CENTER FOR REGULATORY FREEDOM
PROJECT OF CPAC FOUNDATION

515 KING STREET, ALEXANDRIA VA 22314

M E M O R A N D U M

To:	**Hon. Jamieson Greer, United States Trade Representative**
From:	**Andrew Langer, Director, Center for Regulatory Freedom, CPAC Foundation**
Date:	**November 3, 2025**
Re:	**USTR Request For Comments/Request for Public Hearing Relating To the Operation of the Agreement Between the United States of America, United Mexican States, and Canada, Docket Numbers USTR-2025-0004 and USTR-2025-0005, Published September 17, 2025**

Below are comments of the American Conservative Union Foundation's (d/b/a. Conservative Political Action Coalition Foundation) (hereinafter "CPAC Foundation") Center for Regulatory Freedom (hereinafter "CRF"), in response to the USTR Request For Comments/Request for Public Hearing Relating To the Operation of the Agreement Between the United States of America, United Mexican States, and Canada, Docket Numbers USTR-2025-0004 and USTR-2025-0005, published September 17, 2025.

CRF is a project of the CPAC Foundation, a non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that the risks and costs of regulations are fully based on sound scientific and economic evidence, and to ensure that the voices, interests, and freedoms of Americans, and especially of small businesses, are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

Introduction

The history of global prosperity is the history of ideas converted into value — and the mechanism that converts those ideas into investable assets is intellectual property protection. A society that rewards discovery, protects risk-taking, and enforces the fruits of human ingenuity becomes a society that innovates, builds, and advances. A society that fails to do so becomes a

society that imitates what others created. The United States did not become the world's largest economy through extraction or imitation — it became the world's largest economy by cultivating the conditions in which innovators could expect the rule of law to protect their investment of time, talent, and capital.

That principle is not abstract. It is the reason that the United States — and not command economies — became the primary global originator of biopharmaceutical breakthroughs, microelectronics, advanced manufacturing and materials science platforms, and digitally-enabled service architectures. Intellectual property protection is not an ornament of economic policy — it is the hard infrastructure of investment. It is what converts knowledge into property, risk into return, and research into capital formation. Without enforceable IP rules, innovation is not rewarded — and therefore does not occur at scale.

Trade policy is one of the few domains where innovation incentives, industrial competitiveness, and geopolitical positioning intersect explicitly. Because trade frameworks define the cross-border operating environment for innovators, they are structurally tied to the durability of innovation ecosystems. A trade architecture that treats innovation as a "bargaining chip" rather than an economic cornerstone inevitably weakens the incentive to invest domestically. In a world where China is attempting to displace the United States through state-driven industrial strategy, the stakes for getting this right have never been higher.

USMCA is not simply a trade agreement — it is the continent-level rule-set that defines whether North America remains the preeminent platform for innovation-driven growth. And in the upcoming Joint Review, the United States must not lose sight of what underlies North American economic strength: an innovation ecosystem made possible because the returns to breakthrough science, engineering, and technology are predictable. If those conditions erode, capital moves — and once capital moves, manufacturing capacity follows.

It is also essential to understand that intellectual property protection is not merely a matter of economic growth — it is a condition of political stability. Nations that innovate prosper. Nations that cannot innovate must either subsidize imitation or resort to coercive extraction. IP protection is therefore a bulwark against the forms of political destabilization that accompany zero-sum economics. It is the hard line that separates economic freedom from state assignment of outcomes.

For these reasons, the Joint Review must be viewed as a strategic inflection point — not a procedural maintenance exercise. If the United States uses this moment to reaffirm that innovation is the engine of North American prosperity — and to enforce the obligations that make innovation possible — then USMCA will remain a platform for opportunity and growth. If instead innovation incentives are weakened or diluted, the consequences will be felt not merely in economic metrics, but in the long-term strategic balance of the North American project.

The Center for Regulatory Freedom therefore approaches this Joint Review with a simple premise: the foundation of North American competitiveness must remain a predictable, enforceable, pro-innovation legal environment. If we preserve that, North America will continue to prosper and lead. If we weaken it, no amount of bureaucratic coordination can repair the loss.

