UNITED STATES – AUTOMOTIVE RULES OF ORIGIN

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

OPENING STATEMENT
OF THE UNITED STATES OF AMERICA

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TABLE OF ABBREVIATIONS

Abbreviation	Definition
Agreement or USMCA	United States-Mexico-Canada Agreement
NAFTA	North American Free Trade Agreement
Party	USMCA Party
RVC	Regional Value Content

TABLE OF EXHIBITS

Exhibit No.	Description
USA-27	Graph of Estimated Impacts of Complainants' Interpretation

I. Introduction

1. Mr. Chairman, members of the Panel, Good Morning.

2. We would like to begin by thanking the Panel, your staff assisting you, and the U.S. Section of the Secretariat for your work in this dispute.

3. The U.S. statement will be brief, as the issues in this dispute are clear. In negotiating the USMCA, the United States wanted to drive North American investment and production so that the benefits of the USMCA would increase and be more widely shared across the region.[1] A key outcome of these negotiations was an overhaul of the rules governing rules of origin for autos and auto parts to incentivize investment and job creation in North America and rebuild support for trade between the Parties.

4. The result of negotiations was, among other content requirements such as labor value and steel and aluminum, that the USMCA increased the overall regional value content ("RVC") requirement for autos and auto parts. Specifically, the USMCA raised the minimum North American content required for vehicles and light trucks to enjoy preferential treatment, from 62.5 percent to 75 percent.[2]

5. Further, the USMCA added a regional content requirement for the core parts of the vehicle– under Article 3(7) of the Autos Appendix – the core parts origination requirement – which is at the heart of this dispute. This requirement establishes that certain "core parts" of the vehicle must themselves be originating by satisfying the separate regional value content

[1] *See* U.S. Initial Written Submission, para. 3 (citing Trilateral Statement on the Conclusion of NAFTA Round One, August 16, 2017, Exhibit USA-1); *see also*, U.S. Initial Written Submission, para. 5 (citing USTR, Estimated Impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. Automotive Sector, April 18, 2019, p. 3 (Exhibit MEX-9).

[2] USMCA Chapter 4, Annex 4-B, Autos Appendix Article 3(1).

thresholds set out for those parts. The seven defined core parts – the engine, transmission, body and chassis, axle, suspension system, steering system and where applicable, the advanced battery – represent some of the most valuable parts of a vehicle, constituting a significant percent of the total value of the vehicle, depending on the model.

6. This new origination requirement means that, whereas other parts of a vehicle may be non-originating but still present in an otherwise originating vehicle, the core parts of the vehicle must contain sufficient amounts of regional value content to satisfy an origination threshold (for each part separately, or, taken together as a single part). If these core parts of a vehicle are not themselves originating, the vehicle cannot receive preferential treatment under the USMCA.

7. To meet this requirement, the Autos Appendix provides the producer with additional flexibilities for how these parts can be calculated, which deviate from, and alter the calculation under the standard regional value content methodology. These special calculations are not available when calculating the regional value content of the vehicle.[3] And unlike parts or materials calculated pursuant to the standard methodology, parts calculated pursuant to the special methodologies at Articles 3(8)(b) and 3(9) of the Autos Appendix, are not subject to the "roll-up" provision at Article 4.5.4 of the Agreement.

8. As you have heard from Complainants, they challenge the U.S. interpretation, and claim that the special methodologies are available when calculating the core parts for the regional value content of the vehicle, and that if those core parts are originating under the special flexibilities, the roll-up provision applies, and any non-originating content in those parts is disregarded. The

[3] *See* Autos Appendix Articles 3(8)(b) and 3(9).

Complainants' interpretation is not supported by the text of the Agreement, and Complainants have not shared with this panel any viable textual arguments that support their interpretation.

