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Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Submitted electronically via www.regulations.gov

Attn: Docket: USTR-2017-0006

Re: Comments on the Modernization of the North American Free Trade Agreement (NAFTA)

Dear Mr. Gresser,

The American Fuel & Petrochemical Manufacturers (AFPM) welcomes the opportunity to submit comments to the Office of the United States Trade Representative (USTR) as it prepares to enter into negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). AFPM fully supports the Administration's goal of promoting "higher paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under NAFTA."

AFPM is a trade association representing the U.S. refining and petrochemical industries. In fact, AFPM members encompass virtually all U.S. refining and petrochemical manufacturing capacity, including 119 refineries and 248 petrochemical[1] manufacturing facilities. AFPM's members produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the chemical building blocks that are used to make the millions of products that make modern life possible—from clothing to life-saving medical equipment and smartphones.

The refining and petrochemical industries support nearly 5 million U.S. jobs and add $850 billion each year to the U.S. economy. The employment opportunities provided by refining and petrochemical companies are precisely the type of well-paying jobs the Administration is seeking to promote and create—whether it is skilled laborers working in our facilities or those in engineering, accounting, finance, and other professional services that our companies require. In fact, according to the U.S. Bureau of Labor Statistics (BLS), in 2016 the average petrochemical plant and refinery operators earned about $67,000 per year (median).

[1] For purposes of these comments, AFPM defines "petrochemical" as base petrochemicals, ethylene, propylene, butenes, benzene, toluene and xylenes, as well as their first and second derivatives. For administrative purposes, AFPM does not include methane and its derivatives, or chlor-alkali chemicals in its portfolio.

In addition, our industries are growing and are projected to expand in the future. In the next decade, the refining and petrochemical industries will need additional skilled labor to work as welders, electricians, pipefitters, boiler makers, and in other similar positions. In fact, demand for these skilled labor positions is expected to grow by 12 percent by 2024 to support the more than $185 billion in committed investment in our industries.

North American trade is a key element for continued growth in U.S. refining and petrochemical manufacturing. The United States imports significant volumes of crude oil from Canada and Mexico and in-turn exports substantial volumes of refined petroleum products and petrochemicals to those countries. As U.S. demand for transportation fuels continues to decline and as world demand for our products increases, our industries will increasingly rely on export markets for growth. Likewise, Canada and Mexico are also key trading partners for petrochemicals. Because petrochemicals are building blocks used in a wide variety of manufacturing supply chains, the ease of their movement across borders is critical.

NAFTA modernization provides an opportunity to further enhance market access and bolster the competitiveness of the refining and petrochemical industries. AFPM's comments are divided into two parts. Part I summarizes the importance of North American markets. Part II summarizes the refining and petrochemical industries' primary recommendations for areas of negotiation in the upcoming modernization discussions.

I. North American Trade in Energy and Petrochemicals is Significant and Growing

A. Energy

In modernizing NAFTA, it is crucial that the agreement facilitates and encourages the cross-border trade of energy and petrochemical products between the United States, Mexico, and Canada. Canada is the United States' largest energy trading partner and Mexico is the United States' second largest energy trading partner. In 2016, the U.S. imported $53 billion worth of energy products from Canada and exported $14 billion worth of energy products to Canada. Mexico is the largest export market for refined products made in the United States, with energy products accounting for almost 20 percent of trade with Mexico. In 2016, the U.S. exported $20.2 billion worth of energy products to Mexico and imported $8.7 billion worth of energy products.

Crude Oil. The North American supply of crude oil is vital for U.S. energy, economic, and national security. Our NAFTA trading partners combined to supply 48 percent of the U.S. imported crude supply needs in 2016. More specifically, in 2016, the U.S. imported 3.3 million barrels of Canadian crude oil per day, making Canada the largest supplier of imported crude oil to the U.S., representing 41 percent of U.S. crude oil imports. Similarly, the U.S. imported

582,000 barrels of crude oil per day from Mexico, making Mexico the fourth largest source of imported crude oil, representing 7 percent of U.S. crude oil imports.