Executive Summary

The Center for Regulatory Freedom submits these comments to the United States Trade Representative to reinforce what the USMCA Joint Review must do to keep the Agreement true to its original purpose. This Joint Review is occurring at a moment in which China is openly seeking to displace the United States and North America in strategic supply chains and technology-driven industries. The Joint Review is not merely administrative — it is competitive. And USMCA must remain the deal that helps North America win.

Accordingly, CRF emphasizes the following:

- **USMCA must remain a *market-liberalizing compact* — not a mechanism to grow new transnational administrative power.**
- **The Joint Review must reaffirm that *competition*, not bureaucratic coordination, is how North America wins the 21st-century contest against China.**
- **Market-driven *innovation* — especially in biopharmaceuticals and biologics — is North America's core advantage.**
- ***Biosimilars* are not a threat to innovation — they are the intended downstream competition that lowers drug costs *without* imposing price controls.**
- **USMCA must not become a platform to delay biosimilar entry through procedural manipulation.**
- **The 10-year biologics regulatory data protection (RDP) standard in the 2018 USMCA text should be restored for Canada and Mexico — not left on the cutting-room floor.**
- **Canada must stop *free-riding* on American R&D and must carry a proportionate share of innovation cost if it wishes to benefit from American breakthroughs.**
- **Mexico must *enforce the IP obligations it already agreed to* — including patent-term adjustment for unreasonable regulatory delay.**
- **The *Bolar exemption* must be clarified so that it cannot be used as a loophole to pre-commercialize.**
- **Regulatory dark matter — sub-regulatory mandates that function like law but evade public process — must not be permitted to metastasize across three systems.**
- **Dispute settlement must not be weaponized as a backdoor industrial policy engine.**
- **The Competitiveness Committee must remain a friction-removal clearinghouse — not a permanent bureaucracy looking for mission-creep justification.**

In short: the Joint Review should restore the pro-growth, pro-innovation, pro-competition architecture the Parties originally agreed to — and ensure that foreign markets pay their fair share — while the United States retains the core principles that actually win the future.

I. The Original Promise of USMCA as a Market-Liberalizing, Growth-Enhancing North American Compact

When USMCA was negotiated, its animating purpose was to preserve and modernize the benefits of a continental free trade zone — not to transform North America into a policy laboratory, nor to position the three governments as gatekeepers of industrial outcomes. At the time of negotiation, policymakers and stakeholders recognized that the greatest strategic

advantage North America possessed was the ability to out-innovate, out-compete, and out-deploy capital faster than state-directed competitors like China. The modernization imperative was rooted in the insight that market-liberalizing integration increases the returns to private capital deployment; it does not replace those market signals with bureaucratic intervention.

This is why the United States cannot allow the Joint Review process to morph into a referendum on whether North America should become more dirigiste. The argument for USMCA was never that the state should pick winners and losers but that the state should remove frictions, lower transaction costs, and enable firms to re-invest in the continent rather than divert capital in defensive posture. We have seen too much of that defensive posture in the global competition landscape — capital flowing into insurance, hedging, and compliance rather than into innovation. That is the opposite of the North American advantage.

The United States cannot afford to drift toward the model China uses — a model in which industrial outcomes are engineered, capital is directed by the state, and competition is managed rather than earned. USMCA was deliberately not that. It was built to strengthen the supply-side competitiveness of the continent by preserving the policy environment in which innovation and risk-taking produce returns. If the Joint Review becomes a mechanism to create new cross-border administrative coordination bodies or new channels for procedural harmonization, then we will have effectively shifted from a model that encourages competition to a model that orchestrates it.

The difference matters. China's approach is that markets should serve the plan. The North American approach — the one that built the most dynamic economy in human history — is that plans should serve the market. When the U.S. ratified USMCA, the selling proposition was not "we will build continental industrial policy councils." The proposition was "we will protect North America's ability to compete on the basis of free enterprise." That promise must remain intact.

In this context, the Joint Review is not simply a procedural milestone. It is a strategic signaling moment. If the United States uses this review to reaffirm the original market-liberalizing promise of the Agreement, private sector actors around the world will interpret that as a green light for long-term placement of capital here rather than in China or other non-market jurisdictions. Conversely, if the Joint Review is used to open the door to more regulatory convergence, procedural creep, or de facto harmonization, then private capital will read that as a signal that North America is becoming less dynamic — less flexible — and less anchored in competitive discipline.

