process at the USITC that will protect U.S. truckers and companies from surges in trucking services from Mexico that cause material harm to the U.S. industry.

2. Establishing a robust monitoring program

The United States has failed to effectively monitor the labor provisions in trade agreements. Pursuant to the December 10th Agreement, the USMCA implementing bill will establish an interagency committee with devoted funding that will be responsible for actively monitoring Mexico's compliance with the labor chapter, including the following activities:

- *Establish an Independent Review Body.* The implementing bill will establish an independent review body that will make determinations regarding whether Mexico is satisfactorily implementing its labor reform and general labor laws based on objective benchmarks. Negative determinations will lead to dispute settlement actions.
- *Devote Robust Resources.* The interagency committee will receive funding for staff from USTR and the U.S. Department of Labor ("DOL") devoted to monitoring and enforcement, including multiple labor attachés based in Mexico.
- *Engage with Key Stakeholders.* The interagency committee will be required to consult regularly with key stakeholders, including the Labor Advisory Committee. The committee will also coordinate with other key stakeholders, including the International Labour Organization ("ILO"), the Inter-American Development Bank (IDB), Mexico, and Canada.
- *Link Monitoring with Enforcement.* The interagency committee's monitoring work will be directly related to enforce-

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www.trade.gov/industry/tas/Guatemala%20%20%E2_%80%93%20Obligations_%20Under_%20Article%2016-2-1(a)%20of_%20the%20CAFTA-DR%20%20June%2014%202017.pdf.

ment actions taken by USTR, including the establishment of priority sectors and facilities. The committee will also review petitions submitted by outside stakeholders.

3. Creating labor-specific enforcement tool

State-to-state dispute settlement by itself has not provided sufficient leverage to ensure that U.S. trading partners live up to their labor commitments. In recognition of this concern, the December 10th Agreement establishes an enforcement mechanism in the dispute settlement chapter that:

- Takes immediate effect upon entry into force of the Agreement;
- Provides for facility-based enforcement of labor standards with a rapid timeline;
- Covers manufactured goods and services traded between the United States and Mexico as described in the Protocol;
- Requires verification of compliance by independent labor experts; and
- Leads to the imposition of penalties on goods and services—which includes suspension of liquidation during the course of the verification—that are not produced in compliance with the December 10th Agreement's labor standards. In the case of repeat offenders, the United States can block entry of those goods.

The renegotiation of the NAFTA was premised on the recognition that the original agreement failed to raise wages and working conditions in Mexico, hurting American workers, especially in our industrial manufacturing sector. The NAFTA does not formally incorporate labor provisions. It addresses labor commitments through the North American Agreement on Labor Cooperation ("NAALC"), a separate cooperative agreement.[11] Despite the fact that findings of non-compliance have been made pursuant to the NAALC's mechanisms, sanctions or penalties have never been authorized as a result of those cases.

The USMCA as signed in November 2018 incorporated labor commitments in the Agreement itself and subjected those commitments to the Agreement's state-to-state dispute settlement mechanism. However, some of those obligations remained soft, and responding parties have been able to frustrate the NAFTA's state-to-state mechanism, as noted above. In the December 10th Agreement, Democrats obtained improvements in the following areas: strengthening rules; new mechanisms and resources to ensure that the U.S. government effectively monitors compliance with the Agreement's labor obligations specific to Mexico; and a new and enhanced labor-specific enforcement mechanism.

4. Committing robust resources for implementing and enforcing the labor provision

The obligations in trade agreements are valuable only if they are actively monitored and enforced. Pursuant to the December 10th Agreement, the implementing bill will provide increased funding to monitor and enforce the USMCA, as well as provide significant ca-

[11] *See* North American Agreement on Labor Cooperation, available at: https://www.dol.gov/agencies/ ilab/trade/agreements/naalcgd.

pacity building resources to support Mexico's labor reform, including $240 million over four years, including:

- $30 million for USTR to monitor and enforce the labor obligations in the USMCA;
- $30 million for DOL to monitor and enforce the USMCA, including funding for five labor attaché positions in Mexico; and
- $180 million in capacity building for grants issued by DOL to support the implementation of Mexico's labor reform, which will go a long way toward ensuring the potential of Mexico's labor reform. The Ways & Means Committee expects at least $100 million of these funds to support capacity building projects in Mexico that are designed to train workers so that they can realize their collective bargaining and freedom of association rights in the workplace.

c. Environment

Twenty-five years under NAFTA have shown that a failure to comply with and enforce environmental standards in Mexico has had negative economic consequences and undermined American competitiveness. The NAFTA does not formally incorporate environmental provisions. It addresses environment commitments through the North American Agreement on Environmental Cooperation ("NAAEC"), a separate cooperative agreement. No sanctions or penalties have ever been authorized as a result of petitions filed pursuant to the NAAEC.[12] The USMCA, as signed in November 2018, incorporated environment commitments in the Agreement itself and subjected those commitments to the Agreement's state-to-state dispute settlement mechanism. In the December 10th Agreement, House Democrats obtained improvements in the following areas: strong and high-standard rules that are clear and enforceable, new mechanisms and the allocation of additional resources to monitor whether environmental protections are being applied, and new mechanisms to hold partners and actors accountable to the Agreement.

1. Strong and high-standard rules that are clear and enforceable

Similar to the labor rules, the December 10th Agreement creates a presumption that an environmental violation affects trade and investment and requires the responding Party to prove otherwise during dispute settlement. Further, House Democrats restored key obligations achieved in the NAFTA and under the May 10, 2007 Agreement ("the May 10th Agreement") between House Democrats and the Administration in connection with trade agreements with Peru, Panama, and Colombia. The May 10th Agreement required the Parties to "adopt, maintain and implement" seven key multilateral environment agreements (MEAs).[13] House Democrats were able to secure a similar commitment in the December 10th Agreement. The obligation also includes additional language that allows the Parties to agree to add additional environment or conservation agreements to the listed MEAs. House Democrats had hoped to se-

[12] *See* North American Agreement on Environmental Cooperation. Available at: https://www.epa.gov/sites/production/files/2018-11/documents/us-mxca_eca_-_final_english.2.pdf.
[13] *See* Art. 24.8(4) of the USMCA.

cure the addition of an eighth MEA, the Paris Agreement under the United Nations Framework Convention on Climate Change, to the list of covered MEAs; however, House Democrats were unable to secure the outcome from the Trump Administration. House Democrats intend that a future Administration, which recognizes the global climate change crisis, will immediately work with Canada and Mexico to amend the obligation accordingly. The December 10th Agreement also restored a provision that appears in the NAFTA that allows a Party to prioritize their obligations under the seven covered MEAs over the trade agreement obligations. Lastly, the December 10th Agreement removed language to ensure that trade in all substances controlled by the Montreal Protocol can be covered by the USMCA, including all existing and future amendments to the Montreal Protocol (such as the Kigali amendment covering HFCs, which contribute to global warming).

2. New mechanisms and the allocation of additional resources to monitor environmental protections

Under the December 10th Agreement, House Democrats secured the creation of the Interagency Environment Committee for Monitoring and Enforcement ("Interagency Environment Committee"). The Interagency Environment Committee will include all federal agencies with the necessary expertise and functions to fully enforce the USMCA environment obligations, including the Department of Interior ("DOI") (U.S. Fish and Wildlife Services), the Department of Commerce (National Oceanic and Atmospheric Administration ("NOAA"), and the Environmental Protection Agency ("EPA"). First, the Interagency Environment Committee will conduct a thorough assessment of Canada and Mexico's current environment laws, regulations and enforcement practices. The Interagency Environment Committee will develop a report that will create a roadmap for full compliance with the USMCA environment obligations and will submit the report and assessment to Congress.

The Interagency Environment Committee will continuously monitor Canada's and Mexico's implementation of the USMCA environment obligations. Monitoring will include reviewing and recommending enforcement actions in response to factual records and submissions of the Commission for Environmental Cooperation ("CEC"), a U.S.-Mexico-Canada cooperation body set up under the NAFTA. Since the NAFTA was implemented, the CEC has developed factual records showing that the NAFTA Parties are failing to effectively enforce their environment laws. No action has been taken based on these findings. Under the December 10th Agreement, the Interagency Environment Committee will be required to review the factual records and their underlying submissions to determine if an enforcement action should be taken. The Interagency Environment Committee must submit a written justification to Congress if it recommends that no action be taken.

Further, with respect to Mexico, the Interagency Environment Committee will implement, review public comments, and fully utilize all enforcement tools under the Cooperation and Customs Verification Agreement between the United States and Mexico ("Customs Verification Agreement") and will review quarterly update reports from the three new environment attachés in Mexico. The December 10th Agreement includes the establishment of three

new environment attachés who will be detailed to USTR from NOAA, U.S. Fish and Wildlife Service, and EPA and stationed in Mexico to assist the Interagency Environment Committee with monitoring and enforcing Mexico's efforts to live up to their USMCA environment obligations. The Interagency Environment Committee will provide a platform for better coordination, utilization and funding of U.S. Government efforts to strengthen environment practices in North America.

House Democrats secured additional resources to fulfill these functions. Pursuant to the December 10th Agreement, the implementing legislation includes an additional appropriated $20 million over four years for USTR to lead the Interagency Environment Committee in monitoring and enforcing the environment obligations in the USMCA, including funding for the three environment attachés assigned to Mexico. Moreover, the December 10th Agreement secured $40 million over four years for the Trade Enforcement Trust Fund to be used for environment-focused enforcement efforts. Further, the December 10th Agreement included additional funds, beyond what is typically appropriated for each program per year, to the EPA, NOAA, U.S. Department of Agriculture—Animal and Plant Health Inspection Service ("APHIS") and U.S. Fish and Wildlife Services. Specifically, $4 million over four years will be appropriated to the EPA to assist in its work on the CEC; NOAA will receive an additional $8 million over four years to combat illegal, unreported, and unregulated fishing and to enhance implementation of the Seafood Import Monitoring Program; and U.S. Department of Agriculture (APHIS) and DOI (U.S. Fish and Wildlife Services) will each receive an additional $4 million over four years to implement the Lacey Act.

3. New mechanism to hold partners and actors accountable to the agreement and resources to address pollution

In addition to fixing the state-to-state dispute settlement mechanism, the December 10th Agreement includes a new environment-specific enforcement mechanism. Additionally, the Customs Verification Agreement is a binding agreement signed between Mexico and the United States on December 10, 2019, which allows for the United States to request customs information from Mexico to verify the legality of a shipment of fauna or flora. Mexico is a known source and transshipment hub of illegally-taken wild fauna and flora. This new mechanism will allow the United States to hold Mexico accountable and will deter the shipment of these illegal goods in Mexico.

The December 10th Agreement also included significant funds to address environment-focused infrastructure needs on the U.S.-Mexico border and pollution in U.S.-Mexico shared waters. The December 10th Agreement includes a capital increase authorization for the North American Development Bank ("NADBank") and $215 million for NADBank over five years for environment infrastructure projects. In addition, House Democrats secured $300 million over four years of additional appropriated funds for EPA grants under the Border Water Infrastructure Program to address pollution needs connected with high priority wastewater facilities on the U.S.-Mexico border. Further, House Democrats secured $8 million

for NOAA over four years to address marine debris in North American waters.

d. Access to medicines

U.S. patients are currently facing a crisis relating to access to affordable health care and prescription drugs. The NAFTA did not include provisions on biologics, secondary patents, the protection of new clinical information, patent linkage, or other provisions that limit patients' access to medicines. The USMCA, as originally negotiated, would have locked-in practices that lead to high drug prices, hindered the generic competition that brings down prices, and ignored access to medicines principles from the May 10th Agreement. The December 10th Agreement now preserves Congress's power to pass laws that bring down high prescription drug costs, ensures fair terms of competition, and recognizes key access to medicine standards. The December 10th Agreement creates a balance between encouraging the competition that brings greater access to medicines at lower costs to patients and supporting pharmaceutical innovation. This balance was an important requirement of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

1. Preserving Congressional power to bring down high prescription drug costs

The December 10th Agreement removes the biologics provision, and all references to it, from the intellectual property chapter. This provision required that the United States, Canada, and Mexico provide at least 10 years of market exclusivity for biologics, which are some of the most expensive drugs on the market. Some of these medicines now cost more than $200,000 per year per patient. The removal of this provision preserves the policy space needed to drive down the high price of biologics.

The December 10th Agreement also removes the requirement that the United States, Canada, and Mexico confirm the availability of patents for new uses of known products. This provision would have locked in the practice of "patent evergreening," in which pharmaceutical companies obtain hundreds of patents related to a product to block generic competition and price reductions. The December 10th Agreement ensures that the United States does not lock-in patent evergreening here or require its export to Mexico and Canada.

In addition, the December 10th Agreement removes the requirement that the United States, Canada, and Mexico provide at least three years of additional exclusivity for new clinical information submitted to support new uses of previously-approved pharmaceutical products.

2. Ensuring fair terms of competition

Congress passed the Drug Price Competition and Patent Term Restoration Act of 1984, commonly known as "Hatch-Waxman," to balance incentives for the initial innovation of a pharmaceutical with opportunities for follow-on competition from less expensive generic drugs.[14] The December 10th Agreement also focuses on en-

[14] *See* Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98–417.

suring that the USMCA reflects the balance in U.S. law to promote access to medicines.

The December 10th Agreement adds new language to the regulatory review provision to ensure that it is consistent with U.S. law and fosters competition. A strong regulatory review provision enables generic and biosimilar manufacturers to use a patented invention during the patent term to develop information needed to obtain regulatory approval the moment the patent expires.

