UNITED STATES – AUTOMOTIVE RULES OF ORIGIN

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

REBUTTAL SUBMISSION
OF THE UNITED STATES OF AMERICA

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TABLE OF CONTENTS

TABLE OF CONTENTS i

I. Introduction 1

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 Require Two Separate Calculations 2

A. The Text and Bifurcated Structure of Article 3 of the Autos Appendix Indicates that the Core Parts Origination Requirement and the Overall Vehicle RVC Requirement Are Separate and Require Two Separate Calculations 2

B. The Text of Article 3(9) Makes Clear that the Special Calculation Methodologies Therein Apply Only for Purposes of Meeting the Core Parts Origination Requirement at Article 3(7) 11

C. The Existence of Two Core Parts Tables in the Autos Appendix Confirms that there Are Two Separate Requirements, with Different Calculation Methodologies Applicable to Each 13

D. The Object and Purpose of the Agreement Supports a Finding that the Core Parts Origination Requirement and the Overall Vehicle RVC Calculation Are Separate Requirements Requiring Independent Calculations 16

1. The calculations submitted by the United States demonstrate that the Complainants' interpretation inflates the RVC in vehicles 17

2. Complaints do not provide evidentiary support for their assertion that the U.S. interpretation runs counter to the object and purpose expressed in the Preamble 19

III. Review of Supplementary Means of Interpretation Is Not Necessary, And in Any Event Supports the U.S. Interpretation 22

A. Complainants Mischaracterize the United States Argument on the Use of "Supplementary Means of Interpretation" under Article 32 of the VCLT 22

B. The United States Does Not Place "Arbitrary" Limits on the Evidence that can be Considered as Supplementary Materials under Article 32 of the VCLT 24

IV. Claims Under Articles 4.2(b), 4.11 and 5.16 of the USMCA, and Article 8 of the Autos Appendix are Consequential to Complainants' Claims under Article 4.5.4 of the USMCA, and Article 3 of the Autos Appendix 28

A. Complainants Rebuttal does not Address U.S. Arguments on Complainants' Claims under Articles 4.2(b) and 4.11 of the USMCA 28

B. The United States does not Fundamentally Misunderstand Canada's Claim under Article 8 of the Autos Appendix 29

C. The United States does not Misunderstand Canada's Claim Article 5.16.6 of the USMCA 30

V. Recourse Under Article 31.2(c) of the USMCA is Not Available to Complainants Because Complainants Have Not Demonstrated that the Measures Imposed by the United States Nullify or Impair the Benefits Canada and Mexico Could Reasonably Have Expected to Accrue to It……. 30

A. Complainants Fail to Demonstrate that their Expectations Were Reasonable..... 30

B. Complainants Fail to Show that the U.S. Interpretation Nullifies or Impairs the Benefits of Canada and Mexico 32

C. The United States Does Not Attempt to Unduly Restrain the Scope of the NVNI Claim…..... 33

VI. Conclusion..... 35

TABLE OF ABBREVIATIONS

Abbreviation	Definition
Agreement or USMCA	United States-Mexico-Canada Agreement
ASP	Alternative Staging Program
Party	USMCA Party
ROO	Rules of Origin
RVC	Regional Value Content
VNC	Value of Non-originating Components
VNM	Value of Non-originating Materials
WTO	World Trade Organization

