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Secretary Lisa M. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, D.C., 20436

RE: Investigation No. TPA-105-008 Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update

Dear Secretary Barton,

This submission is in relation to your investigation on *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Update*. We believe this investigation is a useful exercise, and we welcome the opportunity to provide our views.

Our submission focuses on two general shortcomings that we have identified as a particular challenge for economic impact assessments of trade agreements: 1) insufficient public information on the operation of many trade agreements, which makes it difficult for the members of the public to weigh in with constructive comments; and 2) methodological issues that can contribute to an incomplete picture of a trade agreement's impact. We elaborate on these two points below.

Insufficient information

Evaluating the economic impact of trade agreements is a challenge, even with full information about their operation. Unfortunately, while there is usually plenty of attention accorded to the negotiation of trade deals, there are major gaps in public knowledge on the details of implementation of these agreements.

To oversee the implementation function of these deals, FTAs usually establish an administrative body, either a Commission or a Joint Committee,[1] made up of government officials from each party to the agreement. These officials are supposed to meet regularly, normally once a year. Generally speaking, however, there is no detailed disclosure of what is discussed by these Commissions/Joint Committees. Instead, there are only occasional updates with limited details. To illustrate this point, the readout of the December 2017 U.S.-Australia FTA Joint Committee

[1] For example, the U.S. - Chile FTA establishes a Free Trade Commission (Article 21.1); the U.S. - Australia FTA establishes a Joint Committee (Article 21.1).

meeting was only one paragraph long.[2] This dearth of information is insufficient for stakeholders to have a sense of how the agreement is operating, and may adversely affect their ability to benefit from it or even to understand it.

The same lack of transparency is also true for the disputes under trade agreements. Sometimes formal legal complaints are announced with press releases alone, without the request for consultations or a panel being circulated. For example, last year, USTR announced the "First-Ever Environment Consultations Under the U.S.-Korea Free Trade Agreement (KORUS) in Effort to Combat Illegal Fishing,"[3] but the request for consultations was never made public.

Similarly, while each trade agreement is supposed to have its own roster of possible panelists to hear disputes, the names of the people on the roster are not made public. The "judges" are an important part of dispute settlement, and in order to evaluate the enforceability of these agreements, knowledge of the people on the roster is crucial. For instance, a publicly accessible roster can help alleviate concerns regarding "faceless" judges and the legitimacy of international trade courts.

Ultimately, what is needed with U.S. trade agreements is what we have already at the WTO. In contrast to how U.S. free trade agreements are implemented, multilateral and plurilateral agreements negotiated among WTO Members are subject to regular Committee meetings and reporting by the organization's Secretariat, which distributes information about them. This includes an online central repository of official documents and discussions (submissions, minutes of meetings, etc.).

Rather than duplicate the existing WTO document dissemination system, the simplest approach might be to use the WTO to disseminate information about the operation of trade agreements. The WTO already has jurisdiction to monitor these agreements, through its Committee on Regional Trade Agreements. It would not be too much of a stretch to justify using the WTO to provide information on these agreements to the public.

Trade agreements are not just about traditional protectionism anymore. They cover a wide range of issues, and have a broad impact on public policy: intellectual property, food safety, labor, etc. Given the broad scope and potential impact of trade agreements, the public should be made aware of what is being discussed between governments with regard to their implementation. This is the only way for stakeholders, both large and small, to weigh in meaningfully. Otherwise, any review or evaluation process will be controlled by special interests with insider access to government officials. Interest groups know who to talk to in order to get information, but those without connections have a much harder time. An effort to broaden access to information about the operation of these agreements could correct this deficiency.

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[2] Office of the United States Trade Representative, "United States and Australia Meet to Review Implementation of Bilateral Free Trade Agreement," (December 8, 2017) https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/united-states-and-australia-meet.

[3] Office of the United States Trade Representative, "USTR to Request First-Ever Environment Consultations Under the U.S.-Korea Free Trade Agreement (KORUS) in Effort to Combat Illegal Fishing," (September 19, 2019) https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/september/ustr-request-first-ever.

Methodological Concerns

Trade agreements have proven contentious, not least because explaining the benefits is an increasingly complicated endeavor with agreements expanded to encompass more than just tariff reductions and basic non-discrimination requirements. Estimating the benefits of tariff reductions is quite straightforward. But over the years, as we have included a broader range of issues that are harder to quantify, such as intellectual property provisions and digital trade rules, the task of unpacking the value of these agreements becomes more difficult.

Compounding this problem is the fact that politicians frequently cite to topline figures in economic assessments of trade agreements, which oversimplifies the value and makes these deals an easy target for criticism when any negative economic impact is felt. This was the case with the North American Free Trade Agreement (NAFTA), which, on net, was positive for the United States economically, but was oversold by politicians touting massive job gains and large topline GDP growth numbers.