The December 10th Agreement also ensures that the USMCA's data protection provisions are consistent with U.S. law. Under U.S. law, branded pharmaceutical companies may obtain a form of data protection known as new chemical entity ("NCE") exclusivity for a period of five years. A new footnote ensures that a generic company can continue to seek approval in less than five years when the branded company receives notice of the generic's claim and does not bring legal action within 45 days. Another footnote ensures that NCE exclusivity is limited to those products with the same active moiety or molecule as the branded product, consistent with U.S. law.

3. Reflecting key May 10th principles

The December 10th Agreement removes the concept of "hard" patent linkage—under which a regulatory agency cannot approve the marketing of a generic version of a pharmaceutical until it certifies that no patent would be violated—from the trade agreement template. Under a new Annex, Mexico may continue its current linkage system only if it ensures that directly affected persons receive notice and a reasonable opportunity to be heard. The December 10th Agreement also improves transparency and incentives for generic competition. The patent linkage provision applies only to chemically-synthesized drugs as the United States does not apply patent linkage to biologics.

The December 10th Agreement also aligns the provision on patent term adjustments more closely with the May 10th principles by providing non-exhaustive examples of limitations and restrictions on when patent term adjustments for regulatory delays may be permitted.

II. KEY USMCA PROVISIONS

The USMCA makes some notable changes to the NAFTA's market access provisions for autos, agriculture products, and services, as well as changes to rules and disciplines, including in the areas of investment and intellectual property rights. The USMCA also addresses new issues such as digital trade and currency.

a. Autos

The NAFTA phased out U.S. tariffs on imports of automotive goods from Canada and Mexico that met the rules of origin requirements. The USMCA increases regional value content requirements for passenger vehicles, light and heavy trucks, and automotive parts. It also imposes a new requirement that 70 percent of steel and 70 percent of aluminum purchases by vehicle producers must originate in USMCA countries. For the first time in a trade agreement, the USMCA includes wage requirements stipulating a minimum of 40 to 45 percent of production of vehicles traded in the

USMCA region be made by workers earning on average at least $16 per hour.

b. Agriculture

The USMCA generally maintains the market access for agriculture provided under the NAFTA, which allows tariff-free trade of most agricultural goods in the region. The USMCA provides additional market access for U.S. dairy, poultry, and eggs to Canada. Canada also agreed to eliminate its pricing schemes for skim milk products six months after the agreement enters into force. New provisions address Canada's discriminatory practices regarding the sale, distribution, and labeling of wine and distilled spirits, and grading of U.S. wheat. Additionally, the USMCA includes strengthened disciplines for science-based sanitary and phytosanitary measures and provisions that address novel agricultural bio technologies such as gene editing.

The Committee is of the view that U.S. recognition of Sotol as a distinctive product of Mexico would contravene the purpose of 27 U.S.C. 205(e), under which the Secretary of the Treasury is charged with developing regulations on packaging, marking, branding, and labeling "as will prohibit deception of consumers with respect to" distilled spirits products. In fact, U.S. recognition of Sotol as a distinctive product of Mexico through such a regulation would fundamentally deceive U.S. consumers because Sotol is the generic name for 22 species of a plant that grows naturally on both sides of the U.S.-Mexico border. For the same reasons, the Committee is of the view that the Alcohol and Tobacco Tax and Trade Bureau ("TTB") does not have authority under its regulations to recognize Sotol as a distinctive product of Mexico, since 27 CFR 5.22 prohibits TTB from recognizing distilled spirits as distinctive products if "by usage and common knowledge [they] have lost their geographical significance to such an extent that the appropriate TTB officer finds they have become generic."

c. Currency

The USMCA includes new policy and transparency commitments on currency issues. It requires commitments to refrain from competitive devaluations and targeting exchange rates and provides accountability mechanisms.

d. Digital trade

The USMCA includes new digital trade provisions, including prohibiting customs duties on electronically transmitted products and limits on source code disclosure requirements. The USMCA also contains broad provisions on cross-border data flows, and restrictions on data localization and the liability of Internet platforms for third-party content. The USMCA is the first trade agreement to include certain limitations on liability of interactive computer service suppliers or users for third-party content. The Committee understands that inclusion of this obligation will not preclude Congress from acting to amend U.S. law related to these principles in the future.

e. Intellectual property

The USMCA creates a strong framework of standards for protection and enforcement of intellectual property rights including copyrights, trademarks, trade secrets, and patents. It also includes robust criminal and civil enforcement provisions.

f. Investment

The USMCA's investment provisions largely track those of the NAFTA, except for changes to the investor-state dispute settlement ("ISDS") provisions. The Agreement generally ends ISDS between Canada and the United States. With respect to Mexico and the United States, the USMCA would limit ISDS to claims involving government contracts in natural gas, power generation, infrastructure, transportation, and telecommunications sectors, or in other sectors provided national remedies are exhausted first.

g. Services

The USMCA's services provisions require nondiscriminatory treatment of partner-country providers in like circumstances, including national treatment and MFN treatment; no limitations on the number of service suppliers, the total value or volume of services provided, the number of persons employed, or the types of legal entities that a foreign service supplier may employ; and include prohibitions on commercial presence requirements. Mexico and Canada also agreed to increase their customs *de minimis* thresholds.

II. LEGISLATIVE HISTORY

Background

On December 13, 2019, the President transmitted, in accordance with Section 106(a) of the Bipartisan Congressional Trade priorities and Accountability Act of 2015, documents including a draft of the implementing bill, a copy of the final legal text, and a statement of administrative action with respect to such agreement. On the same day the implementing bill, H.R. 5430, was introduced by Majority Leader Steny Hoyer on behalf of himself and the Minority Leader. On December 17, 2019, H.R. 5430 was referred to the Committee on Ways and Means.

Committee hearings

On June 25, 2019, the Subcommittee on Trade held a hearing on "Mexico's Labor Reform: Opportunities and Challenges for an Improved NAFTA." Members heard testimony from experts in Mexico's economy, including: 1) Dr. Joyce Sadka from the Center for Economic Research at Instituto Tecnologico Autonomo de Mexico, 2) Ms. Gladys Cisneros from the Solidarity Center, 3) Dr. Harley Shaiken from the Center for Latin American Studies at University of California, Berkeley, and 4) Ms. Cathy Feingold, AFL–CIO. On June 19, 2019, the full Committee held a hearing on "The 2019 Trade Policy Agenda: Negotiations with China, Japan, the EU, and UK; new NAFTA/USMCA; U.S. Participation in the WTO; and other matters." Ambassador Robert E. Lighthizer, the U.S. Trade Representative, was the only witness at the hearing.

On May 22, 2019, the Subcommittee on Trade held a hearing on "Enforcement in the New NAFTA." Members heard from the following witnesses: 1) Ms. Beth Baltzan, from the American Phoenix Trade Advisory Services PLLC, 2) Mr. Owen Herrnstadt from the International Association of Machinists and Aerospace Workers, 3) Ms. Sandra Polaski, an Independent Expert, and 4) Mr. Alexander von Bismark from the U.S. Environmental Investigation Agency. The minority invited Ms. Devry Boughner Vorwerk from Cargill, Inc. On March 26, 2019, the Subcommittee on Trade held a hearing on "Trade and Labor: Creating and Enforcing Rules to Benefit American Workers." Members heard from the following witnesses: 1) Ms. Celeste Drake from the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), 2) Mr. Shane Larson from Communication Workers of America (CWA), 3) Mr. Josh Nassar, United Auto Workers (UAW), 4) Ms. Holly Hart from United Steelworkers (USW), 5) Mr. Steve Catanese from Local 668 Chapter, Services Employees International Union (SEIU) and 6) Ms. Thea Lee, Economic Policy Institute (EPI). The minority invited Ms. Susan Montevideo from American Association of Port Authorities (AAPA).

On March 21, 2018, the full Committee held a hearing on the "U.S. Trade Policy Agenda." Ambassador Robert E. Lighthizer, the U.S. Trade Representative, was the only witness at the hearing.

On July 18, 2017, the Subcommittee on Trade held a hearing on "Modernization of the North American Trade Agreement (NAFTA)." Members heard from many witnesses, including: 1) Mr. Tom Linebarger from Cummins, Inc., 2) Mr. Patrick J. Otensmeyer from Kansas City Southern, 3) Mr. Dennis Arriola from Sempra Energy, 4) Ms. Celeste Drake from American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), 5) Mr. Jason Perdue from the Nebraska Farm Bureau, 6) Ms. Christine Bliss from Coalition of Services Industries, 7) Mr. Stan Ryan from Darigold, Inc., 8) Ms. Althea Erickson, Etsy, Inc., and 9) Ms. Susan Helper from Case Western Reserve University.

On June 22, 2017, the full Committee held a hearing on the "U.S. Trade Policy Agenda." Ambassador Robert E. Lighthizer, the U.S. Trade Representative, was the only witness at the hearing.

Committee action

The Committee on Ways and Means met in open session on December 17, 2019 to consider H.R. 5430, the "United States-Mexico-Canada Agreement Implementation Act," on December 17, 2019, and ordered the bill favorably reported by voice vote (with a quorum being present).

III. EXPLANATION OF THE BILL

Section 1. Short Title and Table of Contents

Section 1 of H.R. 5430 contains the short title of the Act, which may be cited as the "United States-Mexico-Canada Agreement Implementation Act", and sets forth the table of contents of the bill.

Section 2. Definition

Section 2 of H.R. 5430 defines various terms used throughout the bill, including the terms "appropriate congressional committees",

"HTS", "identical goods", "NAFTA", "preferential tariff treatment", "USMCA", "USMCA Country", "International Trade Commission", and "Trade Representative".

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE USMCA

Section 101: Approval and Entry Into Force of the USMCA

CURRENT LAW

Section 101 of the NAFTA Implementation Act approved the NAFTA, and the accompanying exchange of letters and Statement of Administrative Action.

EXPLANATION OF CHANGE

Section 101(a) of H.R. 5430 states that Congress approves the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada, the USMCA attached as an Annex to the Protocol, as amended by the Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada, and the Statement of Administrative Action. Section 101(b) provides for the USMCA to enter into force with respect to Canada and Mexico not earlier than 30 days after the date on which the President submits to Congress the written notice required by section 106(a)(1)(G) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015), which shall include the date on which the USMCA will enter into force.

REASON FOR CHANGE

Approval of the USMCA and the Statement of Administrative Action is required under the procedures of section 103(b)(3)(B) of TPA 2015.[15] Section 101 provides for such approval and for entry into force of the USMCA.

Section 102: Relationship of the USMCA to United States and State Law

CURRENT LAW

Section 102 of the NAFTA Implementation Act contains similar provisions as section 102 of H.R. 5430 described below concerning the relationship of the NAFTA to U.S. and State laws and private right of action.

EXPLANATION OF CHANGE

Section 102(a) of H.R. 5430 provides that U.S. law prevails in the case of a conflict with the USMCA. Section 102(b) provides that only the United States is entitled to bring a court action challenging a state law as being invalid on grounds of inconsistency with the USMCA. Section 102(c) of H.R. 5430 states that there is no private cause of action or defense under the FTA and no person

[15] *See* Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114–26.

other than the United States may challenge a federal or state law in court as being inconsistent with the FTA.

REASON FOR CHANGE

The provision addresses the issue of the operation of the agreement relative to federal and state law, as well as private remedies. Section 102 of H.R. 5430 is necessary to make clear that no provision of the USMCA will be given effect if it is inconsistent with federal law and that entry into force of the agreement creates no new private remedy.

Section 103: Implementing Actions in Anticipation of Entry Into Force; Intial Regulations; Tariff Proclamation Authority

CURRENT LAW

Section 105 of the NAFTA Implementation Act contains similar provisions as section 103 of H.R. 5430 described below concerning the implementing actions in anticipation of entry into force of the NAFTA.

EXPLANATION OF CHANGE

Section 103(a) of H.R. 5430 authorizes actions between the date of enactment of H.R. 5430 and entry into force of the USMCA necessary to implement the Agreement on that date. Section 103(a) of H.R. 5430 provides that, after the date of enactment, the President may proclaim such actions, and other U.S. Government officers may issue such regulations, as are necessary to ensure the appropriate implementation of any provision of the legislation that is to take effect on the date of entry into force of the Agreement. The effective date of such actions and regulations may not be earlier than the date of entry into force of the USMCA. Where proclaimed actions are not subject to consultation and layover requirements under the bill, proclamations generally may not take effect earlier than 15 days after their publication.

Section 103(b) of H.R. 5430 establishes that regulations necessary or appropriate to carry out actions under the bill and Statement of Administrative Action must, to the maximum extent feasible, be issued within one year of entry into force of the USMCA or, where a provision takes effect on a later date, within one year of the effective date of the provision.

Section 103(c) of H.R. 5430 authorizes the President to proclaim (i) modifications or continuations of any duty; (ii) continuation of duty-free or excise treatment; or (iii) additional duties that the President determines to be necessary or appropriate to carry out or apply Article 2.4 (Treatment of Customs Duties), Article 2.7 (Temporary Admission of Goods), Article 2.8 (Goods Re-Entered After Repair or Alteration), Article 2.9 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials), Article 2.10 (Most-Favored Nation Rates of Duty on Certain Goods), Article 6.2 (Handmade, Traditional Folkloric, or Indigenous Handicraft Goods), Article 6.3 (Special Provisions), and the Tariff Schedule of the United States to Annex 2–B (Tariff Commitments), including the appendices to that Annex, Annex 2–C (Provisions Be-

tween Mexico and the United States on Automotive Goods), and Annex 6–A (Special Provisions).

Section 103(c) of H.R. 5430 also authorizes the President to provide for the continuation, phase-out, and elimination, according to the Tariff Schedule of the United States to Annex 2–B of the USMCA, of customs duties on imports from Canada and Mexico that meet the Agreement's rules of origin.

REASON FOR CHANGE

These provisions of H.R. 5430 are necessary to ensure full implementation of obligations under the USMCA upon its entry into force and the issuance of all Federal regulations.