TABLE OF EXHIBITS

Exhibit No.	Description
USA-1	Trilateral Statement on the Conclusion of NAFTA Round One, August 16, 2017
USA-2	Estimated Impacts of Complainants' Interpretation
USA-3	Office of the United States Trade Representative, Executive Office of the President, Summary of Objectives for the NAFTA Renegotiation, November 17, 2017
USA-4	Office of the United States Trade Representative, Executive Office of the President, Summary of Objectives for the NAFTA Renegotiation, July 17, 2017
USA-5	Joint Statement from United States Trade Representative Robert Lighthizer and Canadian Foreign Affairs Minister Chrystia Freeland, September 30, 2018
USA-6	June 11-12, 2020 email exchange between Canada and the United States, June 11 and June 12, 2020
USA-7	July 8, 2020 email correspondence between Kia and U.S. officials, July 8, 2020 (Confidential)
USA-8	July 22, 2020 email correspondence between the Parties, July 22, 2020
USA-9	U.S. Trade Officials Sought Consulting Work on Rules They Wrote, Bloomberg News, June 14, 2020
USA-10	Inside U.S. Trade, Lighthizer 'troubled' by two USTR officials' solicitation of consulting work on USMCA auto rules, dated June 17, 2020
USA-11	August 18, 2020 email correspondence between Mexican and USTR Officials, August 18, 2020
USA-12	September 2, 2020 email correspondence between Canadian and USTR officials, September 2, 2020
USA-13	September 9, 2020 email correspondence between Canadian and USTR officials, September 9, 2020
USA-14	Alternative Staging Plan Approval Letters from USTR to Automotive Producers, December 28, 2020 (Confidential)
USA-15	Mexico's ASR Approval Letter to [[]], December 31, 2020 (Confidential)
USA-16	Canada's ASR Approval Letter to [[]], January 12, 2021 (Confidential)
USA-17	Articles on the Law of Treaties with commentaries (1966) ("ILC Commentaries")
USA-18	Sinclair, Sir Ian, The Vienna Convention on the Law of Treaties, 2nd edition. Manchester: Manchester University Press, 1984
USA-19	Auto producer chart of core parts methodology calculation
USA-20	Foreign auto producer calculation (Confidential)
USA-21	O. Dörr and K. Schmalenbach, Vienna Convention on the Law of Treaties: A Commentary 2nd edn. (Springer, 2018)

Exhibit No.	Description
USA-22	GM to Invest $1 bln in Mexico to build electric vehicles, Reuters, April 29, 2021
USA-23	Nissan is investing in EV production in the USA, elevrive.com, February 18, 2022
USA-24	Honda of Canada Mfg. to Invest more than $1.38 billion in Ontario Manufacturing Plants in Preparation for Electrified Future, Honda Canada News, March 16, 2022
USA-25	Bosch Boosting North American Technology Investments, WardsAuto, June 9, 2022
USA-26	Continued Investment in Canadian automotive production - MRO Magazine, July 18, 2022

I. Introduction

1. In this dispute, Canada and Mexico challenge the U.S. interpretation of the *United States-Mexico-Canada Agreement* ("USMCA" or "Agreement") automotive rules of origin, specifically with respect to the relationship between the core parts origination requirement and the calculation of the overall regional value content (RVC) for vehicles. In their rebuttal submissions, Complainants have failed to remedy the failures in their initial written submissions to demonstrate that the U.S. interpretation of the USMCA automotive rules of origin is inconsistent with the terms of the USMCA. Therefore, for the reasons explained in the U.S. initial written submission, as well as in this rebuttal submission, the Complainants' claims must be rejected.

2. The U.S. initial written submission established that by the ordinary meaning of its terms in the context of Chapter 4 and the Autos Appendix, and in light of the object and purpose of the Agreement, in order for a vehicle to receive preferential treatment under the USMCA, in addition to other requirements, it needs to meet (1) the core parts origination requirement and (2) the overall vehicle RVC requirement. The United States demonstrated that these are two separate requirements, that require two separate calculations. The U.S. initial written submission further demonstrated that the results of the special calculation methodologies available for a vehicle producer to meet the core parts origination requirement cannot be used when calculating the overall vehicle RVC, and are thus not subject to "roll-up" under Article 4.5.4 of the Agreement.

3. In this rebuttal submission, the United States will discuss Complainants' responses to the U.S. arguments and explain why Complainants' assertions continue to fail in demonstrating that the U.S. interpretation is inconsistent with the text, read in context, and in light and object and purpose of the Agreement. Complainants' interpretation does not respect the text, and if accepted, would lead to a perverse result: that by introducing the core parts origination requirement, which was intended to enhance North American content, the USMCA would result in lower North American content under the RVC calculation, undermining one of the key revisions to USMCA that led to its approval in the United States.

4. The United States has structured this submission as follows.

5. In **Section II**, we rebut Complainants' arguments and show again that the text, read in context, in light of the object and purpose of the Agreement, requires that the core parts origination requirement and overall vehicle RVC requirement are separate requirements that require two separate calculations. In subsection A, we explain why Complainants fail to rebut U.S. explanations of the bifurcated structure of Article 3 of the Autos Appendix. In subsection B, we explain that the object and purpose of the USMCA, as set forth in the Preamble to the USMCA – incentivizing production and source of goods and materials within North America, enhancing competitiveness of regional businesses, and establishing a clear, transparent and predictable legal framework for businesses – support the application of a two-prong approach to

determine whether a vehicle is originating, and will receive duty free treatment under the USMCA.