Petroleum Products. In 2016, the U.S. exported 4.7 million barrels per day of refined petroleum products, and one-third of those exports went to our NAFTA trading partners. Products include transportation fuels such as gasoline, diesel, and jet fuel, as well as heating oil, and other products such as naphtha, a petrochemical feedstock, propane that is used for heating and cooking, and light oils used to dilute heavy crude oils, which both Canada and Mexico produce.

Both Canada and Mexico are vital markets for U.S. refined products. Mexico is the single largest export market for the U.S. refining industry; in 2016, almost 20 percent of U.S. petroleum product exports were delivered to Mexico. In fact, U.S. exports of gasoline to Mexico supplied more than half of Mexico's gasoline demand in 2016.

Any changes that diminish the ability of our companies to export would put U.S. refining capacity at risk. The modernization of NAFTA must consider the importance of Mexico to the U.S. refining industry and must allow U.S. refineries to continue supplying competitively priced gasoline and diesel fuel. The global refined product market is very competitive, and U.S. exports to Mexico could be replaced by supply from Europe, India, or the Middle East.

On the other hand, the bilateral trade of refined products between the United States and Canada is relatively balanced in both volume and value. In 2016, the United States exported 564,000 barrels of refined products per day to Canada, valued at $8.2 billion and constituting 12 percent of all product exports. Additionally, in 2016, the United States imported 542,000 barrels of refined product, this included 180,000 barrels per day of gasoline (~2.8 billion gallons for the year) and 104,000 barrels per day of diesel fuel and heating oil (1.6 billion gallons for the year) from Canada. The Northeastern United States especially relies on gasoline, heating oil and diesel fuel from refineries in Eastern Canada.

Natural Gas. The natural gas trade between the United States and Canada is dominated by pipeline shipments. In 2016, natural gas imports from Canada averaged 8.0 billion cubic feet per day (Bcf/d) (equaling 97 percent of all U.S. natural gas imports), and U.S. natural gas exports to Canada averaged 2.1 Bcf/d, (equaling 33 percent of all U.S. natural gas exports). Most U.S. imports of natural gas from Canada originate in Western Canada and are shipped to U.S. markets in the West, Midwest, and Northeast. U.S. natural gas exports to Canada originate primarily in Michigan and New York, and exploration of the Marcellus and Utica shales have increased U.S. production of natural gas.

U.S. exports of natural gas to Mexico have increased dramatically as U.S. production of natural gas has increased. In 2016, U.S. exports of natural gas to Mexico totaled nearly 4 Bcf/d (equaling 60% of total U.S. natural gas exports) and are expected to increase in 2017 as pipeline infrastructure expands. Natural gas pipelines currently under construction or in the planning stages are expected to double the pipeline natural gas exporting capacity from the U.S. to Mexico in the coming years. The U.S. imports very small volumes of natural gas from Mexico into Southern California and Texas.

U.S. natural gas trade with Mexico and Canada is vitally important to balancing U.S. natural gas demand and supply. In 2016, the U.S. consumed more than 75 Bcf/day of natural gas, more than 10 percent of which was imported from Canada and Mexico.

B. Petrochemicals

In total, trade in all chemicals, including substances outside of the petrochemical portfolio, many of which are made from petrochemical building blocks, has more than tripled since NAFTA came into force, from $20 billion in 1994 to $63 billion in 2014. Petrochemical imports from Canada and Mexico totaled around $419 million in customs value, while exports to both countries totaled around $749 million in customs value.[2] As mentioned above, there is a very diverse portfolio of petrochemicals crossing the border that affects a wide variety of different manufacturing supply chains throughout North America. Those supply chains often go back and forth across borders, blurring the distinction of purely American, Canadian or Mexican manufacturing and creating a North American manufacturing bloc.

II. NAFTA Modernization Provides an Opportunity to Enhance the Competitiveness of U.S. Fuel and Petrochemical Manufacturers

The energy and petrochemical sectors in the U.S., Canada, and Mexico have undergone significant changes since NAFTA was first enacted. Innovation and technology have increased crude oil production, particularly in the U.S. and Canada, leading the U.S. to lift the ban on crude oil exports in 2015. Likewise, in 2013, Mexico changed its constitution to begin liberalizing its energy sector, allowing for direct investment by U.S. companies for the first time. As a result of increased energy production and the increasingly integrated North American energy market, the International Energy Agency (IEA) now projects that North America will be energy secure by 2020. North American energy security reduces U.S. reliance on unstable and volatile sources of energy, benefiting U.S. national security. A modernized NAFTA will enhance the progress already underway. AFPM offers the following recommendations for USTR as it develops its goals for negotiations.