It is critical to remember: global capital markets are not waiting on the U.S. to decide whether North America still intends to compete. They already have multiple venues in which to invest. China continues to subsidize production, scale industrial capacity through state subsidy, and weaponize supply chains. The Joint Review is not occurring in an ideological vacuum — it is occurring against this geopolitical backdrop. Thus, recommitting to the market-discipline premise of USMCA is not merely a technical point of trade policy — it is a strategic counter to China's state-engineered industrial model.

In the judgment of the Center for Regulatory Freedom, USMCA's success should not be measured by the number of policy initiatives it births, the number of committees it empowers, or the number of workstreams it spawns. It should be measured by the extent to which it reduces frictions, reduces costs, increases certainty, and expands the return on investment for productive

private risk. If the Agreement enables North American firms to move faster than China, to commercialize innovation faster than China, and to scale capacity faster than China, then USMCA is fulfilling its function. If it instead becomes a platform for administrative accretion, then it will undermine the very advantage it was designed to protect.

For this reason, the Joint Review should explicitly reaffirm that USMCA is not a continental planning instrument. It is not a stealth regulatory harmonization vehicle. It is not a channel for "soft law" alignment by stealth. It is a pro-market compact designed to strengthen North America's ability to compete — precisely because competition is the engine of growth. If the United States keeps faith with the original promise of USMCA, the continent can out-innovate and out-compete China for decades to come.

II. North American Regulatory Coherence as the Core Competitiveness Multiplier

Regulatory coherence is one of the least glamorous but most decisive competitiveness variables that USMCA can influence. Tariff levels matter, but in modern commerce — especially in highly-regulated sectors — the regulatory tax is often greater than the tariff tax. Firms that operate across borders repeatedly report that the greatest hidden cost in North America is not duties, but the compounding friction of navigating three different sets of rules for the same product, the same labeling, the same testing protocols, and the same documentation expectations. That friction is not only economically wasteful; it is strategically dangerous in an era where China deliberately uses regulatory opacity to create asymmetric advantage.

The central insight USMCA recognized — and what USTR must reaffirm — is that coherence is not harmonization. Regulatory coherence is the discipline of ensuring that domestic policymaking does not inadvertently penalize regional competitiveness. Coherence respects sovereignty while recognizing that the marginal cost of regulatory divergence falls not on governments, but on innovators, manufacturers, and investors. This, in turn, reduces America's comparative advantage relative to China — because China does not have to contend with three parallel domestic legal systems at once. Beijing's centralization is an inherent advantage in industrial policy; North America's counter-advantage must be clarity and discipline.

One of the greatest risks in the Joint Review is that bureaucratic actors will push for "convergence" of regulatory approaches under the euphemism of efficiency. But convergence is not coherence — convergence is the construction of a new meta-regulator. And once built, those structures never shrink; they expand. The private sector understands this better than government does, because private capital must budget for downstream compliance obligations long before the compliance obligations even formally exist. This is precisely the dynamic China leverages — imposing policy by decree, without process, and using that discretion as a competitive instrument.

What makes regulatory coherence uniquely powerful is that it increases competitiveness without spending money. It is the only competitiveness tool that generates investment attraction without subsidy. Coherence is pro-growth, fiscally conservative, and innovation-positive. It lowers barriers to continental scaling — and in a world where China is committing hundreds of billions of dollars to subsidize industrial expansion, North America needs tools that do not rely on matching subsidy for subsidy. Coherence is that tool.

The absence of coherence, by contrast, creates a structural incentive for firms to off-shore or off-continent certain production phases simply to avoid compliance duplication. When manufacturing steps are relocated offshore because a three-jurisdiction compliance obligation is more expensive than a single offshore legal regime, then North America loses not because of tariffs, but because of paperwork. In practical terms, that means USMCA becomes less effective as a bulwark against China — not because China is more innovative, but because North America is more procedurally burdensome.