Section 104: Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions

CURRENT LAW

Section 103 of the NAFTA Implementation Act established consultation and layover requirements similar to the provisions carried forward in section 104 of H.R. 5430.

EXPLANATION OF CHANGE

Section 104 of H.R. 5430 establishes requirements for the proclamation of actions that are subject to consultation and layover provisions under the Act. The President may proclaim such action only after: (1) obtaining advice from the appropriate private sector advisory committees and the USITC, which shall hold a public hearing on the proposed action before providing advice regarding the proposed action, (2) submitting a report to the appropriate congressional committees concerning the reasons for the action, and (3) providing for a 60-day layover period (starting after the President has both obtained the required advice and provided the required report). Section 104 of H.R. 5430 provides that the proposed action cannot take effect until after the expiration of the 60-day period and after the President has consulted with the appropriate congressional committees regarding the proposed action.

The President may initiate the consultation and layover process under section 104 of H.R. 5430 on enactment of the bill. However, under section 103(a) of the bill, any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin in accordance with Article 5.18 (Committee on Rules of Origin and Origin Procedures) and Article 6.4 (Review and Revision of Rules of Origin) of the USMCA.

Section 104 of H.R. 5430 gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough and timely manner.

REASON FOR CHANGE

Section 104 of H.R. 5430 is necessary to provide the statutory authority for the President to proclaim certain actions that are subject to consultation and layover. Because the proclamation authority is expressly subject to the consultation and layover requirements, the Committee and Congress will carefully review any changes in the rules that would vary from those previously set out.

Section 105: Adminstration of Dispute Settlement Proceedings

CURRENT LAW

Section 105 of the NAFTA Implementation Act establishes and authorizes funds for the United States Section of the NAFTA Secretariat.

EXPLANATION OF CHANGE

Section 105(a) of H.R. 5430 authorizes the President to establish or designate within the U.S. Department of Commerce a United States Section of the Secretariat established under Chapter 30 of the USMCA. Subsection (b) of H.R. 5430 authorizes appropriations for each fiscal year after fiscal year 2020 to the Department of Commerce $2 million for the establishment and operations of the section and for payment of the U.S. share of expenses of panels established under Chapter 31 of the USMCA including under Annex 31–A relating to the Facility-Specific Rapid Response Labor Mechanism, binational panels and extraordinary challenge committees convened under NAFTA for matters covered by Article 34.1 of the USMCA.

It also provides for the reimbursement of expenses incurred in dispute settlement proceedings under Chapter 10 of the USMCA, Chapter 31 of USMCA, or under Chapter 19 of NAFTA if the Canadian or Mexican Section of the Secretariat provides funds to the U.S. Section during any fiscal year as reimbursement for their expenses in connection with dispute settlement proceedings.

REASON FOR CHANGE

Dispute settlement procedures and panels are necessary to ensure that disputes over compliance with FTA provisions can be resolved effectively. The Committee believes that the Commerce Department is the appropriate agency to provide administrative assistance to such panels.

Section 106: Trade Representative Authority

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 106 of H.R. 5430 provides that if a country (other than the United States) that has signed the USMCA does not enact implementing legislation, the Trade Representative is authorized to enter into negotiations with the other country that has signed the USMCA to consider how the applicable provisions of the USMCA

can come into force with respect to the United States and that other country as promptly as possible.

REASON FOR CHANGE

This provision in H.R. 5430 is necessary to help ensure that USTR is authorized to enter into negotiations to consider how applicable provisions of the USMCA can come into force with respect to the United States if either Mexico or Canada fails to enact implementing legislation.

Section 107: Effective Date

CURRENT LAW

Section 109 of the NAFTA Implementation Act provides for the effective date of the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 107 of H.R. 5430 provides that sections 1 through 3 of Title 1 (other than section 103(c)) shall take effect on the date of the enactment of USMCA Implementation Act and Section 103(c) shall take effect on the date on which the USMCA enters into force.

REASON FOR CHANGE

Section 107 of H.R. 5430 is necessary to implement provisions of the USMCA relating to the effective date of the bill.

TITLE II—CUSTOMS PROVISIONS

Section 201: Exclusion of Originating Goods of USMCA Countries from Special Agriculture Safeguard Authority

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 201 of H.R. 5430 implements an exclusion of originating goods of USMCA from special agricultural safeguard authority. It exempts from any duty imposed under Section 202 any good that qualifies as an originating good under section 202 of the USMCA Implementation Act of a USMCA country with respect to which preferential tariff treatment is provided under the USMCA.

REASON FOR CHANGE

Section 201 of H.R. 5430 is necessary to implement commitments made in the USMCA relating to agricultural safeguards.

Section 202: Rules of Origin

CURRENT LAW

Section 202 of the NAFTA Implementation Act implements the rules of origin for trade of goods between the United States, Canada, and Mexico under NAFTA.

EXPLANATION OF CHANGE

Section 202 of H.R. 5430 implements the rules of origin set out in Chapter 4 of the USMCA. Section 202(c) establishes four basic ways for a good from Canada or Mexico to qualify as an "originating good" and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if:

(1) it is wholly obtained or produced entirely in the territory of one or more USMCA countries as established in Article 4.3 of the Agreement;

(2) it is produced entirely in the territory of one or more USMCA countries and any materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or the good otherwise meets regional content and other requirements, as specified in Annex 4–B of the USMCA;

(3) it is produced entirely in the territory of one or more USMCA countries, exclusively from originating materials; or

(4) except for a good provided for in Chapter 61 to 63 of the Harmonized System, the good is produced entirely in the territory of one or more of the USMCA countries but one or more of the non-originating materials provided for as parts under the Harmonized System used in the production of the good cannot satisfy the requirements set out in Annex 4–B of the USMCA (because both the good and its materials are classified in the same subheading or same heading that is not further subdivided into subheadings or, the good was imported into the territory of a USMCA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to rule 2(a) of the General Rules of Interpretation of the Harmonized System), but only if the regional value content of the good, determined in accordance with Article 4.5 of the Agreement meets certain thresholds (not less than 60 percent if the transaction value method is used, or not less than 50 percent if the net cost method is used).

Section 202(c)(2) of H.R. 5430 provides recovered material qualifies as "originating" for the purposes of determining whether a remanufactured good is originating if it is derived in the territory of one or more USMCA countries.

The remainder of Section 202 of H.R. 5430 sets forth more detailed rules for determining whether a good meets the Agreement's requirements under the second and fourth method of qualifying as an originating good. These include alternative methods for calculating regional value content and valuation of materials used in production.

Other provisions in Section 202 of H.R. 5430 address accumulation of materials for production of goods; rules pertaining to de minimis quantities of non-originating materials that do not undergo a tariff transformation, including for textiles; determination of the originating or non-originating status of fungible goods and materials; and treatment of accessories, spare parts and tools, packaging and packing materials, indirect materials, and goods put up in sets. Section 202(l) specifies goods that undergo further production or other operations outside the territory of a USMCA country (with certain exceptions) or do not remain under the control of the

customs authorities of such other countries do not qualify as originating goods.

REASON FOR CHANGE

Section 202 of H.R. 5430 is necessary to implement the rules of origin established under Chapter 4 of the USMCA to ensure only products of the United States, Canada, and Mexico receive USMCA preferential tariff treatment. As stated in the Statement of Administrative Action submitted by the Administration, the rules are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in USMCA countries. These rules also prevent importers from improperly claiming benefits under the Agreement for third-country goods transshipped through Canada and Mexico.

Section 202A: Special Rules for Automotive Goods

CURRENT LAW

Section 202(c) of the NAFTA Implementation Act implements the rules of origin for trade in automotive goods between the United States, Canada, and Mexico as established under Article 403 of the NAFTA.

EXPLANATION OF CHANGE

Section 202A of H.R. 5430 implements the specific provisions related to the rules of origin for automotive goods in the Appendix to Annex 4–B of the USMCA.

Section 202A(a) defines terms specific to the rules of origin for automotive goods and consistent with the Appendix to Annex 4–B of the USMCA.

Section 202A(b) directs the President to establish an interagency committee led by the Trade Representative with participation by other relevant agencies, including the United States Department of Commerce, Customs and Border Protection, the Department of Labor, the USITC, and any other members determined to be necessary by the Trade Representative to provide advice on the implementation, enforcement, and modification of the automotive rules of origin. Additionally, the interagency committee will review the operation of the agreement with respect to trade in automotive goods, including the economic effects of the rules on the U.S. economy, workers, and consumers, and the impact of new technology on such rules of origin.

Section 202A(c) lays out the certification requirements relating to the new labor value content and steel and aluminum purchase rules for producers of passenger vehicles, light trucks, and heavy trucks. Article 6 of the Appendix to Annex 4–B of the Agreement includes new requirements that at least 70 percent of a vehicle producer's purchases of steel by value and at least 70 percent of a vehicle producer's purchases of aluminum by value are of originating goods. Article 7 of the Appendix requires that vehicle producers source a certain share of content from North American plants or facilities that on average pay direct production workers at least $16 per hour, known as the labor value content requirement. The Administration's stated objective of the labor value content rule is to

incentivize U.S. jobs and facilitate U.S. development and manufacture of high-technology parts, such as advanced batteries.

Section 202A(d) requires the Trade Representative, in consultation with the interagency committee established in section 202A(b), to publish the requirements for producers of covered vehicles to request a transition to meet the USMCA requirements under an alternative staging regime, as described in Article 8 of the Appendix to Annex 4–B of the USMCA. The Trade Representative will request a detailed and credible plan which describes the actions the producer intends to take to bring production of the passenger vehicles or light trucks into compliance with the requirements set forth in Articles 2 through 7 of the Appendix to Annex 4–B of the USMCA from a producer that seeks to use the alternative staging regime for more than 10 percent of the producer's total production of passenger vehicles or light trucks in USMCA countries. Producers of passenger vehicles and light trucks may modify their alternative staging plans at any point during the alternative staging regime period. The Trade Representative, in consultation with the interagency committee established in section 202A(b) shall make a determination with respect to whether to authorize the use of the alternative staging regime and shall issue that determination to each producer in writing not later than 120 days after receiving a request of a producer for the alternative staging regime. The Trade Representative shall maintain a public list of the producers whose covered vehicles have been authorized to use the alternative staging regime and provide the appropriate congressional committees with a summary of requests for the alternative staging regime. The remainder of the section addresses modification of alternative staging plans and treatment of producers unable to meet the requirements of the alternative staging regime.

Section 202A(e) permits the Secretary of the Treasury in conjunction with the Secretary of Labor to conduct a verification of whether a covered vehicle complies with the labor value content requirements. Section 202(f) authorizes the Secretary of Labor to establish or designate an office within the Department of Labor to carry out the provisions of this section for which the Department is responsible.

Section 202A(g) requires the Trade Representative, in consultation with the interagency committee to conduct a biennial review of the operation of the USMCA with respect to trade in automotive goods to ensure the Agreement's provisions remain relevant in light of new technology and changes in the content, production processes, and character of automotive goods. The USITC shall submit to Congress a report on the economic effects of the automotive rules of origin on the U.S. economy, including on the wages and employment of workers in the automotive sector. Lastly, the Comptroller General of the United States shall submit to the Committee a report assessing the effectiveness of the United States Government interagency coordination on the implementation, enforcement, and verification of the automotive rules of origin.

REASON FOR CHANGE

The USMCA covers new requirements for passenger vehicles and trucks to be eligible for preferential treatment, including stronger product-specific rules for vehicles and vehicle parts and a require-

ment that certain core parts used in the production of a vehicle be originating. The Appendix to Annex 4–B of the USMCA eliminates the NAFTA's "tracing" provisions. It includes new requirements that vehicle producers' purchases of steel and aluminum have a minimum percentage of originating steel and aluminum. The USMCA rules also require that vehicle producers source a share of content from North American plants or facilities that, on average, pay direct production workers at least $16 per hour.

Section 202A of H.R. 5430 is necessary to implement the commitments made in the Agreement with respect to rules of origin applying to trade of automotive goods between USMCA countries. The Committee has imposed additional reporting requirements given the novelty of the automotive rules of origin, particularly the labor value content rule and the steel and aluminum purchase requirement.

The Committee expects the Trade Representative to keep the Committee fully apprised of the operation of the automotive rules of origin, including the operation of the alternative staging regime, and any efforts to modify these provisions to ensure the USMCA automotive rules of origin remain relevant and promote U.S. and North American competitiveness, investment, and jobs in light of new technology and the changing composition and character of automobiles.

SECTION 203: Merchandise Processing Fee

CURRENT LAW

Section 204 of the NAFTA Implementation Act implements the U.S. obligation under NAFTA Article 310 to provide for the immediate elimination of the merchandise processing fee for Canadian goods, consistent with U.S. commitments under the U.S.-Canada FTA. The section also provides for the elimination of the merchandise processing fee on imports of Mexican goods.

EXPLANATION OF CHANGE

Section 203 of H.R. 5430 amends section 13031(b)(10) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to implement the U.S. commitments under Article 2.16.3 and Annex 6–A of the USMCA by eliminating the Merchandise Processing Fee ("MPF") on originating goods. In accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994, the provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods.[16]

REASON FOR CHANGE

The USMCA eliminates the MPF on qualifying goods from Canada and Mexico. Other customs user fees remain in place. Section 203 of H.R. 5430 is necessary to put the United States in compliance with the user fee elimination provisions of the USMCA.

The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 203

[16] *See* General Agreement on Tariffs and Trade, available at: https://www.wto.org/english/docs_e/legal_e/gatt47.pdf.

also provides that goods entered or exported from the United States before USMCA enters into force will be provided NAFTA treatment.