[2] American Fuel & Petrochemical Manufacturers, AFPM SELECTED PETROCHEMICAL STATISTICS, U.S. Trade Data (December 2016).

1. Enhance and protect foreign direct investment in partner nations

With the liberalization of the Mexican energy sector, significant investments are now being directed from the U.S. into the Mexican energy infrastructure. For example, Tesoro Corporation was recently awarded a contract to lease storage and pipeline capacity in northwestern Mexico from Mexico's state-run oil and gas company Pemex. Tesoro will supply the capacity with products produced from their U.S. West Coast refineries, providing an important market for U.S.-produced refined products.[3] Likewise, Valero Energy Corporation and Exxon Mobil both recently announced hundreds of millions of dollars in investment in fuels logistics, product inventories, and marketing in Mexico.[4] These investments will provide an important and growing market for U.S. refined products. Given the energy sector's experience in other Latin American nations, U.S. investors need sufficient protection against potential political changes in Mexico that could jeopardize their investments. Accordingly, a revised NAFTA should provide stronger and explicit protections against nationalization or other actions that could imperil U.S. investment in Mexico or Canada.

2. Modernize NAFTA rules of origin and streamline product-specific rules as appropriate

The current NAFTA rules of origin should be modernized and streamlined to better reflect the modern industry practices and the standards in subsequent free trade agreements. As currently structured, the rules place a high burden on companies to gather and review supplier information (some of which is business confidential and cannot be shared) in order to certify their own goods and obtain duty-free access to markets. Modern rules of origin should be crafted to continue to ensure that partner nations do not become back-door markets to foreign competitors not party to NAFTA but at the same time recognize the practical aspects of normal business operations and interactions among business partners.

AFPM also supports provisions that would streamline the NAFTA duty preference regulatory and reporting issues around crude oil and refined products. In particular, crude oil is classified under subheading 2709 of the Harmonized Tariff System, which is the same subheading covering certain types of diluents. Canadian producers blend heavy crude with diluent (light hydrocarbons added to crude oil to reduce viscosity and density) to facilitate the transportation of the oil by pipeline. However, the blended crude may not satisfy the current applicable rule of origin and would be regarded as non-originating. If the good is determined

[3] Rye Druzin, *San Antonio-based Tesoro Wins First Pemex Pipeline and Storage Contract,* SAN ANTONIO EXPRESS-NEWS (May 9, 2017), http://www.expressnews.com/business/eagle-ford-energy/article/San-Antonio-based-Tesoro-wins-first-Pemex-11133184.php?t=1676ed3718e3582fc1&cmpid=premartcl.

[4] Rye Druzin, *San Antonio-based Refiner Valero to Spend $200M in Mexico*, SAN ANTONIO EXPRESS-NEWS (May 25, 2017), http://www.mysanantonio.com/business/eagle-ford-energy/article/Valero-Mexico-fuel-11174057.php; *see also* Press Release, ExxonMobil, ExxonMobil to Launch Mobil-Branded Service Stations and Fuels in Mexico (May 17, 2017).

non-originating, it will not qualify for preferential NAFTA status. The Trans-Pacific Partnership included provisions that corrected the rules of origin to address this issue. A similar provision should be included in modernizing NAFTA, as it would allow U.S. importers of crude to classify entries crossing the Canadian and Mexican borders as originating goods, making it easier for importers of crude and natural gas in Mexico, the US and Canada to apply for NAFTA benefits on entries of hydrocarbons crossing borders between the three countries.

3. Dispute resolution processes involving commercial transactions

As currently constructed, NAFTA dispute resolution mechanisms are focused on actions taken by the governments of NAFTA parties, and commercial disputes must rely entirely upon the Mexican, Canadian, and U.S. judicial systems. Unfortunately, this dynamic often introduces significant uncertainty into commercial relationships for U.S. companies because they cannot be confident that contractual or other disputes will be resolved expeditiously, fairly, and in accordance with their commercial expectations. NAFTA negotiators should expand the dispute resolution protections available to U.S. businesses confronting adverse treatment in Mexico or Canada regarding commercial issues.