6. **Section III** addresses Complainants' arguments on the use of supplementary means of interpretation. We explain why Complainants' attempts to argue that supplementary means of interpretation are necessary must fail, and then demonstrate – again – that not only are most of the materials submitted by Complainants not in fact supplementary materials for purposes of interpretation, but that the supplementary materials that have been submitted support the U.S., and not Complainants', interpretation.

7. **Section IV** addresses Complainants' consequential claims under Article 4.2 of the Agreement, Article 4.11 of the Agreement, Article 8 of the Autos Appendix, and Article 5.16.6 of the Agreement, and reiterates that these claims should be rejected for the same reasons Complainants' principal interpretive claim fails.

8. Finally, **Section V** addresses Complainants' claims that the U.S. interpretation has nullified or impaired benefits that Canada or Mexico could reasonably have expected to accrue to it. Canada and Mexico put forth no additional arguments that demonstrate they could have had no reasonable expectation that the United States would impose measures inconsistent with the USMCA. Therefore, Complainants still fail to demonstrate that the measures imposed by the United States nullify or impair benefits that Canada and Mexico could reasonably have expected to accrue to it for purposes of Article 31.2(c) of the USMCA.

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 Require Two Separate Calculations

A. The Text and Bifurcated Structure of Article 3 of the Autos Appendix Indicates that the Core Parts Origination Requirement and the Overall Vehicle RVC Requirement Are Separate and Require Two Separate Calculations

9. Contrary to the arguments made by Complainants[1], the structure of Article 3 of the Autos Appendix confirms the plain meaning of the text, which provides that the RVC vehicle requirement and core parts origination requirement are two separate requirements, requiring two independent calculations. As the United States explained in its initial written submission,[2] the first six paragraphs of Article 3 expressly link to and specify the calculation methodologies for the standard RVC calculation, while the final three paragraphs, containing the core parts

[1] Canada's Rebuttal Submission, paras. 12-24; Mexico's Rebuttal Submission, paras. 22-37.

[2] U.S. Initial Written Submission, paras. 67-76.

origination requirement, set out optional, special, independent calculation methodologies. Complainants do not demonstrate otherwise.

10. Complainants argue that paragraphs 3 through 6 of Article 3 of the Autos Appendix reveal that there is no separation between the vehicle RVC calculation and the RVC calculation for the core parts origination requirement. In making this argument, Complainants rely on three assertions: (1) that the presence of cross-references between paragraphs 7 and 2 of Article 3 of the Autos Appendix, and paragraph 8 of Article 3 of the Autos Appendix to Article 4.5 of the USMCA establishes that there is "no separation" between the vehicle RVC calculation and the calculation for the core parts origination requirement;[3] (2) that the "roll-up" provision is a rule of general application, and there are no terms expressly limiting its application,[4] and; (3) that negotiators would have accomplished their goal of setting out two separate requirements in some other way than what appears in the agreement.[5]

11. For the reasons explained below, each of the arguments made by Complainants fails to demonstrate that the special calculation methodologies at paragraphs 8 and 9 of the Autos Appendix may be used for any purpose other than meeting the separate core parts origination requirement, and ultimately fails to show that the RVC of parts calculated pursuant to the special methodologies can be used when calculating the vehicle RVC, and can be rolled up into the vehicle RVC.

12. **First,** contrary to what Complainants argue,[6] the text of Articles 3(7) through 3(9) does not reveal that there is "no separation between the vehicle and core parts RVC calculations"[7] or "that there are not two separate and independent RVC methodologies."[8] Specifically, the mere reference to Article 3(2) in Article 3(7) of the Autos Appendix, or Article 4.5 of the Agreement in Article 3(8) of the Autos Appendix[9] does not establish that a special calculation for the core parts origination requirement must be subsumed in the vehicle RVC calculation. To the contrary, the precise text of Article 3 of the Autos Appendix and Article 4.5 of the Agreement establishes that these are separate calculations and requirements.

13. As an initial matter, the fact that there is a relationship between provisions does not mean that there is not a separate requirement and function attached to each individual provision. Notwithstanding the reference to Article 3(2), the text in Article 3(7) clearly carves out a

[3] Canada's Rebuttal Submission, paras. 12-13; Mexico's Rebuttal Submission, paras. 24-25.

[4] Canada's Rebuttal Submission, paras. 22-23.

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

[6] Canada's Rebuttal Submission, paras. 12-13; Mexico's Rebuttal Submission, para. 19, 24, 25.