Section 204: Disclosure oF Incorrect Information; False Certifications of Origin; Denial of Preferential Treatment

CURRENT LAW

Section 205 of the NAFTA Implementation Act concerns the disclosure of incorrect information, false certifications of origin, and the denial of preferential treatment

EXPLANATION OF CHANGE

Section 204 of H.R. 5430 amends section 592 of the Tariff Act of 1930 by prohibiting the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the agreement if the importer acts promptly and voluntarily to correct the error and pays any duties owed on the good in question.[17] The amendment also makes it unlawful for a person to certify falsely, by fraud, gross negligence, or negligence that a good exported from the United States is an originating good. The amendment also prohibits the imposition of a penalty if the exporter or producer promptly and voluntarily provides notice of the incorrect information to every person to whom a certification was issued. Section 204(b) of H.R. 5430 amends section 514 of the Tariff Act of 1930 and provides that if an importer, exporter or producer has engaged in a pattern of conduct in providing false or unsupported representations, U.S. authorities may suspend preferential treatment with respect to identical goods imported by that importer, exporter or producer. The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 204 also provides that goods entered or exported from the United States before the USMCA enters into force will be provided NAFTA treatment.

The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 203 also provides that goods entered or exported from the United States before USMCA enters into force will be provided NAFTA treatment.

REASON FOR CHANGE

This provision is necessary to implement commitments in the USMCA relating to application of penalties for submission of false information or certifications by importers, exporters and producers.

Section 205: Reliquidation of Entries

CURRENT LAW

Section 206 of the NAFTA Implementation Act authorizes the Customs Service to reliquidate an entry to refund any excess duties paid and provide NAFTA tariff treatment to the entry.

[17] *See* Smoot-Hawley Tariff Act, Pub. L. 71–361.

EXPLANATION OF CHANGE

Section 205 of H.R. 5430 amends section 520(d) of the Tariff Act of 1930 to make conforming changes to ensure that the Customs Service is authorized to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 205 also provides that goods entered or exported from the United States before USMCA enters into force will be provided NAFTA treatment.

REASON FOR CHANGE

Section 205 of H.R. 5430 implements U.S. obligations under Article 5.11 of the USMCA by amending section 520(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

Section 206: Recordkeeping Requirements

CURRENT LAW

Section 614 of the NAFTA Implementation Act addresses the recordkeeping requirements of the NAFTA.

EXPLANATION OF CHANGE

Section 206 of H.R. 5430 amends section 508 of the Tariff Act of 1930 by defining the terms USMCA, USMCA country, USMCA certification of origin. It also makes an amendment that provides that a U.S. exporter or producer that issues a USMCA certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection a copy of the certification and such records and supporting documents. The amendment also requires that the exporter or producer keep these records and supporting documents for five years from the date it issues the certification. Further, it provides specific amendments related to vehicle producers.

The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 206 also provides that goods entered or exported from the United States before the USMCA enters into force will be provided NAFTA treatment.

REASON FOR CHANGE

Section 206 is necessary to implement the USMCA as it relates to exporters and producers for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

Section 207: Actions Regarding Verification of Claims Under the USMCA

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 207 of H.R. 5430 provides that the Secretary of Treasury may conduct a verification of whether a good is an originating good under Section 202 or 202A of the bill. It also provides that if the Secretary of Treasury conducts a verification, the President may direct the Secretary to release the good only upon payment of duties of security and, deny or withhold preferential tariff treatment in the case of certain determinations.

REASON FOR CHANGE

Section 207 of H.R. 5430 implements U.S. obligations related to Article 5.9 (Origin Verification) and 6.6 (Verification) of the USMCA.

Section 208: Drawback

This section has been transferred from section 203 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of Section 501 of the USMCA Implementation Act.

Section 209: Other Amendments to the Tariff Act of 1930

CURRENT LAW

Subtitle C of the NAFTA Implementation Act implements miscellaneous amendments to the Tariff Act of 1930.

EXPLANATION OF CHANGE

Section 209 of H.R. 5430 amends sections 304, 509, and 628 of the Tariff Act of 1930 by making conforming changes to the Tariff Act of 1930 concerning the country of origin marking and the examination of books and witnesses. It also amends section 628 of the Tariff Act of 1930 by authorizing Customs and Border Protection to exchange information with any government agency of a USMCA country.

The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 209 also provides that goods entered or exported from the United States before the USMCA enters into force will be provided NAFTA treatment.

REASON FOR CHANGE

These amendments were necessary to implement U.S. commitments under paragraph 7 of the General Note to the Tariff Schedule of the United States, by amending section 304 of the Tariff Act of 1930 (19 U.S.C. 1304). The amendment makes conforming terminology changes.

Section 210: Regulations

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 210 of H.R. 5430 directs the Secretary of Treasury to prescribe regulations necessary to carry out the provisions of Title II of the H.R. 5430, except for those regulations as may be necessary to carry out the labor value content determination under section 202A of H.R 5430. It also directs the Secretary of Labor to prescribe regulations necessary to carry out the labor value content determination under section 202A of H.R. 5430.

REASON FOR CHANGE

This provision gives the Secretary of Treasury and Secretary of Labor necessary regulatory authority to carry out the agreement.

TITLE III—APPLICATION OF THE USMCA TO SECTORS AND SERVICES

Subtitle A—Relief from Injury Caused by Import Competition

This subtitle has been transferred from section 311 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of section 502 of the USMCA Implementation Act.

Subtitle B—Temporary Entry of Business Person

This subtitle has been transferred from section 341 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of section 503 of the USMCA Implementation Act.

Subtitle C—United States-Mexico Cross-Border Long-Haul Trucking Services

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 321 of H.R. 5430 defines key terms for this subtitle.

Section 322 provides that the USITC is required to conduct an investigation regarding whether current or future grants of authority to operate cross-border trucking services cause or are threatening to cause material harm to the U.S. long-haul trucking industry. Investigations may be started by the filing of a petition from an interested party, a request from the President or the Trade Representative, or a resolution from the Committee on Ways and Means or the Senate Finance Committee.

This section also describes the factors that the USITC is required to consider, which include, among other things, the volume and tonnage of merchandise transported and the employment, wages, hours or service, and working conditions in the industry. Finally, section 322 provides that the USITC is required to make a determination in an investigation within 120 days of it being initiated.

If the USITC determines that the investigation is extraordinarily complicated, the USITC is required to make its determination within 150 days.

Section 323 requires the USITC to issue a report within 60 days of making its determination under section 322. The report shall include an explanation of its determination and, if the determination is affirmative, recommendations for action to address the material harm. The report shall also include any addition and dissenting views. The USITC is required to promptly make the report public and to publish a summary in the Federal Register.

If the President receives an affirmative determination, section 324 requires the President to issue an order to the Department of Transportation (DOT) directing the relief to be carried out. The order must be issued within 30 days of the date on which the President receives the USITC's report. The President is not required to provide relief if the President determines that it is not in the national economic interest of the United States or it would cause serious harm to the national security of the United States.

Section 324 also describes the type of relief that the President is authorized to provide. The President is authorized to deny new grants of authority to provide cross-border trucking services, revoke, restrict, or limit existing grants of authority, and place a cap on the number of grants of authority issued on an annual basis. DOT is required to provide this relief within 15 days of the President's determination.

The relief may not last longer than two years, but such relief can be extended for an additional four years if the USITC finds that an extension is necessary to remedy of prevent material harm. If the President determines that an extension, then the President may extend the relief for an additional four years.

Section 325 ensures that the USITC protects confidential business information that it receives during the course of any investigation.

Section 326 provides that certain provisions in Title 49 do not limit DOT's ability to carry out the actions authorized by this subtitle.

Section 327 requires DOT to conduct a survey of all existing and any pending grants of operating authority to Mexican-domiciled motor carriers. DOT shall complete this report within 180 days of the date on which USMCA enters into force. The report shall be delivered to the Trade Representative, USITC, the Committee on Ways and Means, the Senate Finance Committee, the House Transportation and Infrastructure Committee, and the Senate Committee on Commerce, Science, and Transportation.

REASON FOR CHANGE

The United States included a non-conforming measure in its Annex II schedule for investment and services regarding long-haul truck services. The measure provides that the United States may adopt certain limitations on grants of authority for persons of Mexico to provide long-haul trucking services in certain circumstances. This provision establishes the process by which the United States may impose limitations on such grants of authority.

TITLE IV—ANTIDUMPING AND COUNTERVAILING DUTIES

Subtitle A—Preventing Duty Evasion

(Section 401)

Current Law There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 401 of H.R. 5430 amends section 414(b) of the Enforce and Protect Act of 2015 by inserting conforming changes to ensure that section 414(b) of the Enforce and Protect Act of 2015 applies to the USMCA and USMCA Parties.[18]

REASON FOR CHANGE

Section 401 of H.R. 5430 is intended to ensure that section 414(b) of the Enforce and Protect Act of 2015 applies to the USMCA and USMCA Parties.

Subtitle B—Dispute Settlement

This subtitle has been transferred from sections 401–408 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of section 504 of the USMCA Implementation Act.

Subtitle C—Conforming Amendments

(Sections 421–432)

Current Law There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Sections 421–432 of H.R. 5430 amend the Tariff Act of 1930 to make conforming amendments related to judicial review in antidumping and countervailing duty cases, disclosure of proprietary information under protective orders, and the Court of International Trade.

REASON FOR CHANGE

The amendments made in sections 421–432 of H.R. 5430 are necessary to ensure that the treatment provided under the NAFTA continue to apply to the USMCA.

Subtitle D—General Provisions

(Sections 431–432)

Current Law There is no provision under the NAFTA Implementation Act.

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[18] *See* Enforce and Protect Act of 2015, Pub, L. No. 114–125.

EXPLANATION OF CHANGE

Section 431 of H.R. 5430 relates to the effect of termination of USMCA country status as well proceedings regarding protective orders and undertakings and binational panel and extraordinary challenge committee reviews. The section provides that, on the date on which a country ceases to be a USMCA country, the provisions of Title IV of the USMCA Implementing Bill will cease to have effect with respect to that country. Section 431 of H.R. 5430 also provides that if on the date on which a country ceases to be a USMCA country (1) an investigation or enforcement proceeding concerning the violation of a protective order issued under section 7777(f) of the Tariff Act of 1930 or an undertaking of the government of that country is pending, the investigation or proceeding shall continue and sanctions may continue to imposed; or (2) a binational panel or extraordinary review is pending or has been requested with respect to a determination that involves a class or kind of merchandise, such determination shall be reviewable and the time limits for commencing an action shall not begin to run until the date on which the USMCA cease to be in force with respect to that country.

Section 431 of H.R. 5430 shall take effect on the date that the USMCA enters into force but shall not apply to any final determination or any binational panel review under the NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before the date on which the USMCA enters into force.

REASON FOR CHANGE

Sections 431–432 of the H.R. 5430 are necessary to describe the effect of termination of USMCA country status.

TITLE V—TRANSFER PROVISIONS AND OTHER AMENDMENTS

Section 501: Drawback

CURRENT LAW

Section 203 of the NAFTA Implementation Act addresses drawback for goods traded between the Parties to the NAFTA.

EXPLANATION OF CHANGE

Section 501 of H.R. 5430 transfers section 203 of the NAFTA Implementation Act to section 208 of H.R. 5430 and amends section 203 of the NAFTA Implementation Act to provide exceptions to the limitation on drawback implemented in the NAFTA for certain goods traded between the Parties to the Agreement. This amendment includes conforming terminology changes and references to provisions of the USMCA, as well as changes to the exception for sugar to reflect new tariff nomenclature and expansion to include sugar-containing products. This section also amends sections 311, 312, 313, and 562 of the Tariff Act of 1930 (19 U.S.C. 1311, 1312, 1313, and 1562), which provide that drawback with respect to goods imported into the United States and subsequently exported to the territory of another Party, used in the production of a good exported to another Party, or substituted by goods used in the production of a good exported to another Party, be limited to the lesser

of the duties paid or owed upon importation into the United States, or the duties paid on the good to another Party. The amendments make conforming terminology changes with respect to the limitation on drawback implemented in the NAFTA relating to bonded manufacturing warehouses, bonded smelting and refining warehouses, substitution drawback, and manipulation in bonded warehouses. This section also amends section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c), to make conforming terminology changes regarding the limitation on drawback as provided under the Foreign Trade Zones Act.

REASONS OF CHANGE

Section 501 of H.R. 5430 amends the NAFTA Implementation Act and makes conforming changes to address drawback for goods traded between the Parties of the USMCA.

Section 502: Relief From Injury Caused by Import Competition

CURRENT LAW

Section 311 of the NAFTA Implementation Act addresses relief from injury caused by import competition.

EXPLANATION OF CHANGE

Section 502 of H.R. 5430 transfers section 311 of the NAFTA Implementation Act to subtitle A, title III of H.R. 5430 and redesignates it as section 301 of H.R. 5430 without substantive change.

REASON FOR CHANGE

Section 502 of H.R. 5430 transfers section 311 of the NAFTA Implementation Act to subtitle A, title III of H.R. 5430 and redesignates it as section 301 of H.R. 5430 without substantive change.

Section 503: Temporary Entry

CURRENT LAW

Section 341 of the NAFTA Implementation Act addresses temporary entry of business persons.

EXPLANATION OF CHANGE

Section 503 of H.R. 5430 transfers section 341 of the NAFTA Implementation Act to subtitle B, title III of H.R. 5430 and redesignates it as section 311 of H.R. 5430 without substantive change.

REASON FOR CHANGE

Section 503 of H.R. 5430 incorporates or otherwise transfers section 341 of the NAFTA Implementation Act to H.R. 540.

Section 504: Dispute Settlement in Antidumping and Countervailing Duty Cases

CURRENT LAW

The NAFTA Implementation Act establishes procedures in the United States for implementing the dispute settlement provisions

related to antidumping and countervailing duty cases in the NAFTA, including the processes for the selection dispute settlement panelists and initiating a case, among other things.

