UNITED STATES – AUTOMOTIVE RULES OF ORIGIN

(USA-MEX-CDA-2022-31-01)

CLOSING STATEMENT

OF THE UNITED STATES OF AMERICA

August 3, 2022

Mr. Chairman and members of the Panel:

1. The United States would like to thank once again the Panel, and the staff assisting you, for your work on this dispute.

2. We have covered a lot of ground in the written submissions, oral statements, and answers over the past two days. We hope this has been helpful to you. Ultimately, the questions before the Panel are clear and straightforward: whether the vehicle regional value content requirement and the core parts origination requirement are *separate* requirements that are subject to separate calculations, and whether the core parts satisfying the separate core parts requirement are originating for purposes of the "roll-up" provision when calculating the regional value content of the vehicle.

3. As the United States has explained, a proper application of the customary rules of interpretation reveals that the regional value content requirement for the vehicle, and the core parts origination requirement are two separate requirements. The USMCA text makes clear that the two requirements are subject to two separate calculations, and that the results of those calculations for the core parts origination requirement cannot be used when calculating the regional value content of the vehicle, and are not subject to the roll-up provision in Article 4.5.4 of the Agreement.

4. Over the past two days, we have heard statements from both Canada and Mexico that actually demonstrate why their positions cannot be accepted. Canada agrees with the United States that the core parts origination requirement is a *separate* requirement from the regional value content requirement for the vehicle. However, Canada does not consider that the special calculation methodologies in Articles 3(8)(b), 3(9)(a), and 3(9)(b) can only be used for the core

parts origination requirement, but rather considers that the results of the special methodologies for this *separate* requirement must be carried over into the regional value content calculation for the vehicle. We have not heard any textual arguments from Complainants that support this interpretation. And now it is clear that – far from imposing an additional requirement on automakers – the only function of the core parts origination requirement under Complainants' interpretation is to get core parts to "roll-up" with *less* – and sometimes *much less* – North American content than under the standard methodology.

5. On the issue of the two core parts tables – Tables A.1 and A.2 – Complainants suggested that the existence of these two tables is purely superficial, with Table A.2 serving only as an easier reference document for automakers to consult than Table A.1. But Complainants say nothing of the separate textual references to each table and the different format and substance of the two tables. As we have detailed, this is completely unsupported by the text in Article 3, and by the tables themselves. Both Table A.1 and Table A.2 list the core parts contained in a vehicle. These parts are overlapping. However, each table contains different information, is referenced in different provisions, for satisfying different requirements.

6. Specifically, Table A.1 is referred to for calculating the RVC of the vehicle and core parts coming in outside of the vehicle (specifically at paragraphs 2 and 3), while Table A.2 is only referred to for purposes of the core parts origination requirement (specifically at paragraphs 7, 8, 9, and 10).

7. The substance of Table A.1 lists the core parts, their HTSUS code and their description. Table A.2 on the other hand, contains two columns. Column 1 lists just the names of seven core parts that appear in Table A.1, and Column 2 lists the "key components" that make up those

parts in Column 1. The only purpose for Table A.2 is for the core parts origination requirement, and the application of the special methodologies for that requirement. Specifically, these two columns are necessary, and only useful for undertaking the calculations at Article 3(8)(b) or 3(9)(b) – where a producer can disregard all the VNM for a core part in Column 1, except for the VNM of any of the components in Column 2. Given the layout and content, it would make no sense for a producer to reference this table for anything but the core parts origination requirement.

8. Therefore, as the United States has explained, the existence of two separate but overlapping tables demonstrates that there are in fact two separate requirements: the vehicle regional value content requirement, and the core parts origination requirement. And each requirement is subject to separate calculations.

9. The United States appreciates the questions from the Panel over these two days. There is one question in particular that the United States would like to reiterate – whether there is textual support for Complainants' assertion that the special calculation methodologies at Articles 3(8) and 3(9) of the Autos Appendix are applicable to the vehicle regional value content calculation, and are subject to the "roll-up" provision.

10. Complainants have not been able to identify textual support for their argument that the special calculation methodologies at Articles 3(8) and 3(9) can be applied when calculating the regional value content of the vehicle, and are subject to the "roll-up" provision. As we have detailed in the U.S. written submissions, and during this hearing, the text of Article 3 of the Autos Appendix does not support Complainants' interpretation. Let us recall briefly the relevant text and how it supports the U.S. interpretation.