9. If the flexibilities in the core parts origination requirement were "rolled-up" into the overall RVC calculation, as Complainants claim, they would significantly reduce – rather than enhance – the actual regional value content of the vehicle. This would turn what was clearly intended to be an additional content requirement, into an effective loophole.

10. In fact, as you can see in the projected slide, regional value content figures from auto producers,[4] and estimates calculated by the U.S. International Trade Commission based on producer and trade data,[5] show significant North American content *loss* when applying Complainants' interpretation.[6] The estimates based on trade data, project a loss between eight percent and thirty-three percent when applying Complainants' interpretation.[7]

11. In the projected slide, which was modified from a slide provided to USTR by a foreign automaker – which we have provided as Exhibit USA-19 – the top three bars reflect the regional value content required under the NAFTA as compared to the USMCA. The first line shows the regional value content percentage thresholds; the second line reflects the estimated 7.5% loss under NAFTA's deemed originating rule, which brought the effective percentage threshold down to 55%, and the third line shows the additional 5% loss from NAFTA's tariff shift rule for the core parts. The fourth line reproduces the foreign automaker's estimate of the impact of the new

[4] *See* Auto producer chart of core parts methodology calculation, Exhibit USA-19, which indicates an artificial increase in regional content of 3% when "Accounting for VNM of key parts only" and another 7% relying on a "Roll-up of qualifying core parts"; Foreign auto producer calculations, Exhibit USA-20 (Confidential).

[5] *See* Estimated Impacts of Complainants' Interpretation, Exhibit USA-2.

[6] *See* Graph of Estimated Impacts of Complainants' Interpretation, Exhibit USA-27.

[7] *See* Estimated Impacts of Complainants' Interpretation, Exhibit USA-2.

rules that was provided by that automaker – originally represented in lines 4 and 5 of the graph in USA-19.

12. The bottom four bars are regional value content calculations we have completed based on producer and trade data under both Complainants' and the U.S. interpretation. When you compare the regional value content loss from Complainants' interpretation in the bottom five bars – which are represented by the red hatched portions – with the regional value content gains made under USMCA, by eliminating the "deemed originating" and tariff shift rule for core parts, you can see that in some cases those gains are completely nullified if the Complainants' interpretation were accepted. This is plainly represented in the fourth line, which again reflects estimates of impacts provided by the foreign auto producer, and which estimates the *actual* regional value content permitted under the rules to be *unchanged* under the USMCA. In two of the calculations, lines 5 and 6, the vehicle would not even meet the regional value content requirement under the NAFTA. And in the final two lines, calculations show that Complainants' interpretation makes the difference in allowing automakers to meet the USMCA threshold. Notably, the loss of actual regional value content in even these calculations exceeds the loss allowed by NAFTA's deemed originating rule, as well as the loss allowed by NAFTA's core parts tariff-shift rule. These outcomes clearly undermine the terms of the USMCA and cannot have been intended by the negotiators.

13. Complainants' have criticized the U.S. calculations; but they have not rebutted them. If data exists to show that the U.S. calculations are wrong, then Complainants should provide that to the Panel. For whereas the United States has access to only limited amounts of information regarding the actual content of imported vehicles, the multinational automakers supporting Complainants' interpretation have access to all of it. Maybe this data is all too sensitive for

automakers to share – besides, of course, what it has already shared; or maybe it shows much the same as the U.S. calculations: a wide variety of outcomes, but all of which show significantly inflated amounts of regional value content under Complainants' interpretation.

14. In fact, under Complainants' interpretation, the negotiators would have better achieved their goal of increasing the RVC of vehicles had they *not* included the core parts origination requirement at all. This absurd result is contrary not only to the text and structure of Chapter 4 and the Autos Appendix, but is also contrary to the Parties' goals of attracting new investment, creating good, well-paying manufacturing jobs, and ensuring, to the extent possible, that only the Parties of the USMCA benefit from the duty-free treatment provided by the Agreement for meeting these new rules of origin.[8]

II. The Text Read in Context, and in Light of the Object and Purpose of the Agreement, Supports the Interpretation that the Overall RVC Calculation and the Core Parts Origination Requirement are Two Separate Requirements

15. The U.S. interpretation is straightforward, and the text is clear.

16. Specifically, Article 3 of the Autos Appendix sets out two regional value content requirements a vehicle must meet to receive preferential treatment. The regional value content requirement for the vehicle, and the regional content requirements for certain core parts, the "core parts origination requirement".