Regulatory coherence thus should be seen not as a technical alignment exercise, but as a national-interest competitiveness priority. The Joint Review should explicitly recognize that coherence is not a "nice-to-have," but a precondition of North American industrial viability. Coherence is the way to counter China's forced-scale model without abandoning our principles of federalism or democratic process. It is how we compete as democracies — by removing friction, not by acting like Beijing.

The Center for Regulatory Freedom therefore urges USTR to insist that the Joint Review emphasize coherence, not convergence. Coherence is bottom-up discipline — each Party restrains itself. Convergence is top-down authority — a centralized overseer dictates terms. The former strengthens markets. The latter weakens them. The former reduces costs. The latter increases them.

The measure of success in this space is simple: when a North American firm makes an investment decision, it should not have to model three sets of regulatory overhead costs for a single product line. If the Joint Review process delivers that type of continent-level clarity, USMCA will serve as a true competitiveness multiplier — and the United States will be better positioned to out-compete China not by copying its model, but by outperforming it.

III. Innovation Capacity, Manufacturing Sovereignty, and Technology-Driven Competitiveness — Including Biopharma and Biosimilars

North America's long-run competitive advantage is not low labor cost — it is innovation density. The capacity to develop new platforms, new modalities, and new manufacturing architectures is the only durable differentiator between a market-democracy industrial ecosystem and a state-directed industrial model like China's. USMCA's core strategic function is to preserve the conditions in which North American private actors invest in the next generation of capacity rather than migrate to jurisdictions where costs are artificially suppressed through subsidies and non-market distortion. Innovation is not decorative — it is the core operating condition of comparative advantage.

Biologics are the clearest exhibit of this point. Biologic development is expensive, risky, iterative, time-consuming, and deeply capital-intensive. The only way the United States became the world's leader in biologics is that innovators had a predictable, finite, enforceable window to recoup their sunk costs. That is not a theoretical model — it is how the United States overtook Europe in biotech leadership. Exclusivity was the mechanism that compensated risk. Without exclusivity, capital rationally goes somewhere else.

But exclusivity is not permanent — nor is it supposed to be. The innovation cycle only works when the exclusivity period is the runway — not the destination. Biosimilars are the competitive phase that proves the system is working. They are the intended downstream competition. The

only way to bring biologics costs down **without** price controls is biosimilars. And CRF is emphatically opposed to price controls precisely because they decouple risk and return. Biosimilars do not — they preserve the logic of risk-reward, and then restore price discipline.

Biosimilars are also a national-interest manufacturing asset. If North America does not onshore and near-shore biosimilar manufacturing capacity, then China will dominate the fill-finish, cold chain, bioprocessing equipment, and upstream fermentation stacks. China is actively trying to command the verticals that flow from biologics — because whoever controls the stack controls the rents. The way North America defeats that model is not to behave like China, but to accelerate innovation and then protect the competitive second phase of the cycle.

The Joint Review must therefore reaffirm that IP protection for biologics is not merely a legal abstraction — it is the mechanism that keeps the United States ahead of China. If exclusivity is treated as a negotiable political variable — or as a favor to be traded — then capital will take the next quantum leap somewhere else. We will have signaled that risk-taking will not be rewarded reliably. That is the moment China gains industrial leverage.

This is why the Joint Review cannot become a forum for procedural exclusivity extension or procedural exclusivity erosion. The first is anti-competition; the second is anti-innovation. The only legitimate posture is: protect predictability, enforce the runway, and then allow competition when the runway ends. The entire biologic ecosystem depends on that balance. It is the reason multinational capital built biopharma platforms in the United States rather than in Europe — and the reason private capital continues to treat the United States as the superior jurisdiction for life sciences allocation.

Additionally, biosimilars are a cost-of-living issue that does not require price controls to solve. When biosimilars enter, competition lowers price. That mechanism respects both the innovator and the consumer. It is pro-innovation and pro-affordability simultaneously. The political class often treats those two objectives as mutually exclusive — they are not. They are sequential phases of the same competitive cycle.

CRF believes the Joint Review should explicitly reaffirm that USMCA is not a mechanism for "delayed biosimilar entry by procedural interpretation," and that any such maneuver would be a direct strike on North American competitiveness. The only sustainable way to beat China is to innovate faster — and then allow the price relief phase to operate. Attempts to freeze the innovation cycle distort the market, entrench rents, and undermine credibility.