[7] Canada's Rebuttal Submission, para. 13.

[8] Mexico's Rebuttal Submission, para. 30; *see also* Mexico's Rebuttal Submission, 22-30.

[9] Canada's Rebuttal Submission, paras. 12-13; Mexico's Rebuttal Submission, para. 19, 24, 25.

requirement for core parts that is separate from the vehicle RVC requirement at paragraph 1. Article 3(7) provides:

> Each Party shall provide that a passenger vehicle or light truck is originating *only if the parts under Column 1 of Table A.2 of this Appendix* used in the production of a passenger vehicle or light truck are originating. Such a part is originating only if it satisfies the regional value content requirement in paragraph 2, except for an advanced battery. The Parties, as appropriate, shall provide in the Uniform Regulations additional description or other clarification to the list of the parts and components under Table A.2 of this Appendix, such as by tariff provision or product description, to facilitate implementation *of this requirement*.[10]

14. The first sentence of the provision sets forth an obligation – "shall provide that a passenger vehicle or light truck is originating" – which is conditioned on "the parts under Column 1 of Table A.2 of the Appendix" being originating. Specifically, the phrase "only if" in the second clause of the first sentence sets out a necessary condition on the first clause, meaning that a passenger vehicle can be originating only ("solely, merely, exclusively")[11] when the condition in the second clause (that the parts under Column 1 of Table A.2 are originating), is met.[12] And the language in the last sentence further speaks to the fact that this is a separate requirement by mandating language in the regulations to help implement "this requirement."

15. Further, the reference to paragraph 2 – which sets forth the RVC thresholds for core parts – serves the specific purpose of identifying the threshold needed to meet the RVC requirement. It does not, as Canada argues,[13] show that there is somehow no separation between the core parts origination requirement calculation and the vehicle RVC calculation. Canada states that "the obligation in Article 3.6 applies to the calculation of whether core parts in column 1 of Table A.2 meet the applicable RVC threshold [in paragraph 2] in the same way that it applies to the calculation of whether the vehicle or other parts meet their applicable RVC threshold."[14] The relationship of paragraph 2 to paragraph 6, however, is de-limited by the language in paragraph 7, which as described above, sets forth a separate core parts origination requirement. Of note, the special calculation methodologies at Articles 3(8)(b) and 3(9) are not referenced in Article 3(6).

[10] Emphasis added.

[11] Oxford English Dictionary, only (adv., meaning 2: "Solely, merely, exclusively; with no one or nothing more besides; as a single or solitary thing or fact; no more than.").

[12] United States Initial Written Submission, para. 58.

[13] Canada's Rebuttal Submission, para. 11.

[14] Canada's Rebuttal Submission, para. 13.

16. Nor does the fact that there is a relationship between the core parts origination requirement and Article 4.5 of the Agreement show that there is "no separation" between the core parts origination requirement calculation and the vehicle RVC calculation, or that there are not two separate and independent RVC methodologies,[15] when calculating the core parts for the core parts origination requirement, and the RVC for the vehicle. In part, Article 3(8) states "[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). The text in Article 3(8) explicitly references Article 4.5 "for the purposes of" calculating the RVC "for *a part*" under Column 1 of Table A.2 – *not* a vehicle.

17. Further, and contrary to Mexico's mistaken understanding that the United States considers that Article 4.5 cannot apply to paragraphs 7-9 of Article 3,[16] the United States recognizes that Article 4.5 generally applies for purposes of the core parts requirement. However, its application differs depending on which calculation methodology the producer uses when calculating the core parts RVC for the core parts origination requirement. The provisions in Article 4.5, including the roll up provision at Article 4.5.4, do *not* apply if the producer elects to use the special calculation methodologies under Articles 3(8)(b) and 3(9) of the Autos Appendix.

18. Article 4.5.4 states:

> 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.[17]

19. The plain language of Article 4.5.4 requires the Parties to permit producers to disregard the value of non-originating materials (VNM) of a material that is used in a good that individually qualifies as originating, when calculating the regional value content of a good *under either paragraphs 2 or 3 of Article 4.5*.[18] Accordingly, this requirement is only triggered when calculating the RVC for a good under Article 4.5.2 or 4.5.3 of the Agreement. As explained below, the special calculation methodologies at paragraphs 8(b), 9(a), and 9(b) of Article 3 of the Autos Appendix are alternatives to the way the VNM is calculated in the RVC equations at

[15] Canada's Rebuttal Submission, para. 14; Mexico's Rebuttal Submission, paras. 24-31.