17. Paragraphs 1-5 of the Article 3 of the Autos Appendix set forth the requirements for the numerical percentages (the regional value content thresholds) that must be met for the vehicle and parts that make up a vehicle, and paragraph 6 describes how to do the mathematical

[8] *See e.g.*, USMCA Preamble.

calculation to determine what the percentage is – for the vehicle this is the standard calculation methodology under Article 4.5.3 of the Agreement.

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

19. 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. Paragraph 8(a) reproduces the standard calculations in Article 4.5. So one option for calculating the percentages for the core parts in Table A.2, to see whether they meet the core parts origination requirement, is to use the same standard calculation the producer would use when calculating the percentages for the vehicle, or the parts of the vehicle.

20. But, the calculations under paragraphs 8(b) and 9 of Article 3 of the Autos Appendix, 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. We also know this because the *chaussette* of paragraph 9 expressly limits the use of the calculations in paragraph 9, to the core parts origination requirement in paragraph 7; and because the Autos Appendix contains two separate but overlapping core parts tables, Table A.1 and A.2, each with for different purposes.

21. 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 also would not be subject to the roll-up provision at Article 4.5.4 of the Agreement.

22. The roll-up provision also confirms this result. Specifically, Article 4.5.4 of the Agreement limits the use of roll-up to goods that are calculated "under paragraph 2 or 3" of Article 4.5.[9] The special calculation methodologies deviate from the standard calculations by altering how the value of non-originating materials is calculated, and therefore cannot be considered calculations "under paragraph 2 or 3" of Article 4.5. And so, the roll-up would not apply to parts calculated pursuant to the three special methodologies at Articles 3(8)(b) and 3(9) of the Autos Appendix.

23. Complainants attempt, but fail, to refute these textual arguments.

III. Complainants Fail to Rebut the U.S. Case

24. Complainants make a variety of arguments against the U.S. interpretation, but their key arguments appear to be as follows. ***First***, Complainants argue that the references between the vehicle regional value content provisions in the Autos Appendix, and the regional value content provisions of Chapter 4, to the core parts origination provisions in the Autos Appendix, show that there are not two separate calculations for the vehicle and the core parts origination requirement.[10] ***Second***, that the roll-up provision is a rule of general application, and there are no terms expressly limiting its application.[11] And ***third***, that negotiators would have accomplished their goal of setting out two separate requirements in some other way had they

[9] USMCA Article 4.5.4 "Each Party shall provide that the value of non-originating materials used by the producer in the production of a good shall not, *for the purposes of calculating the regional value content of the good under paragraph 2 or 3*, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good." Emphasis added.

[10] *See* Canada's Rebuttal Submission, paras. 12-13; Mexico's Rebuttal Submission, paras. 19, 24-25.

[11] *See* Canada's Rebuttal Submission, para. 22.

intended the U.S. interpretation, including using a term other than "originating" in Article 3(7) of the Autos Appendix.[12] Each of these arguments fail.

A. The existence of a relationship between provisions does not impede the U.S. interpretation

25. As the United States explained in its rebuttal submission,[13] that there is a relationship between provisions, does not mean that there is not a separate requirement and function attached to each provision. There *is* a relationship between Articles 3(7) and 3(2) of the Autos Appendix. There is also a relationship between Article 4.5 of the Agreement, and the special calculation methodologies. However, these relationships do not impede the U.S. interpretation that there are two separate requirements, which can require two separate calculations.