4. Extension of time for agreed upon protection beyond termination of actual agreement

U.S. companies should be protected from unfair treatment in litigation, regulation, or commercial disputes that may arise after an agreement is fully performed. As such, to facilitate cross-border investment, NAFTA should ensure that investors have access to dispute resolution mechanisms for a reasonable period of time after either party completes contract performance. Such protection would further enhance the environment for cross-border investment and would provide more commercial reliability for U.S. companies.

5. Regulatory cooperation and alignment

A modernized NAFTA should promote a more integrated and efficient regulatory environment. Regulatory cooperation can help eliminate unnecessary burdens on cross-border trade and provide more certainty for businesses and the public. For example, AFPM member companies report that the process to receive licenses and permits to physically conduct business in Mexico is onerous and slow. Likewise, members report that the Mexican product testing regime adds considerable time and cost and that there is significant opportunity to make quality assurance/quality control in Mexico more reflective of U.S. standards.

Just as NAFTA partners should review barriers to U.S. exports, the U.S. should review and reconsider barriers to imports. For example, to build cross-border pipelines, U.S. companies must receive a favorable national interest determination from the U.S. Department of State. The integration of the North American energy market is in the national interest of the U.S., and the U.S. should lower barriers to building modern and safe infrastructure. Nor is cross-border energy trade is limited to pipelines. U.S. fuel and petrochemical manufacturers rely on rail transport to ship hazardous liquids across borders to access supply routes and markets. To foster this transport, regulatory harmonization related to tank car standards, operational controls, and hazard classification is essential to U.S. fuel and petrochemical manufacturers. NAFTA modernization provides an opportunity to harmonize and streamline these types of regulations. USTR should review and consider other proposed structures, such as the Regulatory Cooperation Council envisioned by the Trans-Pacific Partnership, while maintaining existing bilateral efforts at regulatory harmonization.

Finally, regulatory cooperation should be extended throughout North America to harmonize and strengthen the risk- and science-based approaches to chemical regulations adopted under the Canadian Environmental Protection Act (CEPA) of 1999 in the U.S. Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) in 2016. Streamlining and harmonizing partner nation approaches to chemical regulation will reduce systemic regulatory cost, promote innovation, and ultimately facilitate U.S. exports and competitiveness.

6. Streamline/define the NAFTA auditing process

The existing auditing procedures that member countries' customs authorities employ during NAFTA audits should be streamlined and clearly defined so that they are transparent and predictable to industry participants. Currently, customs authorities can be inconsistent in the requirements they place on industry during audits, with information requests often being overly burdensome and not tailored to information relevant to proving rules of origin. The following are specific items that could help make the audit process more consistent, streamlined, and in-sync with the purpose of proving goods are NAFTA-qualified.

- Allow for the electronic maintenance of all records relating to the origin of a good for which preferential tariff treatment has been claimed.
- Limit the scope of written questionnaires required of exporters or producers to a percent of the shipments reasonable under the 30-day timeframe for response.
- Clarify that electronic signatures are acceptable to fulfill the requirement that an exporter or producer complete and sign a Certificate of Origin.
- Recognize the various mechanisms industry has for inventory control management – permit industry to utilize its own ERP/SAP or customized inventory tracking systems (including various forms of records maintained in the normal course of a company's business) to fulfill inventory tracking requirements.
- Harmonize NAFTA with evolving free trade agreements and clarify that no specific form is required so long as the required data elements are certified by the producer / exporter.

III. Conclusion

AFPM strongly supports the Administration's efforts to modernize NAFTA and to enhance the competitiveness of U.S. refiners and petrochemical manufacturers. NAFTA modernization provides a unique occasion to bring our strong North American relationships into the new century and create new opportunities for U.S. businesses and workers to thrive. AFPM and its refining and petrochemical members stand ready to partner with the Administration as negotiations proceed.

Sincerely,

Chet Thompson
President and CEO