[16] Mexico's Rebuttal Submission, para. 24.

[17] Emphasis added.

[18] United States Initial Written Submission, para. 51.

Articles 4.5.2 and 4.5.3. It follows that any core part calculated pursuant to these special calculations are not calculated under paragraphs 2 or 3 of Article 4.5.

20. When calculating core parts in column 1 of Table A.2 for purposes of the core parts origination requirement, a producer is provided with four different calculation methodology options at Article 3(8)(a), 3(8)(b), 3(9)(a), and 3(9)(b): the standard RVC calculation methodology, and three special flexibilities.[19] As Canada correctly point out, the first methodology option, at Article 3(8)(a), is the same as the standard calculation methodology.[20] And so, if a producer knows that they do not need any of the flexibilities at Article 3(8)(b) or 3(9), then they could apply the standard calculation methodology when calculating the parts at column 1 of Table A.2. If the producer meets the core parts origination requirement based on that methodology, which is the standard methodology at paragraphs 4.5.2 or 4.5.3 of the Agreement, then they could use those results for the parts listed in Table A.1 (which overlap with the parts in Table A.2) when calculating the vehicle RVC, and apply Article 4.5.4, where triggered. This is because it is the same calculation that the producer would use or would have used when calculating the core parts under Article 3(3) of the Autos Appendix for purposes of calculating the vehicle RVC.[21]

21. If however, a producer knows, or discovers after using the standard methodology, that they cannot meet the core parts origination requirement using the standard calculation methodology, then they have at their disposal three special calculation methodologies, which provide them with flexibilities to meet the core parts origination requirement.

22. These special calculations offer flexibilities on how a producer can calculate the VNM when calculating the RVC of a part. Specifically, they allow a producer to deviate from the standard methodology prescribed under the equations at Articles 4.5.2 and 4.5.3 when calculating the VNM. As the text of Article 3(8) of the Autos Appendix prescribes,[22] a producer

[19] United States Initial Written Submission, para. 70.

[20] Canada's Rebuttal Submission, para. 18.

[21] Contrary to Canada's argument at paragraphs 18-19 of its rebuttal submission, it is not the U.S. interpretation that a producer who chooses to calculate core parts in Column 1 of Table A.2 for purposes of the core parts origination requirement using the standard methodology at Article 3(8)(a) of the Autos Appendix could not take the results of those calculations when calculating the vehicle RVC, and apply the roll-up provision when triggered. *See* United States Initial Written Submission, para. 63. The U.S. interpretation is that a producer cannot use the results of the special calculations when calculating a vehicle RVC.

[22] In part, Article 3(8) of the Autos Appendix states "[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).

Article 3(9) then provides in part "[f]urther to paragraph 8, each Party shall provide that the regional value content may also be calculated, at the producer's option, for all parts under Column 1 of Table A.2 of this Appendix as a

using any one of the special calculation methodologies would set up its RVC calculation using the equation under 4.5.2 or 4.5.3 of the Agreement, but would alter the VNM portion of those equations based on whichever special calculation methodology it was using in 3(8) or 3(9) of the Autos Appendix. Accordingly, a producer could not use the roll up provision in Article 4.5.4 when calculating parts pursuant to one of the special calculation methodologies for purposes of the core parts origination requirement.

23. In this regard, Mexico is also wrong that the United States "contradicts" itself by arguing that Article 3(9) of the Autos Appendix provides producers with flexibilities, but that those flexibilities are not available when calculating the vehicle RVC.[23] As the United States has described, those flexibilities are available for purposes of the core parts origination requirement, but are not available for purposes of the vehicle RVC calculation. Accordingly, the United States does not "contradict" itself, as Mexico states, but applies the obligations consistent with the text of the Agreement.

24. For the reasons described above, Complainants are wrong that the cross-references in Article 3 preclude a finding that the core parts origination requirement is separate from the vehicle RVC requirement, and requires a separate calculation.

25. **Second**, Canada claims that the roll-up rule is a "rule of general application" that applies to any good unless explicitly specified otherwise, and that the U.S. interpretation fails because the United States has not identified any provision that excludes core parts calculated pursuant to the special calculation methodologies from the roll-up rule.[24] However, Canada's argument is a mere assertion that fails to provide any support for the proposition that application of the roll-up cannot be limited.