Therefore, as part of the Joint Review, USTR should position innovation and competition as the two halves of the same system — not rival aims in tension — and should explicitly signal that biosimilar competition is a necessary phase of a functioning biologics economy. Innovation without competition is rent extraction. Competition without innovation is commodification. USMCA must protect both.

If the United States keeps that balance explicit — and keeps the system predictable — North America will remain the most advanced biopharma innovation platform in the world. If we slip into procedural manipulation of exclusivity periods or procedural obstruction of biosimilar entry, China will gain the industrial foothold we surrendered voluntarily.

IV. Restoring Biologics RDP, Enforcing Partner Compliance, and Making Foreign Markets Pay Their Fair Share

The Joint Review is not only about reaffirming principles — it is the moment to restore what was stripped out of the Agreement in 2019. The original 2018 USMCA text required Canada and Mexico to provide 10 years of regulatory data protection for biologics. That language was removed in the Pelosi renegotiation. Restoring it is not new ambition — it is restoring the deal North America already agreed to. CRF urges the USTR to reinstate that 10-year term in this Joint Review process.

Some in Congress argued that raising Canada and Mexico from zero (or shorter) to 10 years of biologics RDP would raise drug prices. The empirical evidence contradicts that. When Canada raised its RDP from zero to eight years in 2006, its pharmaceutical spending **declined** as a percentage of total health spending. The "higher RDP = higher spending" claim was never data-grounded — it was a talking point. USMCA should not continue being held hostage to that fiction.

President Trump's May 12, 2025 Executive Order is explicit that foreign nations must stop freeloading on the American patient. Foreign suppression of pharmaceutical prices is a form of industrial arbitrage — it forces Americans to subsidize global innovation, while foreign governments extract the product without paying the innovation cost. USMCA must become the tool that corrects that imbalance — it must shift global cost-sharing back toward reciprocity and away from U.S. unilateral subsidization.

Canada — a rich country — still spends far less on new innovative medicines than the United States. Canada pays less because it has chosen to free ride. That is not a bug — it is an intentional policy choice. The Joint Review is the mechanism to correct it. If Canada wants to benefit from U.S. breakthroughs, it must pay something closer to proportionate shares of the innovation cost. USMCA should explicitly condition North America's innovation equilibrium on Canada carrying more weight.

Mexico's problem is different — Mexico is not merely underpaying for innovation; Mexico is failing to implement the IP commitments it already signed. In 2025, Mexico was placed on the Special 301 Priority Watch List for failure to enforce IP properly. It is not a paperwork glitch — it is a systemic refusal to adopt the enforcement architecture necessary to make USMCA's IP chapter real. The Joint Review cannot simply scold Mexico — it must require compliance.

Patent term adjustment for unreasonable regulatory delay is not optional — it is in the Agreement. Canada has enacted legislation to implement this rule, albeit narrowly. Mexico has not. Mexico's failure to enact that rule is a violation of the deal. The Joint Review is the moment to force alignment — and alignment here is merely "follow the text you signed." This is not new ambition — this is enforcement.

The Bolar exemption also requires clarification. The current ambiguity allows generic firms to blur the line between "pre-market testing" and "pre-expiration commercial preparation." That ambiguity harms innovators and weakens the incentive structure that makes innovation possible. Clarifying Bolar is not anti-generic — it is pro-rule-of-law. The Joint Review should tighten this language and align it with the original intent — testing, not commercialization.

If Canada and Mexico enforce the IP rules they already agreed to — and if the original biologics RDP term is restored — every Party benefits. North America becomes a more powerful platform for biotech capital formation. Every Party sees more investment. Every Party creates more IP-related jobs. And every Party moves closer to manufacturing and supply chain sovereignty relative to China.

CRF therefore urges USTR to make biologics RDP restoration, patent term adjustment enforcement, Bolar clarification, and Canada/Mexico accountability the centerpiece of America's affirmative "ask" in the Joint Review. It is not enough to preserve the original intent of USMCA — the United States must now restore what was stripped out.