26. Concerning the relationship between Articles 3(7) and 3(2) of the Autos Appendix, both requirements have to do with regional value content, and therefore both involve the calculation of regional value content. As Complainants point out, the core parts in column 1 of Table A.2 (as referenced in Article 3(7)) share an RVC threshold percentage with the core parts listed in Table A.1 (as referenced in Article 3(2)). Rather than reproducing those percentages for the same core parts in column 1 of Table A.2, the drafters referred to percentages already set out for the same core parts in Table A.1.

27. Similarly, while all four calculation methodologies available for meeting the core parts origination requirement relate to Article 4.5 of the Agreement in some way, the text of the provisions indicates that the relationship varies and in some cases is expressly limited.

[12] Canada's Rebuttal Submission, paras. 16-17, 25-30, 32-35; Mexico's Rebuttal Submission, paras. 38-39.

[13] U.S. Rebuttal Submission, paras. 12-24.

28. For example, the text of Article 3(8) of the Autos Appendix limits the applicability of Article 4.5 of the Agreement to calculating the core *parts at Table A.2*.[14] Article 3(8) does not reference the calculations for the regional value content of the vehicle – and so does not somehow impart the use of these special calculations when calculating the regional value content of the vehicle. Therefore, the reference to Article 4.5 of the Agreement in Article 3(8) of the Autos Appendix, is limited to calculating those core parts, and does not speak to the applicability of the calculations that follow, when calculating the regional value content of the vehicle.[15]

29. Similarly, Paragraphs 8 and 9 set forth four methodologies that are available to a producer when calculating the regional value content for core parts in Table A.2, for purposes of meeting the core parts origination requirement – one is the standard method at Article 4.5 of the Agreement, and three are special, and deviate from the standard method by altering how the value of non-originating materials are calculated, but use the base of the equation in the standard methodology for the other elements of the equation.[16]

30. Since Article 4.5 of the Agreement sets forth the standard calculation methods and rules applicable when calculating the regional value content of a good, rather than reproduce and the equations in Article 3 of the Autos Appendix, the drafters referred to the standard equations set forth in Article 4.5 of the Agreement, and then described in paragraphs 8(b) and 9, how to alter those methodologies.

[14] Article 3(8) states in part "[e]ach Party shall provide that for the purposes of calculating the regional value content under Article 4.5 (Regional Value Content) *for a part under Column 1 of Table A.2 of this Appendix*, the value of non-originating materials (VNM) is, at the vehicle producer's option [. . . .]". Emphasis added.

[15] U.S. Rebuttal Submission, para. 16.

[16] U.S. Rebuttal Submission, paras. 20-22.

B. That the roll-up provision applies to all goods, including autos, does not mean that its application cannot be limited by the terms of the Agreement

31. As the United States explained in our rebuttal submission,[17] the mere assertion by Canada that the roll-up provision is a so-called "rule of general application" and that the U.S. interpretation fails because the U.S. has not identified any provision that excludes core parts originating pursuant to the special calculation methodologies from the roll-up provisions is unsupported by the text.

32. Contrary to Canada's claims, the roll-up provision at Article 4.5.4 of the Agreement, by its express terms, allows use of the roll-up "for purposes of calculating the regional value content of the good *under paragraph 2 or 3*".[18] Since the special calculation methodologies at Articles 3(8)(b) and (9) of the Autos Appendix deviate from the calculations in paragraphs 2 and 3 of Article 4.5 of the Agreement, they are not the methodologies under "paragraph 2 or 3" of Article 4.5 of the Agreement.

33. That the roll-up would not apply to the special calculation methodologies at Articles 3(8)(b) and 3(9)(b) of the Autos Appendix makes sense, because those methodologies already allow a producer to disregard all of the non-originating materials that make up the core part, except those non-originating materials in the components listed in column 2 of Table A.2. Essentially, these special methodologies already contain a type of roll-up.[19] The effect of Complainants' interpretation is that a core part that was only considered "originating" because of

[17] U.S. Rebuttal Submission, paras. 24-30.