26. As detailed in the U.S. initial written submission,[25] and the next subsection, the text of the Autos Appendix expressly limits the applicability of the special calculation methodologies to the core parts origination requirement. This means that the RVC percentage as a result of those special calculations could not be used when calculating the RVC of the vehicle, and thus a producer would not be applying the roll-up provisions to the parts calculated pursuant to the special calculation methodologies. Instead, the producer would need to separately calculate the RVC of the core parts under the standard methodology when calculating the vehicle RVC.

27. Further, the flexibilities provided at paragraphs 8(b) and 9(b) allow the producer to disregard the non-originating materials of certain components, but require them to account for

single part, using the sum of the net cost of each part listed under Column 1 of Table A.2 of this Appendix, and *when calculating the VNM, at the producer's option*: [. . . .]." (Emphasis added).

[23] Mexico's Rebuttal Submission, para. 41.

[24] Canada's Rebuttal Submission, para. 22.

[25] United States Initial Written Submission, paras. 77-84.

the non-originating materials in the components at Column 2 of Table A.2.[26] Under the complainants' interpretation, a part that perhaps was only considered originating because of these flexibilities would be eligible for roll up. However, it makes no sense to further disregard the value of non-originating materials (VNM) of a part that was only originating because of a special methodology where the producer has already been able to disregard some of the VNM of those materials.

28. For example, both Article 3(8)(b) and 3(9)(b) permit a producer to disregard the VNM of any material, except those components listed in column 2 of Table A.2. In this regard, the producer has already "rolled up" some of the VNM into the calculation of that part. What is more, under Complainants' interpretation, the producer would also be able to disregard the VNM of those parts in column 2 of Table A.2 when calculating the vehicle RVC. This would mean that those parts and components that the drafters explicitly retained in column 2 as being important when calculating the RVC of a core part, would be disregarded. This cannot have been the intention of the drafters and is not supported by the text.

29. Canada further asserts that if the negotiators wanted to exclude core parts considered originating pursuant to the special calculation methodologies, they could have done so more explicitly, as they did for autos and auto parts in NAFTA.[27] But the two situations are not comparable. The NAFTA explicitly excluded certain autos and auto parts from the rollup provision altogether because they were subject to their own more stringent "tracing" rules at Article 403.1 of the NAFTA. The USMCA does not include this tracing rule, and as we have detailed in our initial submission, the text reflects that passenger vehicles and light trucks, and certain auto parts, *are* eligible for roll up when they are originating pursuant to the standard RVC calculations.

30. Therefore, Canada's claim that the U.S. interpretation would require an explicit exception such as was included in NAFTA is misplaced and unconvincing.

31. **Third**, Complainants argue that, had the negotiators intended the interpretation set forth by the United States, they would have drafted the relevant text by carving out a separate core parts requirement in a separate article. Further, Canada argues that the negotiators would have used a term other than "originating" in the text of Article 3(7).[28] That Complainants consider that negotiators *could have* accomplished their goal of setting out two separate requirements in some other way has no bearing on whether they in fact *did set out* such requirements in the text as it stands in the Agreement. And as we have explained, the text as written supports the U.S. interpretation.

[26] United States Initial Written Submission, para. 64.

[27] Canada's Rebuttal Submission, paras. 22-23.

[28] Canada's Rebuttal Submission, paras. 16-17.

32. As the United States detailed in its initial submission,[29] the RVC requirements for the vehicle appear first in Article 3 of the Autos Appendix (Article 3(1)), and are separated from the core parts origination requirement by Article 3(6) of the Autos Appendix. Article 3(6) of the Autos Appendix provides that for purposes of calculating the RVC of the vehicles and parts under the preceding paragraphs 1-5, the standard provisions under Article 4.5 of the Agreement used for calculating RVC apply. Article 3(6) does not reference the special calculation methodologies in paragraphs 8 or 9. This means that a producer would apply the standard RVC rules in Article 4.5 for purposes of calculating whether the vehicle, or part, meets the relevant RVC thresholds prescribed under Article 3(1) through 3(5). In this way, Article 3(6) and its location within Article 3 of the Appendix serves to differentiate the standard methods used for passenger vehicle RVC calculations in Articles 3(1)-(5) from the separate core parts origination requirement and its calculations, including optional special calculation methodologies, contained in the subsequent paragraphs.[30]