If USTR anchors the Joint Review around these points, we will not merely protect competitiveness — we will rebuild the fastest engine of biopharma innovation in the world, and we will make foreign markets pay their fair share — not push the costs onto American patients.

V. Disciplines Against Regulatory Dark Matter, Administrative Process Creep, and Non-Market Subsidy Drift

One of the most significant threats to North American competitiveness is not formal regulation — it is informal regulation. The Center for Regulatory Freedom has repeatedly documented that more and more of the compliance burden firms face in the United States is not produced through notice-and-comment rulemaking, but through sub-regulatory instruments — guidance memoranda, FAQs, interpretive bulletins, "policy statements," circulars, and advisory texts that are not subjected to the discipline of public participation or economic analysis. These materials function as binding rules in the real world while remaining non-binding in form. This is regulatory dark matter — and USMCA must not enable it or institutionalize it.

The problem is that these sub-regulatory instruments create real obligations, with real penalties for non-compliance, but they are not subject to the transparency safeguards designed to prevent abuse. When a document labeled "interpretive guidance" functions as a de facto mandate, it enjoys all the force of regulatory power and none of the procedural accountability that is supposed to accompany it. That is the antithesis of legitimate rulemaking. And if these forms of administrative improvisation take place across three jurisdictions, North American competitiveness is not merely eroded — it collapses under administrative accretion.

China does not hesitate to use informal regulatory signals to create advantage, but China's economy is a command system. The United States is not. Canada is not. Mexico is not. The comparative advantage of our system is not speed of decree — it is transparency of process. If the United States tacitly abandons process discipline in favor of "administrative convenience," then we will have effectively imported the worst elements of China's model without gaining any of the speed or scale that are the only actual benefits of Beijing's command-and-control structure.

There is also a second danger: sub-regulatory policymaking is the easiest place to embed the kind of "soft subsidy" incentive structures that distort market behavior. When governments cannot get explicit spending authorized to subsidize a sector, they often attempt to subsidize that sector indirectly through regulatory preference — loosening requirements for one actor while tightening them for others. That is subsidy by administrative interpretation. It is every bit as

distortionary as direct subsidy — but it is harder to detect, harder to challenge, and harder for private capital to price.

If USMCA becomes a platform that encourages — or even tolerates — this kind of informal policy engineering, then the Agreement will inadvertently transform itself into a vessel for industrial favoritism and non-transparent redistribution. And once that happens, the Agreement will no longer function as a competitiveness compact. It will have become a continental mechanism for granting regulatory advantage to powerful incumbents or politically favored classes of actors — which is exactly how China tilts the playing field at home.

Regulatory dark matter ultimately undermines investment certainty because it injects ambiguity into the process itself. Capital does not fear rules — capital fears unpredictable rules. Investors can model risk — but they cannot model arbitrary enforcement or evolving interpretations. China's model is built around this ambiguity — it is how the Chinese state retains unilateral leverage. But the U.S., Mexico, and Canada cannot compete with China by becoming China. We compete with China by being what China is not — transparent, rules-based, and predictable.

A Joint Review that does not address this risk will miss the single most structurally important variable in 21st-century competitiveness. Regulatory dark matter is the way policy preferences creep into the economy without authorization, without analysis, without public comment, and without accountability. If North America does not explicitly discipline that practice, then the continent will bleed competitiveness quietly — through the thousand-cut erosion of flexible private risk-taking.

For this reason, the Joint Review should reinforce a clear principle: any regulatory obligation that has a cross-border competitive effect must be imposed through transparent rulemaking. No informal channel should be permitted to generate binding expectations that change market outcomes. Sub-regulatory preference is subsidy by euphemism — and USMCA must not tolerate it. The integrity of market competition demands that the obligation to regulate be matched with the obligation to justify.

VI. The Risk of Dispute Settlement Becoming a De Facto Industrial Policy Forum

The dispute settlement architecture in USMCA exists for one reason only — to resolve disagreements about the meaning and application of the text of the Agreement. It is supposed to function as a referee, not a planning commission. If, during or after the Joint Review, dispute panels begin to be viewed as appropriate vehicles to advance policy preferences that cannot survive domestic legislative scrutiny, then dispute settlement will have been converted into something the Parties never negotiated: a continental industrial policy instrument. That shift would not merely be improper — it would be economically destructive.