EXPLANATION OF CHANGE

Section 504 of H.R. 5430 transfers sections 401, 402, 403, 404, 405, 406, 407, and 408 of the NAFTA Implementation Act to subtitle B, title IV of H.R. 5430 and redesignates those sections as sections 411, 412, 413, 414, 415, 416, 416, 417, and 418 of H.R. 5430 without substantive change. Section 504 of H.R. 5430 also provides for an effective date that is the date on which the USMCA enters into force, and a transition period for antidumping and countervailing duty cases decided before USMCA enters into force and cases that are appealed to a binational NAFTA panel before the USMCA enters into force. In addition, Section 504 of H.R. 5430 provides that the relevant provisions in the NAFTA Implementation Act will continue to apply to such to cases.

REASON FOR CHANGE

Section D of Chapter 10 of the USMCA contains the same substantive provisions as Chapter 19 of the NAFTA, which allows for binational dispute settlement of antidumping and countervailing duty cases. These changes ensure that the NAFTA implementing bill provisions that are necessary to implement these provisions are carried over in the USMCA implementing bill. These changes also provide for a transition period for antidumping and countervailing duty cases decided before USMCA enters into force and cases that are appealed to a binational NAFTA panel before USMCA enters into force.

Section 505: Government Procurement

CURRENT LAW

United States procurement law (such as the Buy American Act of 1933 and the Buy American Act of 1988) limits procurement from certain foreign suppliers of goods and services in favor of U.S. providers of goods and services. Most discriminatory purchasing provisions are waived if the United States is a party to a bilateral or multilateral procurement agreement, such as the WTO *Agreement on Government Procurement*, or a bilateral or multilateral trade agreement that includes provisions on procurement.[19] Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) (Trade Agreements Act), as amended, authorizes the President to waive for eligible products of foreign countries that the President designates under section 301(b) of that Act the application of certain federal laws, regulations, procedures, and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act.Under the NAFTA, the United States has procurement obligations with respect to Mexico and Canada.

[19] *See* World Trade Organization Agreement on Government Procurement, available at: https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm.

EXPLANATION OF CHANGE

Chapter 13 of the USMCA establishes rules that certain government entities listed in Annex 13–A will apply whenever these entities undertake procurements of covered goods and services valued above thresholds specified in Annex 13–A. Chapter 13 applies only as between the United States and Mexico. Once the USMCA enters into force, the United States will continue to have procurement obligations with respect to Canada under the WTO *Agreement on Government Procurement* and will also have national treatment and most-favored-nation obligations with respect to the purchase or acquisition of financial services by public entities in the United States under the General Agreement on Trade in Services (GATS) at the WTO, as set out in the U.S. Schedule of Commitments and the *Understanding on Commitments in Financial Services*. Under the USMCA, the United States has excluded uniforms and clothing procurement by the Transportation Security Administration of the Department of Homeland Security from coverage.

Section 505 of H.R. 5430 implements U.S. obligations under Chapter 13 by amending the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that "eligible product" means a product or service of Mexico that is covered under the USMCA for procurement by the United States. This amended definition, coupled with the President's exercise of his waiver authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the USMCA to purchase, on non-discriminatory terms, covered products and services from Mexico for procurements that fall above the thresholds established under the USMCA.

REASON FOR CHANGE

Section 505 of H.R. 5430 is necessary to implement U.S. commitments under Chapter 13 of the USMCA (Government Procurement).

Section 506: ActionS Affecting United States Cultural Industries

CURRENT LAW

Section 513 of the NAFTA Implementation Act addresses actions affecting United States cultural industries.

EXPLANATION OF CHANGE

Section 506 of H.R. 5430 makes a conforming change to maintain the treatment provided with respect to Canada regarding cultural industries once the USMCA enters into force by exempting certain measures adopted or maintained by Canada with respect to a cultural industry from a number of obligations under the USMCA. It also allows the United States or Mexico to take a measure of equivalent commercial effect in response.

REASON FOR CHANGE

The amendments in Section 506 of H.R. 5430 are necessary to implement Article 32.6 of the USMCA.

Section 507: Regulatory Treatment oF Uranium Purchases

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 508 of H.R. 5430 amends the Energy Policy Act of 1992 to strike the "North American Free Trade Agreement" and insert the "USMCA."[20]

REASON FOR CHANGE

The Annex on Energy Regulatory Measures and Regulatory Transparency, attached to the exchange of letters executed on November 30, 2018 between the United States and Canada, which is integral to the USMCA, contains obligations with respect to energy regulatory measures similar to obligations under Chapter 6 of the NAFTA (Energy and Basic Petrochemicals). Section 1017(c) of the Energy Policy Act of 1992 (42 U.S.C. 2296b–6) contains a savings clause that references the NAFTA. Section 507 makes a conforming change to that section to maintain the treatment provided with respect to Canada once the USMCA enters into force.

Section 508: Report on Amendments to Existing Law

Current Law There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Not later than 180 days after the date of the enactment of H.R. 5430, the Trade Representative shall submit to the Senate Finance Committee and the Committee on Ways and Means a report setting forth a proposal for technical and conforming amendments to the laws under the jurisdiction of such committees, and other laws, necessary to fully carry out the provisions of, and amendments made by H.R. 5430.

REASON FOR CHANGE

Section 508 of H.R. 5430 is necessary to ensure that Congress has a comprehensive list of all technical and conforming amendments to laws necessary to carry out the provisions of the USMCA.

TITLE VI—TRANSITION TO AND EXTENSION OF THE USMCA

Subtitle A—Transitional Provisions

(Sections 601–602)

CURRENT LAW

There is no provision in the NAFTA Implementation Act that addresses a repeal of a trade agreement; however, section 107 addresses overlapping provisions of the NAFTA Implementation Act and the U.S.-Canada FTA Implementation Act.

[20] *See* Energy Policy Act of 1992, Pub. L. No. 102–486.

EXPLANATION OF CHANGE

Section 601 of H.R. 5430 repeals the NAFTA Implementation Act effective on the date on which the USMCA enters into force. Section 602 of H.R. 5430 continues to suspend the U.S.-Canada Free Trade Agreement ("FTA").

REASONS FOR CHANGE

The USMCA incorporates or otherwise carries forward many of the provisions of the NAFTA. In some cases, USMCA provisions supersede provisions of the NAFTA (for example, the USMCA rather than the NAFTA rules of origin will apply to U.S.-Canada-Mexico trade) or have been added on subject matters not covered by the NAFTA. The United States and Canada will continue to suspend the operation of the bilateral free trade agreement upon the entry into force of the NAFTA between the two countries, to stay in effect for such period as the two governments remain parties to the NAFTA.

Accordingly, section 107 of H.R. 5430 suspends certain provisions of the U.S.-Canada FTA Implementation Act that are superseded by the NAFTA Implementation Act. Other provisions of the U.S.-Canada FTA Implementation Act that implement continuing U.S. obligations under the FTA will remain in effect or are amended by the NAFTA Implementation Act.

Subtitle B—Joint Reviews Regarding Extension of the USMCA

(SECTION 611)

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Article 34.7 of the USMCA provides a mechanism for the Parties to conduct a joint review of the Agreement on the sixth anniversary of its entry into force, and for annual reviews thereafter, if a Party does not confirm it wishes to extend the term of the Agreement at such joint review. Section 611 of H.R. 5430 provides that the Trade Representative will seek public comment prior to participating in a joint review. In addition, section 611 of H.R. 5430 provides for consultations between the Trade Representative and the appropriate congressional committees with respect to joint reviews or any annual review.

REASON FOR CHANGE

Section 611 of H.R. 5430 creates a process leading up to the joint review for the sunset provisions provided in Article 34.7 of the USMCA by providing opportunity for significant engagement between the Trade Representative and Congress. The Committee intends to be heavily engaged in any decisions with respect to sunset and expects consultation to be timely and robust.

Subtitle C—Termination of the USMCA

(Section 621)

CURRENT LAW

Section 109 of the NAFTA Implementation Act addresses the termination of the NAFTA.

EXPLANATION OF CHANGE

Section 621 of H.R. 5430 provides that during any period in which a country ceases to be a USMCA country, H.R. 5430 and any amendments shall cease to have effect with respect to that country. It further provides that on the date on which the USMCA ceases to be in force with respect to the United States, H.R. 5430 and any amendments shall cease to have effect.

REASON FOR CHANGE

Section 621 of H.R. 5430 is necessary to implement provisions of the USMCA relating to the date of termination of the USMCA Implementation Act. The Committee intends to be heavily engaged in any decisions with respect to withdrawal and expects consultation to be timely and robust.

TITLE VII—LABOR MONITORING AND ENFORCEMENT

Section 701: Definitions

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 701 of H.R. 5430 defines "labor attaché," "labor obligations," and "Mexico's labor reform," which are key terms for Title VII.

REASON FOR CHANGE

This provision clarifies the meanings of key terms in Title VII.

Subtitle A—Interagency Labor Committee for Monitoring and Enforcement

(Sections 711–719)

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 711 of H.R. 5430 requires the President to establish the Interagency Labor Committee for Monitoring and Enforcement (Interagency Labor Committee) within 90 days of the enactment of the USMCA Implementation Act. The Interagency Labor Committee will be co-chaired by the Trade Representative and the Department of Labor (DOL) and other agencies with relevant expertise. The Interagency Labor Committee will be responsible for mon-

itoring compliance with the USMCA labor obligations and Mexico's labor reform and requesting that the Trade Representative take enforcement actions.

Section 712 establishes the Interagency Labor Committee's duties. These duties include, among other things, coordinating the U.S. government's monitoring of the USMCA labor obligations, consulting regularly with the Labor Advisory Committee, visiting Mexico to assess implementation and compliance, establishing an ongoing dialogue with the Government of Mexico, coordinating with the ILO and the IDB, identifying priority capacity building activities in Mexico, meeting on at least a biannual basis, and recommending enforcement actions.

Section 713 requires the Interagency Labor Committee to establish enforcement priorities. The Interagency Labor Committee is required to review the list of priority sectors identified in Annex 31–A of the USMCA and make suggestions regarding including additional sectors. The Interagency Labor Committee is also required to establish and annually update a list of priority subsectors for enforcement. This section establishes the initial list of priority subsectors. The Interagency Labor Committee is also required to review priority facilities within the priority subsectors for monitoring and enforcement.

Section 714 requires the Interagency Labor Committee to complete assessments of Mexico's compliance with the USMCA labor obligations. The Interagency Labor Committee is required to complete these assessments on a biannual basis for the first five years after the Act is enacted and requires the Interagency Labor Committee to consult with the Committee on Ways and Means and the Senate Finance Committee regarding whether assessments could be completed on annual basis for the following five years.

The assessments shall include a review regarding whether Mexico has met certain benchmarks and satisfied commitments it has made regarding funding and the federal and state-level implementation timelines regarding its labor reform. The assessment shall also review whether legal challenges to Mexico's labor reform have succeeded in Mexican courts.

Section 715 requires the Interagency Labor Committee to recommend enforcements actions to the Trade Representative when it determines that a USMCA country has failed to meet its labor obligations. Such recommendations will be informed by the Interagency Labor Committee's monitoring activities, the Interagency Labor Committee's assessments (described above), and determinations made by the Independent Mexico Labor Expert Board (described below). When the Trade Representative receives an Interagency Labor Committee recommendation, this section requires the Trade Representative to determine whether to initiate an enforcement action within 60 days. If the Trade Representative's determination is negative, the Trade Representative is required to submit a report to the Committee on Ways and Means and the Senate Finance Committee regarding any negative determination.

Section 716 establishes procedures for petitions submitted to the Interagency Labor Committee regarding a failure to comply with the USMCA labor obligations. If the Interagency Labor Committee receives a petition requesting an enforcement action under Annex 31–A, the Interagency Labor Committee shall determine whether

there is sufficient, credible information to request an enforcement action under Annex 31–A. If its determination is negative, it shall certify this determination to the Committee on Ways and Means, the Senate Finance Committee, and the petitioner. If the Interagency Labor Committee's determination is affirmative, the Trade Representative is required to request a review at such facility under Annex 31–A. Within 60 days of the Interagency Labor Committee's affirmative determination, the Trade Representative is required to make a determination regarding whether to request the establishment of a rapid response labor panel under Annex 31–A. If the Trade Representative's determination is negative, the Trade Representative is required to certify its determination and provide information regarding any remediation plan to the Committee on Ways and Means and the Senate Finance Committee.

Section 716 also establishes a petition process for allegations of non-compliance with the USMCA labor obligations not related to Annex 31–A. For such petitions, the Interagency Labor Committee is required to review the petition and determine whether it warrants further review within 20 days. If its determination if affirmative, the Interagency Labor Committee is required to determine whether there is credible, sufficient information to pursue an enforcement action within 60 days of receiving the petition. If the Interagency Labor Committee makes an affirmative determination, the Trade Representative is required to make a determination within 60 days. If such determination is affirmative, the Trade Representative is required to initiate an appropriate enforcement action. If such determination is negative, the Trade Representative is required to submit a notification to the Committee on Ways and Means and the Senate Finance Committee regarding its decision and rationale.

Section 717 requires the Interagency Labor Committee to establish a web-based hotline to receive confidential information regarding labor issues in USMCA countries from interested parties. Such interested parties include Mexican workers. The DOL will monitor this hotline.

Section 718 requires the Interagency Labor Committee to submit a biannual report for the first five years after this Act is enacted. The report shall include a description of the Interagency Labor Committee's staffing and capacity building activities, Mexico's compliance with its labor reform, including budgetary commitments, a summary of petitions filed under section 716, the results of the Interagency Labor Committee's assessments under section 714, and any determinations made by the Independent Mexico Labor Expert Board. After five years, the Trade Representative and DOL shall consult with the Committee on Ways and Means and the Senate Finance Committee regarding whether the report could be submitted on an annual, instead of biannual, basis.