[18] USMCA Article 4.5.4 "Each Party shall provide that the value of non-originating materials used by the producer in the production of a good shall not, for the purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good." *See also*, U.S. Rebuttal Submission, paras. 25-26.

[19] U.S. Rebuttal Submission, paras. 26-27.

the flexibility – specifically, being able to disregard non-originating content in the RVC calculation – would be eligible for a second roll-up when calculating the vehicle RVC. So, the producer would be able to further disregard the value of non-originating materials of that part, including any non-originating materials in the components that the drafters explicitly retained in column 2 of Table A.2 as being important when calculating the RVC of the core part.[20] This cannot have been the intention of the Parties, and is not supported by the text.[21]

C. That negotiators might have done things differently does not mean the text, as written, does not support the U.S. interpretation

34. Complainants also argued that the negotiators might have done any number of different things to set out the core parts origination requirement in the text had they intended the U.S. interpretation. Specifically, Complainants' argue that negotiators would have carved out a separate core parts requirement in a separate article,[22] and that they would have used a term other than "originating" for the core parts origination requirement.[23] But the fact that the core parts origination requirement might have been memorialized differently in the text does not mean that the text, as written, does not support the U.S. interpretation. It does, as the United States has explained in its submissions.

35. In addition, that there is a defined term such as "originating" does not mean that the term must mean the same thing, even when used in different contexts, or that its application cannot be limited by other express terms in the Agreement.[24] The definition of "originating" is "a good or

[20] U.S. Rebuttal Submission, para. 28.

[21] U.S. Rebuttal Submission, para. 28.

[22] Canada's Rebuttal Submission, paras. 16-17; Mexico's Rebuttal Submission, para. 36.

[23] Canada's Rebuttal Submission, paras. 16-17, 25-30, 32-25; Mexico's Rebuttal Submission paras. 38-39.

[24] U.S. Rebuttal Submission, paras. 35-36.

material that qualifies as originating under this Chapter”.[25] This means that the term is subject to the specific rules in the Chapter, including the Autos Appendix, and that whether a good is in fact originating will depend on its compliance with those rules. In this way, the interpretation of the term “originating” – and what is required for a good to so qualify – will vary depending on the text and context of the provisions under the Chapter. As we explained in our written submissions,[26] for those parts calculated according to the special calculation methodologies, Article 3(7), 3(8) and 3(9) limit the scope of the term “originating” to the core parts origination requirement. Therefore, Complainants’ reliance on the definition of the term “originating” to somehow override the text of the Autos Appendix is unavailing.

IV. Conclusion

36. So why do Mexico and Canada support an incorrect interpretation, when the correct interpretation is not only consistent with the text of the Agreement, but promotes more North American investment and production – which would benefit all three partners? It seems the answer is simply because multinational auto companies that have assembly operations in Mexico and Canada do not want to invest in, and produce, more North American content. Rather, these companies would prefer to continue to rely on and bring in significant parts from third countries, including China, Japan, Germany, and South Korea.

37. However, the lack of content manufactured in North America that is actually present in vehicles receiving preferential treatment, was one of the fundamental issues that led to the possible breakdown of NAFTA. Addressing this issue by enhancing the incentives for North American investment and production was critical to obtaining U.S. support for the

[25] USMCA Article 4.1.

[26] U.S. Initial Written Submission, paras. 67-76; U.S. Rebuttal Submission, paras. 10-23, 38-45.

USMCA. Were this Panel to support an interpretation of the autos rules of origin that not only lacks support in the text of the Agreement, but seriously undermines the enhancements to those rules that the Parties agreed, it could jeopardize the very basis for support of the USMCA in the United States.

38. This concludes the U.S. opening statement. We thank you for your attention, and we look forward to answering any questions the Panel may have.