33. Accordingly, Complainants' argument[31] that the negotiators would have carved out a separate core parts requirement in a separate article is unconvincing. Article 3, entitled "Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof" sets forth all of the RVC thresholds for passenger vehicles and light trucks, and certain auto parts, in order for those goods to be considered originating under the USMCA. As we detailed in our initial submission,[32] and directly above, Article 3 also sets out the rules for how the RVC of vehicles, light trucks, and certain auto parts must be calculated, and establishes two regional value content requirements for a passenger vehicle or light truck. No other article in the Autos Appendix sets out the RVC requirements for passenger vehicles, light trucks, or auto parts. Accordingly, Article 3 is the appropriate place for the core parts requirement – a regional value content requirement – to exist. As detailed in our initial submission,[33] the drafters appropriately carved out the separate requirement within the article through specific language in the provisions and the structure of the article.

34. Specifically, as discussed above, the core parts origination requirement at Article 3(7) of the Autos Appendix comes after Article 3(6), which establishes the provisions that are applicable when calculating the RVC thresholds for vehicles and other parts, as prescribed through Articles 3(1) through 3(5). Article 3(6) separates the RVC requirements for the vehicle and certain parts from the core parts origination requirement. Further, as discussed in section II.B below, there is express language in Article 3(9) that limits the applicability of the special calculation methodologies for the core parts origination requirement, and as discussed in section II.C below,

[29] U.S. Initial Written Submission, para. 68.

[30] U.S. Initial Written Submission, paras. 68-69.

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

[32] United States Initial Written Submission, paras. 44-54.

[33] United States Initial Written Submission, paras. 55-84.

the existence of two separate, but overlapping tables (Table A.1 and A.2), evidences that two separate requirements were developed and included in the Appendix for two separate purposes.[34]

35. Complainants also fail to substantiate its claim that if the drafters intended for the core parts origination requirement to be separate, they would have used a term other than "originating".[35] In making this argument, Complainants fail to establish that the term "originating" must mean the same thing, even when used in different contexts.[36] The definition of the term "originating" in Article 4.1 is general, stating that something is originating if it "qualifies as originating under this chapter". Thus, the very definition of this term indicates that its interpretation will depend on the text and context of the provision "under this chapter" in which it appears. As the United States explained in its initial written submission[37], the text of Article 3 itself limits the scope of the term "originating" in Articles 3(7), 3(8) and 3(9) to the core parts origination requirement. In this regard, Mexico is also wrong that the United States attempted to "deceive" anyone – an unfortunate and we trust inadvertent term – by referring to the requirement in Article 3(7) as the core parts "origination" requirement, rather than "originating" requirement.[38]

36. This interpretation is not inconsistent with the definition of the term "originating" set out in Article 4.1. The core parts origination requirement is part of the Autos Appendix to Chapter 4, and if the requirement in Article 3(7) is met, the good "qualifies as originating under this chapter", just as a good complying with the origination requirements of Article 4 will be "originating under this chapter." The inclusion of the definition therefore indicates that, for each good, it is necessary to examine the precise provision "under this chapter" that established conditions for the good to be "originating". Were the very general definition of "originating" in Article 4.1 to transform any use of the term into the ultimate determination of whether a good is "originating" for purposes of tariff treatment, then, for example, the roll up provision itself would have no effect. This is because a finding under another provision that a material or part is "*non*-originating" would override the terms of the roll up because the good would already have been found to be "non-originating under the chapter." This cannot be a correct interpretive outcome, and reinforces that the provisions of Chapter 4 and the Autos Annex must be read according to their precise terms.

37. Canada also asserts that the obligations in Article 3(6) of the Autos Appendix were not placed there to suggest bifurcation between the obligations in paragraphs 1-5 and 7-9, but were placed there as a matter of "practicality", because "Article 3.6 explicitly applies to the

[34] United States Initial Written Submission, paras. 85-91.

[35] Canada's Rebuttal Submission, paras. 16-17.

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

[37] United States Initial Written Submission, paras. 67-76.