Section 718 also requires the Interagency Labor Committee to complete a five-year assessment that will include a comprehensive assessment regarding Mexico's implementation of its labor reform. The assessment shall include a strategic plan and recommendations regarding areas of concern regarding Mexico's labor reform for purposes of the joint review conducted pursuant to Article 34.7 of the USMCA.

Section 719 requires the Interagency Labor Committee to consult with the Labor Advisory Committee, the Committee on Ways and Means, and the Senate Finance Committee regarding the selection of rapid response labor panelists under Annex 31–A. This section also requires the United States, in consultation with Mexico, to provide adequate funding for such panelists.

REASON FOR CHANGE

U.S. trade agreements have required countries to comply with labor obligations, but the United States has failed to adequately monitor whether countries are in compliance with those obligations. These provisions will establish a robust monitoring system to ensure that the United States government is actively monitoring whether USMCA countries are in compliance with their labor obligations.

The section also requires the Interagency Labor Committee to consult regularly with key stakeholders and regularly report to Congress on specific issues, many of which relate to whether Mexico is successfully implementing its labor reform. These requirements will ensure that Congress is able to complete full oversight of the Interagency Labor Committee's activities.

This section also establishes clear timelines when the Interagency Labor Committee receives a petition alleging noncompliance with the USMCA labor obligations. These provisions will ensure that the Interagency Labor Committee takes quick action when a USMCA country is out of compliance with its labor obligations.

Subtitle B—Mexico Labor Attachés

(Sections 721–723)

CURRENT LAW THERE IS NO PROVISION UNDER THE NAFTA IMPLEMENTATION ACT.

EXPLANATION OF CHANGE

Section 721 of H.R. 5430 requires the Secretary of Labor to hire five labor attachés that will be detailed or assigned to work on behalf of the U.S. government in Mexico. Section 722 establishes the duties for Mexico labor attachés, which include assisting the Interagency Labor Committee in its monitoring efforts and submitting quarterly reports regarding Mexico's compliance with its labor obligations. Section 723 provides that Mexico labor attachés shall remain employees of the DOL while they are detailed or assigned in Mexico.

REASON FOR CHANGE

One key aspect of monitoring compliance with labor obligations is collecting information directly in the country that is being monitored. The Mexico labor attachés established under this subtitle will ensure that the U.S. government has officials on the ground in Mexico to actively monitor and assess Mexico's compliance. The Mexico labor attachés will report the information they collect to Congress and to the Interagency Labor Committee to support its monitoring efforts.

Subtitle C—Independent Mexico Labor Expert Board

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 731 of H.R. 5430 establishes the Independent Mexico Labor Expert Board (Board). It also establishes that the Board is responsible for monitoring and evaluating Mexico's compliance with its labor obligations and advising the Interagency Labor Committee regarding capacity building activities in Mexico.

Section 732 provides the membership of the Board and the terms for its members. The Labor Advisory Committee will appoint four members. The Speaker, House Minority Leader, Senate Majority Leader, and Senate Minority Leader will each appoint two members. The members will serve an initial term of six years. After six years, the Board will determine whether to extend its terms. If a majority of its members determine that Mexico is not in full compliance with its labor obligation, the Board's term will extend for four years.

Section 733 requires the United States to provide necessary funding to support the work completed by the Board.

Section 734 requires the Board to submit an annual report to the Interagency Labor Committee and the Committee on Ways and Means and the Senate Finance Committee that will contain an assessment of Mexico's labor reform implementation efforts and general labor law enforcement. The Board's reports may contain a determination that Mexico is not in compliance with its labor obligations, which triggers a review by the Interagency Labor Committee under subtitle A.

REASON FOR CHANGE

The Board will provide independent analysis regarding Mexico's compliance with its labor reform and labor obligations generally. This analysis will ensure that the Interagency Labor Committee is receiving a full range of information and ensure that the Interagency Labor Committee analysis is fulsome and accurate.

Subtitle D—Forced Labor

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 741 of H.R. 5430 requires the President to establish a Forced Labor Enforcement Task Force (Task Force) within 90 days of the enactment of this Act to monitor the enforcement of the prohibition on importation of goods made by or with forced labor under section 307 of the Tariff Act of 1930. The Task Force will be chaired by the Secretary of Homeland Security and will be comprised of the Trade Representative, DOL, and other agencies with relevant expertise. The Task Force shall meet on a quarterly basis.

Section 742 requires the Task Force to establish timelines for responding to petitions alleging that goods are being imported by or

with forced or child labor. The Task Force must establish such timelines within 90 days of being constituted and shall consult with the Committee on Ways and Means and the Senate Finance Committee. The Task Force shall submit the timelines in a report to the Committee on Ways and Means and the Senate Finance Committee and make it publicly available.

Section 743 requires the Task Force to submit a biannual report to the Committee on Ways and Means and the Senate Finance Committee regarding enforcement of the prohibition on importation of goods made by or with forced labor under section 307 of the Tariff Act of 1930. The report shall include a description of actions taken and an enforcement plan regarding goods included in the DOL's "Finding on the Worst Forms of Child Labor" and "List of Goods Produced by Child Labor or Forced Labor" reports, among other things.

Section 744 requires the Task Force to develop an enforcement plan regarding goods made by or with forced labor in Mexico. The Task Force is required to consult with the Committee on Ways and Means and the Senate Finance Committee regarding its enforcement plan. The Task Force is also required to report to the Interagency Labor Committee regarding its enforcement of child and forced labor in Mexico.

REASON FOR CHANGE

Section 307 of the Tariff Act of 1930 prohibits the importation of goods made by or with forced labor. The USMCA also includes a provision that requires parties to prohibit the importation of goods made by or with forced labor. U.S. government enforcement of this prohibition, however, has been sporadic.

This subtitle requires the U.S. government to better coordinate its enforcement efforts and report to Congress on a regular basis regarding such efforts. Further, it requires the Task Force to build upon the monitoring efforts currently being completed by the Department of Labor regarding forced and child labor.

Subtitle E—Enforcement Under Rapid Response Labor Mechanism

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 751 of H.R. 5430 requires the Trade Representative to immediately submit reports issued by a rapid labor response labor panel under Annex 31–A of the USMCA to the Labor Advisory Committee, the Committee on Ways and Means, the Senate Finance Committee, and to the petitioner. The Trade Representative is also required to make reports issued by a rapid response labor panel to the public in a timely manner.

Section 752 provides the Trade Representative with the authority to direct the Secretary of the Treasury to suspend liquidation of entries of goods from a covered facility that is subject to a review under Annex 31–A of the USMCA. Suspension of liquidation shall continue until the Trade Representative notifies the Secretary of the Treasury that a rapid response labor panel has made a deter-

mination that there was not a denial of rights at the facility, a course of remediation has been completed at the facility, or the denial of rights at the facility has been otherwise remedied.

Section 753 provides the Trade Representative with the authority to direct the Secretary of the Treasury to impose a remedy in accordance with Annex 31–A of the USMCA if a rapid response labor panel has found a denial of rights at a facility. The remedy may include requiring goods or services from the facility to pay a tariff or penalty and can include denying entry to goods from facilities if it is found to have been in violation by a rapid response labor panel on three occasions. The Trade Representative is required to consult with the Committee on Ways and Means and the Senate Finance Committee regarding the remedy it will impose.

REASON FOR CHANGE

Annex 31–A of the USMCA provides parties with the right to impose certain remedies if a rapid response labor panel finds that a denial of rights has occurred at a facility. This subtitle is necessary to provide the U.S. government with the ability to impose remedies in accordance with Annex 31–A.

TITLE VIII—MONITORING AND ENFORCEMENT RELATING TO THE ENVIRONMENT

Section 801: Definitions

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 801 of H.R. 5430 defines "environmental law" and "environmental obligations," which are key terms for Title VIII of H.R. 5430.

REASON FOR CHANGE

This provision clarifies the scope of the provisions in Title VIII of H.R. 5430.

Subtitle A—Interagency Environment

COMMITTEE FOR MONITORING AND ENFORCEMENT

(Sections 811–817)

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 811 of H.R. 5430 requires the President to establish an Interagency Environment Committee for Monitoring and Enforcement (Interagency Environment Committee) 30 days after the enactment of H.R. 5430. The Interagency Environment Committee will oversee the implementation, monitoring, and enforcement of the USMCA environment commitments, which appear in Chapters 1 and 24. Membership of the committee will include, but is not lim-

ited to, the Trade Representative, the U.S. Department of State, U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), USDA U.S. Forest Service (USFS), the U.S. Department of the Interior (DOI), the U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP), the U.S. Department of Justice (DOJ), the U.S. Agency for International Development (USAID), the U.S. Environmental Protection Agency (EPA), and the U.S. Department of Commerce (DOC) National Oceanic and Atmospheric Administration (NOAA). The Interagency Environment Committee will allow for better coordination amongst the U.S. government in holding Canada and Mexico to their environment commitments.

Section 812 provides for the Interagency Environment Committee, in coordination with Canada and Mexico, to carry out an assessment of the environmental laws and policies of Canada and Mexico to determine if such laws and policies are sufficient to implement their environmental obligations and identify any gaps and key priority areas for continued assessment and monitoring, technical assistance and capacity building, and enhanced cooperation. The assessment must be conducted within 90 days of establishment of the committee and before entry into force of the agreement. The assessment must be shared with Congress and the Trade and Environment Policy Advisory Committee. The assessment must be updated after five years of the agreement being in force so that the Trade Representative can use it while conducting the "joint review" under Article 34.7.2 in year six of the agreement.

Section 813 describes monitoring actions that the Interagency Environment Committee will undertake related to implementation of the USMCA environment obligations. Section 813 does not list all monitoring actions that the Interagency Environment Committee will undertake. However, it does provide for new monitoring requirements that have not been taken pursuant to previous free trade agreement implementation. Section 813 provides for the Interagency Environment Committee to review public submissions filed pursuant to Article 24.27 (Submissions on Enforcement Matters) and factual records prepared by the Secretariat of the Commission for Environmental Cooperation and determine if the United States should pursue an enforcement action in response to the findings. If the findings show that a USMCA Party has failed to effectively enforce their own environment laws or the USMCA environment obligations and the Interagency Environment Committee decides not to recommend an enforcement action, then the Interagency Environment Committee must submit a written explanation and justification to the Committee.

Section 813 provides for the Interagency Environment Committee to review regular reports provided by U.S. government environment experts assigned to Mexico (attachés). Section 813 also provides for the implementation of the Environment Cooperation and Customs Verification Agreement between the United States and Mexico (Customs Verification Agreement). Section 813 provides for the Interagency Environment Committee to request of Mexico information to verify a shipment either in response to a public comment or by self-initiation. Further, the Interagency Environment Committee must review all public comments within 30 days and determine whether to pursue the shipment highlighted in the pub-

lic comment. Section 813 provides for the Interagency Environment Committee to review all information received from Mexico in response to a customs verification request and determine whether additional steps are necessary to determine the legality of the shipment. Section 813 also provides that the Trade Representative, on behalf of the Interagency Environment Committee, consult quarterly with the Committee and the Trade and Environment Policy Advisory Committee on all activity that takes place related to the Customs Verification Agreement.

Section 814 provides for enforcement actions that the Interagency Environment Committee may request. The list of enforcement actions is illustrative. Section 814 provides for the Interagency Environment Committee to request the Trade Representative to pursue consultations under Article 24.29, Article 31.4 or Article 31.6 of the USMCA. Further, Section 814 provides for Interagency Environment Committee to request the head of a federal agency take action, provided for under existing U.S. federal law, to enforce the USMCA environment obligations.

Section 815 describes other existing U.S. government authorities, predominantly under relevant U.S. environment and conservation statutes, that will assist the Interagency Environment Committee to monitor and enforce the USMCA environment obligations. For example, Section 815 includes the Magnuson-Stevens Fishery Conservation and Management Act, the Pelly Amendment; the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; the Endangered Species Act; the Lacey Act; the Migratory Bird Act; the Eliminate, Neutralize and Disrupt Wildlife Trafficking Act; and the Wild Bird Conservation Act.

Section 816 provides that no later than one year after the USMCA enters into force, and annually for each of the next four years, and biennially thereafter, the Trade Representative will report to the Committee on steps that the Parties have taken to implement and enforce the USMCA environment commitments, and additional actions that may need to be taken with respect to USMCA countries that might be failing to implement their environmental obligations. Additionally, Section 816 provides for a comprehensive determination regarding the USMCA countries' implementation efforts along with an updated assessment to be submitted in the fifth-year report.

Section 817 provides for Federal agencies participating in the Interagency Environment Committee to prescribe regulations necessary to carry out the requirements to implement the functions of the Interagency Environment Committee.

REASON FOR CHANGE

More than 25 years ago, when Congress considered the NAFTA, there were serious concerns that the elimination of duties, coupled with a lack of environmental protections in Mexico, could lead to the deterioration of competitiveness and opportunities for American workers, producers, and manufacturers. In response to those concerns, environmental cooperation provisions were negotiated in a side agreement, subject to a separate enforcement mechanism. Not a single arbitral panel has ever been convened under these provisions.

Meanwhile, environmental protections in Mexico continue to lag significantly behind those in the United States and Canada. The NAFTA resulted in environmental externalities, infrastructural degradation, and health hazards that do not recognize borders. In the 25 years since the NAFTA was passed, some environmental concerns have evolved into existential threats.