The United States-Mexico Canada agreement (USMCA) may also face a similar fate to NAFTA, as the economic impact assessments made by the USITC, the Canadian government, and other independent studies reveals discrepancies in methodological choices that lead to an overemphasis on some select benefits, while underplaying the negative economic consequences of others. Getting these choices right has broader implications for how we should think about evaluating the impact of trade agreements in the future.

Continuing with the USMCA, for example, the economic impact assessment released by Global Affairs Canada (GAC) estimates that implementing the agreement "would secure GDP gains of $6.8 billion (US$5.1 billion), or 0.249%" over a 5 year period.[4] However, the report also notes that motor vehicle exports to the United States would decline by US$1.5 billion relative to the existing NAFTA, due to the more stringent rules of origin (RoO) requirements, which are likely to lead to increased production costs.

The U.S. International Trade Commission's (USITC) report estimated gains for the U.S. economy at $68.2 billion, or a 0.35% increase in real GDP, over six years.[5] These figures are not directly comparable since they are looking at the impact on their own respective countries, but the significant gap in reported gains is notable. In addition, the USITC report also found a negative impact from the auto RoO, in line with Canada's assessment.

A study by Dan Ciuriak, Ali Dadkhah, and Jingliang Xiao for the C.D. Howe Institute, a Canadian think tank, also conducted an assessment of the USMCA, looking at the impact on all three

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[4] Global Affairs Canada, "The Canada-United States-Mexico Agreement: Economic Impact Assessment,: (February 26, 2020) https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/CUSMA-impact-repercussion-en.pdf, p.59.

[5] United States International Trade Commission, "U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors," (April 2019) https://www.usitc.gov/publications/332/pub4889.pdf.

economies. They found a negative impact on real GDP across all three NAFTA countries— a decline of -0.396% for Canada, -0.791% for Mexico, and -0.097% for the United States.[6]

What makes these three assessments so different? The reports all rely on certain assumptions that impact the outcomes of their models. Two issues are of primary importance here: the factors each study relies on in making its estimation, and the baseline comparison when assessing the overall benefit.

One factor that receives significant treatment in the USITC report is elaborated on by Jeffrey J. Schott from the Peterson Institute for International Economics, who notes that the USITC's very positive growth figure "is entirely due to USITC estimates that the USMCA will induce more US investment by reducing uncertainty in policies on data, ecommerce, and intellectual property rights."[7] However, it is still unclear what this "reduced policy uncertainty" will actually produce.[8] The report itself does not provide further clarity, nor do past studies, since this was the first time the USITC has tried to quantify the impact of binding commitments on data flows and data localization in terms of reducing uncertainty for markets. In instances where a new methodological approach is included in future economic impact assessments, it would be useful to have an accompanying appendix that outlines the rationale behind the choice to include these new factors, and how the methodology for assessing their impact was reached.

An illustration of what happens if this reduced policy uncertainty is excluded from the model helps to explain why clear methodological choices and explanations are imperative: the USITC estimates that the net impact of USMCA on the economy is actually negative, at -0.12%, or approximately a loss of US$22.6 billion. This is consequential. The report does, however, acknowledge that the negative impact is due to the new provisions that will actually reduce trade in North America, which we have also written about elsewhere.[9]

That said, one clear methodological advantage the USITC report has over the report by Global Affairs Canada (GAC) is that it actually gives a comparison of NAFTA vs. USMCA, so we have a clear sense of the purported benefits of the "new" deal. However, the GAC report is more modest in its assessment overall because it does not model reduced uncertainty. The rationale it provides is as follows:

> Some provisions under [USMCA] could also help reduce policy uncertainty in certain areas such as services, investment and digital trade, and result in a positive impact on businesses; however, modelling such gains is challenging and relies heavily on the assumptions made. Therefore, these types of benefits were not

[6] Dan Ciuriak, Ali Dadkhah, and Jingliang Xiao, "Quantifying CUSMA: The Economic Consequences of the New North American Trade Regime," (Updated February 2020) https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/WorkingPaper_Ciuriak-Dadkhah-Xiao_2020_0.pdf.

[7] Jeffrey J. Schott, "Five Flaws in the USMCA and How to Fix Them," (August 6, 2019) https://www.piie.com/blogs/trade-and-investment-policy-watch/five-flaws-usmca-and-how-fix-them.

[8] Simon Lester, "Would the New NAFTA Reduce Policy Uncertainty" International Economic Law and Policy Blog, https://worldtradelaw.typepad.com/ielpblog/2019/04/would-the-new-nafta-reduce-policy-uncertainty.html.

[9] Simon Lester and Inu Manak, "The USMCA Is Moving Forward (Too) Quickly," Cato at Liberty (December 16, 2019) https://www.cato.org/blog/uscma-moving-forward-quickly.

> evaluated in this study. Furthermore, many of these obligations have already been implemented by Canada under CETA, and by Canada and Mexico under the CPTPP (p. 47).

