Intelligence MEMOS

From: Jon Johnson

To: Canadian Trade Watchers

Date: January 4, 2022

Re: **Biden Administration's Flawed Bill H.R. 5376 – Opposition is Building**

US trading partners are now voicing strong opposition to the Biden administration's H.R. 5376.

In a letter dated December 3 addressed to Majority Leader Charles Schumer, Valdis Dombrovskis, Executive Vice-President of the European Commission expressed concern over the discriminatory provisions in Bill H.R. 5376 that provide subsidies to purchasers of electric vehicles produced in the US that satisfy local (i.e. US) content requirements. The letter further points out that the requirement in H.R. 5376 that the vehicles be produced in unionized plants discriminates against major vehicle producers in the US such as Toyota whose US plants are not unionized.

In a letter dated December 10, also addressed to Majority Leader Schumer, Canada's Finance Minister Chrystia Freedland and Minister of International Trade Mary Ng objected to the discriminatory provisions in Bill H.R. 5376 "in the strongest terms." The letter maintains that the proposed provisions are "equivalent to a 34 per cent tariff on Canadian-assembled electric vehicles." They also insist that the "proposal is a significant threat to the Canadian automotive industry and is a de facto abrogation of the USMCA." The letter outlines in detail steps that Canada might take in retaliation if these discriminatory provisions are not removed.

Luz María de la Mora Sánchez, Undersecretary for Foreign Trade in Mexico's Economy Secretariat, has also strongly objected to the provisions of Bill H.R. 5376, characterizing its provisions as "destabilizing" and as worse than the 25 percent tariffs on autos threatened by the Trump administration.

Vice President Kamala Harris has stated that the Biden-Harris administration strongly supports the proposed tax credits. However, President Biden and Vice President Harris do not drive the legislative process. The responsibility for deciding whether Bill H.R. 5376 becomes law rests solely with the Senate.

The Senate should consider the likelihood that the response of US trading partners will be at least as strong as their response to the Trump administration's steel and aluminum tariffs. The US' trading partners responded in kind to the steel and aluminum tariffs by unilaterally adopting counter-measures which damaged the US economy and jobs.

The Senate could provoke a similar response from US trading partners if the discriminatory provisions in Bill H.R. 5376 are not removed. It cannot possibly be in US interests to provoke a trade war with its closest allies, at a time when it is trying to work with like-minded countries to counter strategic threats form coercive economic powers such as China.

Beginning with the General Agreement on Tariffs and Trade and moving on to the creation of the World Trade Organization, successive US administrations (until the Trump administration) have strongly supported a rules-based international trading system. Regardless of how the Senate views the need to reform those rules, however, actively harming its allies means the US risks short-term and long-term harm to its own economic power.

Directly contrary to the local content provisions of H.R. 5376, US trade policy has consistently opposed foreign schemes favouring domestic over imported goods. In *Canada - Administration of the Foreign Investment Review Act*, the US successfully challenged the practice of Canada's investment review agency of granting investment approvals conditional on undertakings to purchase Canadian goods. The US insisted on the Canada-US FTA and NAFTA including a provision (carried forward into CUSMA) prohibiting duty remission conditional on achieving a given level or percentage of domestic content. The WTO Subsidies and Countervailing Measures Agreement reflects this US policy by prohibiting subsidies contingent on the use of domestic over imported goods. NAFTA, the Trans-Pacific Partnership as negotiated by the Obama administration, and CUSMA all carry this policy forward by prohibiting subsidies to investors based on requirements to purchase domestic goods.

The Senate has a choice – pass Bill H.R. 5376 with its discriminatory provisions and subject US businesses to considerable injury through trade retaliation and further undermine its position in the international trading system – or refuse to pass Bill H.R. 5376 (and uphold long-standing US policy as well as benefitting the US) unless its discriminatory provisions are removed.

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