The Committee is committed to ensuring that there are meaningful improvements to the environmental standards in Mexico, coupled with transboundary collaboration between the three nations. The lack of consistent environmental standards in North America promotes the exportation of pollution between nations. For example, U.S. companies have been exporting and disposing of used lead batteries to Mexico to avoid U.S. restrictions on lead pollution. This practice has led to an increased risk of lead poisoning in Mexico and U.S. border communities. Further, increased human and industrial development in Mexico created by the NAFTA, coupled with weak Mexican environmental standards, have led to toxic sewage filled with feces, industrial chemicals and other raw waste contaminating waterways like the New River, which flows from Mexico's Mexicali Valley through Calexico, leaving neighboring towns subject to polluted air and water. In addition, weak rules and the lack of enforcement on fishing subsidies, fishing management practices, and combatting illegal, unreported and unregulated (IUU) fishing in Mexico has led to a significant amount of illegally fished seafood to enter the United States from Mexico.

The Committee understands that the establishment of an Interagency Environment Committee is intended to ensure that Canada and Mexico live up to their USMCA environment commitments and that the Trade Representative will have the correct tools to pursue an enforcement action if necessary. The Committee intends for the Interagency Environment Committee to work with Canada and Mexico to build a roadmap to full implementation of the USMCA environment obligations. The Committee understands that the goal of the USMCA environment chapter is to have substantive provisions and enforcement mechanisms that will support the sustainable management of North American resources and their trade, and limit the exacerbation of existing environmental problems. The work of the Interagency Environment Committee will be important because the failure of Mexico to comply with and enforce environmental standards in Mexico has had negative economic consequences and undermined American competitiveness. Strong enforcement of the USMCA environment obligations will be critical in the fight to protect U.S. small- and medium-sized businesses that are consistently undercut by these environmental practices. Each year, 15 percent of world fish catches occur illegally. This black market is estimated to be worth as much as $23 billion dollars, which translates to billions in economic losses for those who play by the rules. Also, the American Forest & Paper Association estimates that illegal logging costs U.S. timber producers $1 billion annually, eroding sustainable forest management practices and costing jobs in responsibly managed forests. This reality cannot continue.

Under the Interagency Environment Committee, the U.S. Government will be better coordinated in implementing and utilizing existing authorities. For example, existing U.S. law provides the

tools to stop the trade of illegal wildlife at the border. Some of the world's worst actors trade in illegal rainforest timber, rhino horns, elephant ivory, and turtle shells use their ill-gotten gains to fund vast criminal syndicates and terrorist organizations. The al-Qaeda affiliate al-Shabaab generates a significant portion of its funding from illegal ivory. The Lord's Resistance Army also depends on a portion of the $10 billion generated each year from wildlife trafficking. Organized crime siphons off a piece of the $30 to $100 billion in the annual illegal timber trade. Trade in illegally taken fauna and flora continues to be a huge problem, especially through Mexico. U.S. law prohibits trade in products that were illegally harvested in their country of origin, and in 2008, the Lacey Act was amended to prohibit trafficking in illegally sourced wood products. Those amendments enjoyed broad bipartisan support in Congress and support from industry, labor, and environmental groups. Mexico does not have a similar law. Coordination under the Interagency Environment Committee will allow for the ban of these products to be better enforced with our two closest trading partners. The Interagency Environment Committee should work with Mexico to develop and enforce stronger rules that govern trade in illegally taken animals, animal products, plant, and plant products.

Further, the Committee understands that full utilization of the Customs Verification Agreement will incentivize less trade in illegally harvest fauna and flora in Mexico. The Customs Verification Agreement is a binding agreement signed between Mexico and the United States on December 10, 2019. The Customs Verification Agreement allows for the United States to request customs information from Mexico to verify the legality of a shipment of fauna or flora. Not only does the Customs Verification Agreement set out specific obligations that the Parties must conduct during a customs verification, but also provides for the requestor to request additional steps necessarily to determine the legality of the shipment(s). Those additional steps may include a jointly conducted site visit, interviews, verification of point of source or harvest, investigations, scientific testing of product, and inspections by relevant authorities. The Customs Verification Agreement also requires both Mexico and the United States to establish a public comment process upon entry into force of the USMCA to allow for the public to request that either Party seeks a verification.

The Committee also understands that the standards set in the USMCA are just a floor for North American collaboration to improve the environment. The Committee believes that the USMCA environment obligations could have been stronger. For example, while the USMCA is silent, the Committee intends for the Interagency Environment Committee to work with Canada and Mexico to mitigate the damage of climate change. The Committee intends that the Interagency Environment Committee recommend and support the Trade Representative in working with Canada and Mexico to add the Paris Agreement under the United Nations Framework Convention on Climate Change to the list of covered agreements under USMCA Articles 1.3 and 24.8(4) at the first available opportunity. The Committee believes that the United States, Canada and Mexico must work collectively to address the global climate crisis.

Under H.R. 5430, additional resources are provided, both funds and personnel, for the implementation, monitoring and enforcement of the USMCA environment obligations. The Committee understands that with those resources, the Interagency Environment Committee will hold Mexico and Canada accountable for their USMCA environment commitments and take appropriate enforcement action if they fail to live up to their commitments.

Subtitle B—Other Matters

Section 821: Border Water Infrastructure Improvement Authority

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 821 of H.R. 5430 provides for the EPA, in coordination with other relevant agencies, to carry out the planning, design, construction, and operation and maintenance of high priority treatment works, to treat wastewater, nonpoint sources of pollution and related matters resulting from international transboundary water flows originating in Mexico. Section 821 also provides that the EPA report to Congress yearly on their activities.

REASON FOR CHANGE

Due to the complexity of land ownership and federal agency cross-jurisdictional issues in the Tijuana River Watershed, the Committee recognizes the need for better coordination among eligible public entities in addressing wastewater, stormwater, non-point sources of pollution, and related matters resulting from international transboundary flows originating in Mexico. The Committee has determined that the EPA possesses the issue expertise and experience necessary to lead and coordinate all efforts associated with pollution reduction in the Tijuana River's Watershed. EPA should prioritize collaboration with the State of California and other eligible local public entities.

Section 822: Detail of Personnel to Office of the United States Trade Representative

CURRENT LAW

There is no provision under the NAFTA Implementation Act.

EXPLANATION OF CHANGE

Section 822 of H.R. 5430 provides for additional monitoring and implementation resources in the form of authorizing three environmental experts from relevant U.S. government agencies to be detailed to the Office of the Trade Representative and assigned as environment attaches at the U.S. Embassy or a consulate in Mexico in order to assist the Interagency Environment Committee in carrying out its duties to monitor and enforce the USMCA environment obligations. The experts will be reimbursable details to the Office of the Trade Representative from the EPA, NOAA, and

USFWS. The attachés will prepare and submit reports to the Interagency Environment Committee quarterly for review.

REASON FOR CHANGE

The Committee understands that it has been very difficult to monitor environmental standards in Mexico. Providing U.S. government environment experts in Mexico will allow for better information gathering and coordination on the status of environmental laws and enforcement in Mexico. Further, the Committee understands that environment-focused U.S. government personnel have been or are currently based at the U.S. Embassy in Mexico City or a consulate in Mexico. While the Committee understands that those personnel have been conducting important work, the positions provided for under Section 822 are for new or additional personnel focused on the implementation of the USMCA environment commitments and assisting the Interagency Environment Committee. This may require that the personnel conduct fact finding missions, capacity building or technical assistance. The Committee understands that the EPA, NOAA, and USFWS will detail one staff each, on a reimbursable basis, with the respective relevant expertise to implement the USMCA environment commitments.

Subtitle C: North American Development Bank

(Sections 831–834)

CURRENT LAW

Title V, Subtitle D, Part 2 of the NAFTA Implementation Act concerns the North American Development Bank.

EXPLANATION OF CHANGE

Sections 831–834 of H.R. 5430 provide for a capital increase for the North American Development Bank (NADBank) to finance environmental infrastructure projects related to water pollution, water and wastewater treatment, water conservation, municipal solid waste, stormwater drainage, air quality, and renewable energy. Section 831 authorizes a general capital increase. Section 832 sets out the policy goals of the NADBank. Section 832 provides for the Secretary of the Treasury to direct the representatives of the United States to the Board of Directors of the NADBank to give preference to the financing of projects related to environmental infrastructure relating to water pollution, wastewater treatment, water conservation, municipal solid waste, stormwater drainage, non-point pollution, and related matters. Section 833 provides for the Secretary of the Treasury to direct the representatives of the United States to the Board of Directors of the NADBank to require the NADBank to develop and implement policies and practices to streamline the project certification and financing processes. Section 834 provides for the Secretary of the Treasury to direct the representatives of the United States to the Board of Directors of the NADBank to require the NADBank to develop and annually update performance measures that align with the NADBank's mission and to assess whether the projects add value to the U.S.-Mexico border region.

REASON FOR CHANGE

On January 6, 2015, former President Barack Obama and former President of Mexico Enrique Peña Nieto agreed to support the capital increase of $3 billion for the NADBank.[21] The amount was to be collected by both governments over an estimated period of five years, including $450 million in paid-in capital. This subtitle will provide for the necessary capital increase and review of NADBank priorities and functions to allow for the development and financing of environmental infrastructure on the U.S.-Mexico border.

In 1989, Congress enacted the International Development and Finance Act of 1989 (Public Law 101–240), which included a provision known as the "Pelosi Amendment" (22 U.S.C. 262m–7). By prohibiting the U.S. from voting in favor of any World Bank or regional development bank project unless an environmental impact assessment is made available to the public 120 days prior to a vote, the Pelosi Amendment provides affected communities a direct voice in the Bank's decision-making and ensures borrower accountability before Bank funds are committed.

In the NADBank's case, the spirit of the Pelosi Amendment is reflected in section 2(c) and (d), Article II, Chapter III of the Bank's charter, which requires an environmental assessment in the NADBank application process so that the Board of Directors can "examine potential environmental and public health benefits, environmental risks, and costs, as well as available alternatives and the environmental standards and objectives of the affected area." In certifying projects relating to water, wastewater, water conservation, and municipal solid waste, the NADBank's Board of Directors is also required to consult affected states and local governments.

The Committee believes that Congress intended the NADBank's project certification process to be as robust as possible to provide communities on both sides of the U.S.-Mexico border a meaningful voice in the NADBank's decision-making. Going forward, the Committee urges the NADBank Board to prioritize robust public input so that project financing decisions can be made in the best interests of project-affected border communities.

The Committee further understands that the scope of projects eligible for NADBank financing are those exclusively provided for in the NADBank charter. The Committee expects that the Secretary of the Treasury will direct the representatives of the United States to the Board of Directors of the NADBank to oppose the participation of the NADBank in financing for the planning or construction of any wall infrastructure along the U.S.-Mexico border, for any fossil fuel-fired electricity generation project or fossil fuel extraction project, or the planning or construction of any incarceration or detention facility. Further, the Committee understands the Secretary of the Treasury will direct the representatives of the United States to the Board of Directors of the NADBank to oppose the participation of the NADBank in financing for any project that directly facilitates opioid trafficking across the U.S.-Mexico border. The committee understands that opposition of the aforementioned projects is appropriate because they are not within the scope of the

[21] https://www.nadb.orgews/presidents-obama-and-pena-nieto-agree-to- north-american-development-bank-capital-increase-of-us3-billion.

NADBank charter and thus, the NADBank should not be financing those projects.

TITLE IX—USMCA SUPPLEMENTAL APPROPRIATIONS ACT, 2019

Title IX appropriates $843 million to implement and enforce the labor and environment obligations of the USMCA.

From within the $210 million provided to the DOL's Bureau of International Labor Affairs, the Committee expects not less than $100,000,000 to be used for capacity building grants focused on educating and training workers regarding rights in the workplace, including worker-focused education and training related to Mexico's labor reform enacted on May 1, 2019; and not less than $20,000,000 to be used for efforts to reduce workplace discrimination in Mexico.

IV. VOTES OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the consideration of H.R. 5430, to implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North American Free Trade Agreement on December 17, 2019.

H.R. 5430 was ordered favorably reported to the House of Representatives by voice vote (with a quorum being present).

V. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 5430, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

VI. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves increased budget authority for appropriations to several federal agencies for the implementation of the USMCA. The Committee states further that the bill will increase revenues by an estimated $2,970,000,000, resulting in an estimated $3,044,000,000 net decrease in the deficit.

VII. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following estimate by CBO is provided.

Table 1 and 2 display CBO's estimates of the cost of enacting H.R. 5430. Table 1 covers the costs of enacting title I, which would

approve the United States-Mexico-Canada Agreement (USMCA).Table 2 includes CBO's estimate of appropriation under Title IX of H.R. 5430, which would provide appropriations to several federal agencies for the implementing the USMCA. The bill would designate those amounts as emergency requirements in accordance with section 251 of the Balenced Budget and Emergency Deficit Control Act of 1985. The limits on discretionary budget authority established by the Budget Control Act of 2011 (Public Law 112–25), as amended, would be adjusted to accommodate that funding.

TABLE 1.—DIRECT SPREADING AND REVENUE EFFECTS OF H.R. 5430, THE UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT, AS INTRODUCED ON DECEMBER 13, 2019

[December 16, 2019]

	By fiscal year, millions of dollars—											
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020–2024	2020–2029
INCREASES OR DECREASES (−) IN DIRECT SPENDING												
Department of Agriculture:												
Estimated Budget Authority	−19	−23	−17	−13	−7	−5	0	0	0	0	−79	−84
Estimated Outlays [a]	−19	−23	−17	−13	−7	−5	0	0	0	0	−79	−84
North American Development Bank:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays [b]	10	0	0	0	0	0	0	0	0	0	10	10
Total Changes:												
Estimated Budget Authority	−19	−23	−17	−13	−7	−5	0	0	0	0	−79	−84
Estimated Outlays	−9	−23	−17	−13	−7	−5	0	0	0	0	−69	−74
INCREASES IN REVENUE												
Estimated Revenue [c]	10	40	70	230	360	450	460	450	450	450	710	2,970
NET INCREASE IN THE DEFICIT												
Effect on the Deficit	−19	−63	−87	−243	−367	−455	−460	−450	−450	−450	−779	−3,044

Source: Congressional Budget Office.