The USITC report does not address the Comprehensive and Progressive Trans Pacific Partnership Agreement (CPTPP), as the United States withdrew from it in January 2017. However, law professor Wolfgang Alschner finds that 57 percent of the USMCA is copied from the CPTPP.[10] This raises an important question about baseline comparisons because we need to be sure we are evaluating agreements based on the differences between the new and old rules, or even with other rules that may be better.

For example, for Canada and Mexico, it would be more useful to also compare the outcomes of USMCA with the CPTPP rather than compare it with NAFTA, or as Canada erroneously does, with no NAFTA at all. The GAC report acknowledges that many of the reductions in uncertainty come not from new provisions in USMCA, but things Canada has already agreed to under its trade agreement with the European Union (CETA), and the CPTPP. This further raises the question as to whether the United States got more out of USMCA than it would have if it had stayed in the CPTPP? The USITC Report includes this statement on this issue in general:

> the Commission's baseline does not take into account the various market liberalizations and binding commitments that Mexico and Canada have undertaken as signatories of the CPTPP, including commitments applying to data localization and data transfer. Since these are key policies that drive Commission model results in estimates that provide higher weights to the value of policy uncertainty, it is unclear whether estimates with higher weights for policy uncertainty would apply to the current (post- CPTPP signing) policy context (p.58).

Since Canada and Mexico have already adopted disciplines in CPTPP, it is difficult to accurately disentangle the effect of USMCA on reduced policy uncertainty from the reduced uncertainty already achieved through CPTPP, from which the United States withdrew. Because the topline figures and summary of the USITC report emphasizes "reduced policy uncertainty" as a major win, it risks overstating the impact of the USMCA and providing an unclear picture of the overall impact of the agreement. In cases such as these, qualitative analysis may better serve to illustrate the potential gains, though estimates may be more conservative and not headline-grabbing as a result.

Another study by Mary E. Burfisher, Frederic Lambert, and Troy D. Matheson from the International Monetary Fund (IMF) also found a negligible impact on GDP (0.02% for Canada, -0.01% for Mexico, and 0.00% for the United States).[11] They note that "key provisions in USMCA would lead to diminished economic integration in North America, reducing trade among the three

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[10] Alschner, Wolfgang and Panford-Walsh, Rama, How Much of the Transpacific Partnership is in the United States-Mexico-Canada Agreement? (June 26, 2019). Ottawa Faculty of Law Working Paper No. 2019-28, Available at SSRN: https://ssrn.com/abstract=3410658 or http://dx.doi.org/10.2139/ssrn.3410658.

[11] Mary E. Burfisher, Frederic Lambert and Troy D. Matheson, "NAFTA to USMCA: What is Gained?" IMF Working Paper (March 26, 2019) https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.

North American partners by more than US$4 billion (0.4 percent) while offering members a combined welfare gain of US$538 million" (p. 23).

In undertaking its current assessment of past trade agreements, the USITC should consider the independent analysis of scholars and experts, particularly those that find opposing results, in order to build a more rigorous impact assessment in the future. This exercise would be of value not just to the USITC, but also to the American public, who would benefit from a full weighing of all the evidence.

The various studies assessing the USMCA spark a number of questions on the appropriate comparisons in the analysis, as well as the variables included in the model. We assert that the correct comparison in the case of USMCA is whether or not it improves upon the NAFTA, and also if its gains are washed out or already achieved by the CPTPP. The USITC does the former, the GAC the latter. Combining these approaches may be fruitful in future evaluations. Incidentally, the study by Ciuriak et al. makes this correction with the GAC report, comparing USMCA with NAFTA, and finds a negative economic impact.

Conclusions

To sum up, we offer the following questions, comments, and recommendations that should inform the economic impact assessments that are undertaken by the USITC of trade agreements:

- Is sufficient information on the operation of trade agreements available to the public and to the ITC? If not, the ITC's impact assessments can only offer so much. The ITC should consider expressing a concern about this issue as part of its assessment, in order to alert policy-makers about this potential deficiency.
- A transparent system of accounting for, reviewing, and housing information of the implementation of FTAs should be a gold standard for future agreements in order to assure the broadest possible stakeholder engagement and overall transparency.
- Are the methodologies being used capable of offering a comprehensive and informative assessment of modern trade agreements? The ITC should consider undertaking a review of its own assessments, those of other governments and international institutions, and those of independent scholars, to determine how it should approach these issues going forward.
- Are methodological choices in impact assessments fully justified, with a clear explanation of how these choices were arrived at? The ITC should consider the impact of the lack of transparency in any methodological decisions to ensure public trust and realistic assessments. Replication files should be made available alongside press releases for reports.
- Impact assessments should be updated once the final text of the FTA is available. Since significant changes can be made to the text before ratification, impact assessments should endeavor to take these modifications into account through an updated release of the report. This allows for a full accounting of the impact.
- Where quantitative assessments are a particular challenge, qualitative research should fill the gap, acknowledging the limitations for impact assessment.

Engaging with these questions and thinking about the broader implications of impact assessments will go a long way in helping to make these evaluations more robust, transparent, and valuable to researchers, policymakers and the public alike.

Regards,

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