This risk is not theoretical. There are actors — inside government and outside it — who want to convert USMCA into a mechanism for supranational decision-making precisely because their preferred outcomes are not politically viable in domestic democratic systems. Those actors understand that "regulatory convergence by panel" is easier than persuading legislatures. They understand that if they can persuade one or two panelists to treat policy preference as treaty interpretation, they can bypass the democratic accountability inherent in Congress, Parliament, or the Mexican legislature. The incentive to attempt this is real.

China, of course, does not have this problem. China does not need to smuggle industrial policy through adjudication, because it already has a command system. Beijing can achieve industrial outcomes through decree — through policy announced on Monday and implemented on Tuesday. That is the entire difference between a state-capitalist model and a market-capitalist model. North America's comparative advantage is that we do not do that. But if North America begins laundering domestic policy preferences through dispute settlement rather than legislation, then we become indistinguishable from the command model — except less efficient, because we retain the procedural overhead while discarding democratic accountability.

This misuse of adjudication would also destroy the credibility of the dispute system itself. The only reason dispute settlement works is because the business community believes that outcomes are rooted in text, not ideology. International adjudicatory systems possess no inherent legitimacy; they only possess legitimacy because private actors believe the system is rules-based. Once dispute systems are perceived as flexible proxies for activist outcomes, the private sector shifts capital out of the jurisdiction. And if that happens in USMCA, the comparative advantage of North America erodes — and China benefits.

Further, if dispute settlement becomes a de facto policy laboratory, it will create the worst of all outcomes — an adjudicatory structure that cannot be appealed, cannot be legislatively overridden, and cannot be democratically corrected. It would produce policy without accountability, power without representation, and outcomes without consent. That is the antithesis of the competitive North American model. It elevates the preferences of a tiny number of adjudicators over the democratic preferences of hundreds of millions of citizens.

The problem is that once dispute settlement is misused in this manner, it cannot be easily undone. The precedent becomes self-legitimating. Actors will cite prior "interpretations" that were not interpretation at all, but stealth policy making. And without explicit Joint Review discipline, the slope is greased. The only way to stop the weaponization of the system is to stop it before it begins. The Joint Review is the moment to draw a bright line.

The Center for Regulatory Freedom therefore urges USTR to reinforce, during the Joint Review and in all public signaling around it, that dispute settlement is for rule application — not rule invention. The only defensible use of the system is textual discipline. If a Party wants a new policy, that Party must negotiate it and legislate it — not attempt to sneak it into existence through adjudication.

If USMCA adheres to this principle, the Agreement will continue to serve as a bulwark against China's model — demonstrating that democratic markets do not need to emulate command systems to remain competitive. But if USMCA abandons this principle, and dispute settlement becomes a shadow legislature, North America will have forfeited the very structural advantage that differentiates us — the legitimacy of consent.

VII. The Competitiveness Committee Should Reinforce Market Discipline — Not Build New Permanent Bureaucracy

The Competitiveness Committee was never intended to become a continental policy-making body. It was created as a coordination mechanism — a clearinghouse to identify friction, not a platform to generate new mandates. Yet there is a growing tendency within cross-border governance culture to reinterpret forums like this as opportunities to institutionalize new standing workstreams, new ongoing agendas, and new bureaucratic footprints. That tendency is a risk to

competitiveness in its own right — because bureaucracy is a form of drag. Every layer of coordination that is not about removing barriers becomes another barrier.

The Committee should be oriented around competitive discipline — not policy invention. It should operate on the principle that its legitimacy comes from subtraction, not addition. The metric of success should be how much friction it removes, not how many "initiatives" it can generate. China's system scales through state construction — ours scales through market acceleration. We do not need additional continental advisory structures; we need fewer frictions so that private actors can make investment decisions with clarity and confidence.

If the Competitiveness Committee becomes an engine of permanent agenda-setting, it will eventually become a gravitational center of policy ambition in its own right. Once a working group exists, it looks for tasks. Once a sub-committee is created, it seeks relevance. And relevance, in bureaucratic logic, is created not by restraint but by proposing new mandates. This is how structures metastasize. It is how administrative organisms convert information-sharing into policy-forming — and how advisory bodies become de facto governing equity.