Estimates are relative to CBO's May 2019 baseline, assumed enactment by February 2020.

[a] CBO estimates that enacting the bill would result in greater U.S. exports of certain dairy products, leading to slightly higher dairy prices and thus a small decrease in federal payments that support dairy producers.

[b] On October 22, 2019, CBO transmitted a cost estimate for H.R. 132, the North American Development Bank Improvement and Pollution solution Act of 2019. In 2016, the Congress appropriated $10 million for paid-in capital, but did not specifically authorize the Department of Treasury to obligate those funds. By authorizing the United States to participate, H.R. 132 would allow the department to pay $10 million to the bank; CBO expects it would do so in 2020. The fall cost estimate can be found here: https;//www.cbo.gov/ systemfiles2019-10hr132.pdf.

[c] The estimated revenue effects of enacting H.R. 5430 mainly reflect higher expected revenue from tariffs on motor vehicles and parts. Because of stricter rules of origin for motor vehicles and new labor value content requirements, CBO projects that certain imports of motor vehicles and parts that currently benefit from favorable treatment under the North American Free Trade Agreement would not be eligible for favorable treatment under the new agreement. Because of that change in eligibility, CBO projects that duty-free imports of vehicles and parts into the United States from the USMCA parter countries would decline. A portion of that decline in duty-free imports would be replaced by domestic production while some of that decline would increase duty-free imports from Canada, leading to a small reduction in tariff revenues collected on agricultural imports subect to tariffs.

[d] Revenue estimates are net of income and payroll taxes.

Estimated prepared By: Tiffany Arthur (Agriculture); Erin Deal (Revenues), Sunita D'Monte (North American Development Bank); Daniel Fried (Revenues).

Table 2 displays CBO's estimate of appropriations under title IX of H.R. 5430, which would provide appropriations to several federal agencies for the implementation of the United States-Mexico-Canada Agreement. The bill would designate those amounts as emergency requirements in accordance with section 251 of the Balanced Budget and Emergency Deficit Control act of 1985. The limits on discretionary budget authority established by the Budget Control Act of 2011 (Public Law 112–25), as amended, would be adjusted to accommodate that funding.

TABLE 2.—DISCRETIONARY APPROPRIATIONS OF TITLE IX, THE USMCA SUPPLEMENTAL APPROPRIATIONS ACT, 2019

[December 16, 2019]

	By fiscal year, millions of dollars—											
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020–2024	2020–2029
Appropriations Subcommittee												
Agriculture:												
Budget Authority	4	0	0	0	0	0	0	0	0	0	4	4
Estimated Outlays	3	1	0	0	0	0	0	0	0	0	4	4
Commerce, Justice, Science:												
Budget Authority	106	0	0	0	0	0	0	0	0	0	106	106
Estimated Outlays	68	22	16	0	0	0	0	0	0	0	106	106
Interior and Environment:												
Budget Authority	308	0	0	0	0	0	0	0	0	0	308	308
Estimated Outlays	37	121	120	30	0	0	0	0	0	0	308	308
Labor, Health and Human Services, Education:												
Budget Authority	210	0	0	0	0	0	0	0	0	0	210	210
Estimated Outlays	11	63	63	42	21	0	0	0	0	0	200	200
State and Foreign Operations:												
Budget Authority	215	0	0	0	0	0	0	0	0	0	215	215
Estimated Outlays	215	0	0	0	0	0	0	0	0	0	215	215
Total:												
Budget Authority	843	0	0	0	0	0	0	0	0	0	843	843
Estimated Outlays	334	207	199	72	21	0	0	0	0	0	833	833

Source: Congressional Budget Office.
Estimates are relative to CBO's May 2019 baseline, assumed enactment by February 2020.
Section 905 of H.R. 5430 specifies requirements for the budget treatment of title IX. Consistent with that section, and at the direction of the House Committee on the Budget, title IX is considered to be appropriation legislation rather than authorization legislation.

Estimate prepared by Justin Riordan.

VIII. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of gen-

eral performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

F. Hearings

In compliance with Sec.103(i) of H. Res. 6 (116th Congress) (1) the following hearings were used to develop or consider H.R 5430:

On June 25, 2019, the Subcommittee on Trade held a hearing on "Mexico's Labor Reform: Opportunities and Challenges for an Improved NAFTA."

On June 19, 2019, the full Committee held a hearing on "The 2019 Trade Policy Agenda: Negotiations with China, Japan, the EU, and UK; new NAFTA/USMCA; U.S. Participation in the WTO; and other matters."

On May 22, 2019, the Subcommittee on Trade held a hearing on "Enforcement in the New NAFTA."

On March 26, 2019, the Subcommittee on Trade held a hearing on "Trade and Labor: Creating and Enforcing Rules to Benefit American Workers."

On March 21, 2018, the full Committee held a hearing on the "U.S. Trade Policy Agenda."

On July 18, 2017, the Subcommittee on Trade held a hearing on "Modernization of the North American Trade Agreement (NAFTA)."

On June 22, 2017, the full Committee held a hearing on the "U.S. Trade Policy Agenda."

IX. 'CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, in order to expedite the business of the House of Representatives, it is necessary to dispense with the requirements of clause 3(e) of rule XIII of the Rules of the House of Representatives (relating to showing changes in existing law made by the bill as reported).

MINORITY VIEWS ON THE USMCA IMPLEMENTATION ACT—DECEMBER 18, 2019

Committee Republicans agree that the United States-Mexico-Canada Agreement (USMCA) fulfills President Trump's promise to modernize and improve on the North American Free Trade Agreement (NAFTA) in a way that grows our economy and benefits American workers, farmers, manufacturers, innovators, high tech workers, and service providers. According to conservative estimates by the independent U.S. International Trade Commission, USMCA will create 176,000 American jobs and increase the size of the U.S. economy by $70 billion. Congress should move forward and pass USMCA without further delay to unlock the tremendous benefits of the agreement and continue building on pro-growth Republican policies.

NAFTA entered into force more than 25 years ago and needed many updates to reflect our 21st century economy and ensure it works well for all Americans. USMCA effectively modernizes our trading relationship with our North American allies with state-of-the-art and enforceable disciplines on, among other things, digital trade, agriculture, services, customs and trade facilitation, and state-owned enterprises. These provisions raise standards and allow American companies to compete and win both regionally and globally. Republican Members of the Committee anticipate that this successful outcome will create considerable momentum for trade agreements with other trading partners, to America's benefit. Congressional approval of USMCA will send a signal to the rest of the world that the United States will continue to lead in setting the standard for trade.

By maintaining duty-free market access on virtually all North American trade, USMCA allows the continued and seamless flow of goods and services across borders. This agreement strengthens the North American economy in a way that will create jobs at home and contribute to a thriving manufacturing sector.

Our farmers and ranchers will maintain their market share in Mexico and will have key new opportunities to compete in Canada because the agreement opens up the Canadian market for our dairy, wheat, poultry, and egg producers. Cutting-edge and enforceable biotech and sanitary and phytosanitary disciplines will prevent unjustified discrimination against our agriculture sector and will signal to the rest of the world that the United States expects all our trading partners to treat U.S. food and agricultural exports fairly and transparently.

Tough standards are meaningful only if they are enforceable, and the USMCA makes significant improvements over NAFTA in the area of enforcement. NAFTA's rules for state-to-state dispute settlement included gaps that allowed parties to "block" or otherwise avoid the formation of a panel to hear a dispute. This is one reason

that no NAFTA dispute settlement panel has been formed since 2000. USMCA includes many innovations to ensure that panel formation cannot be blocked and disputes will be resolved promptly. The United States will be able to hold Canada and Mexico accountable to implement all USMCA commitments, a result that we strongly support.

USTR negotiated a fair, narrow, and transparent rapid response mechanism to hold Mexico accountable for high labor standards and prevent Mexican companies from giving themselves an advantage by tolerating poor labor conditions. At the same time, this labor enforcement mechanism preserves U.S. sovereignty and the rights of U.S. companies. No labor union meddling or harassment is permitted—the U.S. government is in charge of the entire government-to-government process. While holding Mexico accountable, USTR achieved important safeguards for our companies. The agreement explicitly provides that no U.S.-based facility can be subjected to the mechanism unless that company is already in trouble under U.S. law because it is the subject of an adverse National Labor Relations Board order. Agriculture producers are not included.

While interested parties can petition for action, the complaining government retains the final say in deciding whether to bring a case. Before any process begins, the responding government is to conduct its own review and consultations. If the problem is not remediated, then a rapid response labor panel is formed, made up of three labor experts selected from lists put forward by the U.S. and Mexican governments. There is no broad, surprise inspection conducted by unions or the governments. Instead, the three panelists may conduct announced site visits, and a facility may refuse a site visit, although the panel will take that fact into account. If a violation is found, there is ample opportunity to mitigate before remedies are applied.

The remedy for the first violation is limited to fines on the company for the goods produced in the facility and a loss of the USMCA tariff elimination benefit. If there is a second violation, then those same penalties can be assessed against the company's parent and affiliates, but only if the entire process is completed from start to finish. If there is a third violation, the goods in question can be blocked at the border, but only if the entire process is completed a third time. Any remedy must be lifted immediately upon remediation by the company.

On the environment, this agreement strikes the right balance and is consistent with the Bipartisan Congressional Trade Priorities and Accountability (TPA) Act of 2015 by binding the United States only to Multilateral Environmental Agreements to which the United States is a full party. Consistent with TPA, the United States is not bound by the terms of additional MEAs or new provisions of existing MEAs unless the United States becomes a full party, requiring Senate ratification. Also consistent with our expectations as set forth in TPA, the USMCA does not impose any climate change-related commitments on the United States.

USMCA fully complies with the prohibition in TPA against making changes to U.S. immigration law. USMCA simply maintains

the NAFTA provisions on temporary entry visas that have been in place for over 25 years, with no substantive changes.

As this agreement is implemented and monitored, we will remain fully engaged in oversight and expect robust and frequent consultations from this and future Administrations regarding all aspects of the agreement. Article I, Section 8 of the Constitution vests all authority over commerce with foreign nations with the Congress. Congress has developed a partnership with the Executive Branch on these issues by delegating aspects of this authority over time, and legislation setting the terms of this partnership, including the Trade Act of 1974 and various iterations of Trade Promotion Authority legislation, has been unequivocal that Congress expects robust consultations before and after the United States enters into trade agreements, whether or not a Congressional vote is required.

In particular, we expect robust consultation regarding the use of proclamation authority to implement this agreement, both on tariff and non-tariff issues. Likewise, we anticipate robust consultation and consideration of Congressional views when developing the U.S. position on any possible amendments to the agreement (under Article 34.3) or possible withdrawal (under Article 34.6).

The Joint Review (or "sunset") process, to take place at least once every six years as set forth in Article 34.7, is a new provision for U.S. trade agreements. For that reason, Section 611 of the USMCA Implementation Act sets forth some important steps for consultation with Congress in developing the U.S. position for these Joint Review meetings and making decisions on next steps after the meetings occur. The consultations set forth in Section 611 are just some components of the ongoing consultations we expect regarding the Joint Review process.

Although we strongly support this agreement because it is a great win for the United States for all the reasons stated above as well as many others, in certain discrete areas our view is that concessions were made to address Democratic concerns, resulting in weaker provisions that should not be replicated in future trade agreements. First, we view Investor State Dispute Settlement (ISDS) as an important enforcement mechanism that gives U.S. investors in foreign countries access to a fair and neutral venue to enforce their rights when a foreign country's domestic courts may not provide that due process. This agreement preserves a more limited form of ISDS for all sectors and NAFTA-like ISDS for investors in certain sectors that have contracts with the Government of Mexico. However, ISDS is eliminated with Canada after a grandfathering period, and access to ISDS is very limited for investors in many sectors in Mexico. We expect to see full ISDS rights in all sectors in future trade agreements and do not see the need for a government contract requirement.

Second, we strongly supported the USMCA as originally negotiated in the area of pharmaceuticals, including 10 years of data exclusivity for biologics. These original USMCA provisions appropriately balanced strongly support for our vital innovators with access to medicines. They would have helped raise standards in other countries and prevented the significant problem in which far too many countries take advantage of the pro-innovation policies in the

United States without paying a fair share for developing new drugs.

Unfortunately, the biologics provision was removed from the agreement at the insistence of Democrats, who incorrectly suggested that this provision had the potential to increase U.S. drug prices. We do not consider the removal of this provision as establishing a precedent for future agreements.

At the same time, we note that the USMCA does not change the full 12 years of data exclusivity protection for biologics under U.S. law and cannot do so because only Congress can change U.S. law. In addition, USMCA still maintains important protections for American innovation and creativity. Rather than create a precedent in a trade agreement for a level of protection for biologics that is significantly below U.S. law, USMCA is simply silent on what Mexico and Canada are required to provide specifically for biologics, just as NAFTA was. Moreover, biologics will receive the same protection as other pharmaceuticals, including an automatic five years of data exclusivity, as well as many other vital IP protections in this important sector. We further note that USMCA does not prevent Canada and Mexico from choosing to pursue pro-innovation policies by raising their standards in this area to a level closer to the United States level of 12 years, a result that we would view as positive for patients and taxpayers in all three countries.

This agreement is a strong win for Americans across our economy. House Democrats dragged their feet for over a year before allowing this agreement to come to a vote, which has imposed unnecessary costs on the U.S. economy and created considerable uncertainty. We are pleased to move forward now with a strong bipartisan vote to implement the agreement and begin benefiting from the improvements to NAFTA that President Trump has won for all Americans.

KEVIN BRADY,
Republican Leader.
VERN BUCHANAN,
Republican Leader, Trade Subcommittee.

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