11. Article 3 sets forth two regional value content requirements - the regional value content requirement *for the vehicle*, and the regional content requirements *for certain core parts*, the "core parts origination requirement".

12. Paragraphs 1-5 of the Article 3 of the Autos Appendix set forth the requirements for the numerical percentages of regional content that must be met for the vehicle and parts that make up a vehicle, and paragraph 6 describes how to do the mathematical calculation to determine what the percentage is. For the vehicle, this is the standard calculation under Article 4.5.3 of the Agreement.

13. Paragraph 7 of Article 3 then sets forth the separate core parts origination requirement and the numerical percentages of regional content that must be met for the core parts identified in Table A.2.

14. Then paragraphs 8 and 9 describe the options for how to do the mathematical calculation for those core parts in Table A.2 to determine what the percentage is.

15. Paragraph 8(a) reproduces the standard calculation in Article 4.5 of the Agreement. So one option for calculating the percentages for the core parts in Table A.2 to see whether the core parts origination requirement is met is to use the same standard calculation the producer would use when calculating the percentages for the vehicle, or the parts of the vehicle. In other words, if the core parts are originating for purposes of the standard methodologies under Article 4.5, they are originating for purposes of the core parts origination requirement because the calculations are the same.

16. But the calculations under paragraphs 8(b), 9(a), and 9(b), which provide flexibilities, are exclusive to the core parts origination requirement and are not available when calculating the

regional value content of the vehicle. We know this because they are not referenced in paragraph 6, which prescribes the rules for how to calculate the regional content of the vehicle. We also know this because the *chaussette* of paragraph 9 contains express language limiting the use of the calculations in paragraph 9, to the core parts origination requirement.

17. Accordingly, because the results of the special calculation methodologies in paragraphs 8(b) and 9 cannot be used when calculating the regional value content of the vehicle, a part originating pursuant to one of the special methodologies – but not pursuant to paragraph 8(a), which again mirrors Article 4.5 – also would not be subject to the roll-up provision at Article 4.5.4 of the Agreement.

18. The text of the roll-up provision itself also limits the use of "roll-up", expressly referring to goods calculated under the standard methodology at either paragraph 2 or 3 of Article 4.5. Since the special calculation methodologies deviate from the standard calculations by altering how the value of non-originating materials is calculated, they cannot be considered to be calculations under paragraph 2 or 3.

19. Were these calculation flexibilities to replace the calculations under Article 4.5 for purposes of roll-up, as Complainants suggest, the only real function of the core parts origination requirement would be to allow automakers to disregard *more* non-originating value in the regional value content calculation for the vehicle as a whole, than otherwise would be permitted under Article 4.5. Application of the core parts origination requirement would mean that a core part that *could not* be considered originating for purposes of the roll-up provision under the standard rules, now *can* be considered originating under alternative rules. What looked like a

requirement is, under Complainants' interpretation, actually a loophole. Such an interpretation cannot be sustained.

20. Mr. Chairman, members of the Panel, we mentioned yesterday that the interpretations being advanced by Mexico and Canada, and the multinational car companies supporting them, threaten to undermine a core basis for the successful renegotiation of the NAFTA, that led to widespread and bipartisan support in the United States for the USMCA. There is nothing surprising or shocking in drawing the Panel's attention to the real-world implications of this dispute.

21. As we noted yesterday, the figures provided by an auto producer (reproduced in Exhibit US-19) reveal that *all of* the increased North American content expected from elimination of notorious loopholes in the NAFTA *would be lost* via the Complainants' interpretation of rolling up core parts meeting the separate core parts origination requirement into the regional value content of the vehicle. And Mexico's own exhibit MEX-91 presented yesterday confirms this pernicious effect.

22. For example, according to Mexico's own calculations on U.S. data (tab 1 – Internal Combustion Engine), the Complainants' interpretation would result in a regional value content of 80 percent – while the North American content under the U.S. interpretation would be 60 percent. This means *a loss of 20 percent North American content per vehicle* – and the jobs and investment that would support it.

23. And even worse: in this example, the producer would already be meeting the fully phased-in USMCA regional value content requirement of 75 percent. This means that the

producer in this example would *not* have to make any further investments in North America, and would *not* have to make any further purchases of North American parts or components.

24. This is what the Complainants would have you find was the result of the USMCA autos renegotiation – simply put, *nothing*. The United States urges you to preserve the negotiated outcome reflected in the text that helped make USMCA a new model of success for trade.

25. This concludes our closing statement. We thank you again for your attention.