The moment the Committee begins defining "priority policy domains" — beyond the removal of procedural impediments — is the moment the line has been crossed. When a committee defines a priority, it implies a mandate. When it implies a mandate, it implies jurisdiction. When it implies jurisdiction, it stops being an information clearinghouse and begins to operate as a soft supervisory board. And once that happens, competitive outcomes will slowly shift from market-led to process-led. China already operates in that space. North America cannot win there.

The world is watching to see whether USMCA becomes the most durable model of democratic market coordination — or whether it begins drifting toward the logic of continental managed competition. China will welcome the latter outcome. China does not fear North America when we build bureaucratic structures — China fears North America when we unleash private capital, private ingenuity, and private speed. The Committee should therefore be a champion of competitive freedom, not a producer of new policy ambitions or continent-wide frameworks.

The United States must make clear that the Competitiveness Committee cannot and must not become a policy-origination node. The Committee should have no authority to expand its role beyond the functions explicitly negotiated. It should not formulate policy. It should not propose new subsidies. It should not anticipate regulatory convergence. It should merely identify the frictions that prevent North American firms from moving as fast as they are capable of moving — and then recommend their removal.

If the Committee becomes a permanent bureaucracy, USMCA will cease to be a competitive architecture and will evolve into a technocratic ecosystem — one that privileges process over performance. The private sector will respond rationally: capital will slow and disperse. Investment horizons will shorten. China will gain the strategic advantage we squander — not by beating us on innovation or cost, but by simply letting North America defeat itself through administrative overreach.

It is for these reasons that CRF urges USTR to signal, during the Joint Review, that the Competitiveness Committee remains a competitive friction-removal mechanism — not a continental command node. The function of the Committee should be to preserve the space in

which markets outperform planners. If that boundary is kept firm, USMCA strengthens its original purpose. If that boundary is blurred, China's model will gain the advantage we yield.

Conclusion

The Joint Review presents the United States with a rare opportunity to reaffirm the core conditions under which North America can continue to lead the world in innovation, manufacturing, and high-value economic activity. The United States did not become the global hub of advanced discovery by accident — it became that hub because America chose a model that rewards risk-taking, protects intellectual capital, and allows competition to determine outcomes. That model is not self-executing. It must be intentionally preserved.

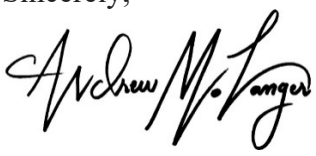
As USTR moves through this Joint Review, it is critical that the United States not allow USMCA to drift into a model of continental industrial coordination or informal policy harmonization that dilutes competitive discipline. China is attempting to displace the United States precisely because it believes North America will follow it into systems of administrative control. The Joint Review must therefore reaffirm — clearly and publicly — that North America's competitive posture is strengthened by markets, not weakened by them.

The United States has every right to demand that our trading partners meet the obligations they agreed to — including intellectual property enforcement, data-exclusivity commitments, regulatory adjudication standards, and basic compliance with the rule of law. If Canada and Mexico want to enjoy the benefits of U.S. breakthroughs, they must carry a proportionate share of innovation cost. Those who benefit from innovation should not be subsidized by those who create it.

Similarly, the United States should not permit what was deliberately negotiated into the original text — such as a stronger biologics framework — to be undone by procedural indirection. Restoring the 10-year RDP period and enforcing existing patent-term adjustment and Bolar-clarifying obligations is not a new ask. It is simply restoring the deal as originally intended — and making sure the deal functions as it was sold to the American people.

In sum, the Joint Review should serve to renew — not redefine — USMCA's central purpose: a platform for competitive North American growth grounded in innovation, not bureaucracy. If USMCA remains anchored in that purpose, then North America will continue to be the most powerful engine of democratic economic dynamism in the world — and a region that cannot be out-maneuvered by command-economy rivals.

Sincerely,



Andrew M. Langer
Director
CPAC Foundation Center for Regulatory Freedom