[38] Mexico's Rebuttal Submission, para. 40.

calculation of the RVC under paragraphs 1-5" and "no other placement would have made more sense".[39] However, this does nothing to rebut the textual and contextual arguments that the U.S. laid out in its initial submission.[40] Canada also contradicts itself here. As Canada recognizes,[41] Article 4.5 and the other provisions listed in paragraph 6 can apply for purposes of meeting the obligation at paragraph 7. This is because the calculation methodology at Article 3(8)(a) is the standard calculation methodology at Articles 4.5.2 and 4.5.3 of the Agreement, and the special calculation methodologies at Articles 3(8)(b) and 3(9) are based on the methodologies at Articles 4.5.2 and 4.5.3 of the Agreement, but change how the VNM is calculated. In fact, were Complainants correct that the placement of Article 3(6) did not reflect its more limited application, then it would have made "logical sense" to simply place it at the end of Article 3. Consistent with the U.S. interpretation, however, the drafters did not.

B. The Text of Article 3(9) Makes Clear that the Special Calculation Methodologies Therein Apply Only for Purposes of Meeting the Core Parts Origination Requirement at Article 3(7)

38. Complainants misread the text in Article 3(9) of the Autos Appendix in suggesting that it does not contain an express limitation on the use of the special calculation methodologies to the core parts requirement, and in doing so fail to rebut the key point that Article 3(9) is expressly limited to the core parts requirement. Specifically, Canada asserts that the U.S. argument ignores the text of Article 3(9), which states in part that "all parts listed in Table A.2 are considered originating", and that paragraph 9 provides that the parts calculated pursuant to Article 3(9) are considered originating if they meet the RVC threshold in Article 3(2).[42] Mexico asserts that there is nothing in Article 3(9) that suggests that it should be read in isolation from other provisions of the Agreement, and that the United States ignores the relationship between paragraphs 9 and 2 of Article 3 of the Autos Appendix.[43]

39. As detailed in the U.S. initial submission,[44] Articles 3(7) of the Autos Appendix sets out the core parts origination requirement, and Articles 3(8)(b) and 3(9) of the Autos Appendix set out the special methodologies permitted to calculate that content. Article 3(9) then expressly limits the applicability of the super-core calculation to the core parts origination requirement under Article 3(7). Neither the text of Article 3(7), nor the text at Articles 3(8) and (9), includes language making these special core parts calculation methodologies applicable for purposes of calculating the vehicle RVC. As we noted above, the text therefore provides that the RVC

[39] Canada's Rebuttal Submission, para. 12.

[40] U.S. Initial Written Submission, paras. 68-69.

[41] Canada's Rebuttal Submission, paras. 14, 19.

[42] Canada's Rebuttal Submission, para. 25

[43] Mexico's Rebuttal Submission, para. 38.

[44] United States Initial Written Submission, paras. 67-76.

percentage that results from those special calculations (at Articles 3(8)(b) and 3(9)) cannot not be used when calculating the RVC of the vehicle. Accordingly, a producer would not be applying the roll-up provisions to the parts calculated pursuant to the special calculation methodologies because it would need to separately calculate the RVC of the core parts under the standard methodology when calculating the vehicle RVC.

40. The text of Article 3(9) makes clear that the special calculation methodologies apply only for purposes of meeting the core parts origination requirement. In relevant part, Article 3(9) states:

> If this regional value content meets the required threshold under paragraph 2, then each Party shall provide that all parts under Table A.2 of this Appendix are originating and the passenger vehicle or light truck will be considered to have met the requirement under paragraph 7.

41. The phrase "this regional value content" logically refers back to the regional value content of the "single part" as described in Article 3(9). Meeting the regional value content requirement under paragraph 2 by the "single part" means that all core parts are originating and the passenger vehicle or light truck will be considered to have met the core parts origination requirement. There is no language that refers to the vehicle RVC requirement at Article 3(1) or makes this special calculation methodology applicable to it. Nor does Article 3(9) operate to supersede the requirement that the core parts under Table A.1 are only considered originating if they each meet the RVC requirement at Article 3(2).[45]

42. Canada also argues that the language at the end of Article 3(9) – "each Party shall provide that all parts under Table A.2 of this Appendix are originating and" – exists to clarify that if the core parts in Table A.2 meet the RVC threshold using the flexibility at Article 3(9), that all parts in Table A.2 are originating for purposes of the 3(7) requirement.[46] Specifically, Canada asserts that – were the U.S. interpretation intended – the drafters would not have included any of this language.[47]

43. However, Canada's view that negotiators would have accomplished their goal of limiting the application of the special calculation methodologies to the core parts origination requirement in some other way, has no bearing on whether they in fact did set out such requirements in the text as it stands in the Agreement. If we take Canada's logic, the drafters likewise could have omitted the clause after "and" and just left the text as "all parts are originating" if they did not want to tie the results of the calculation at Article 3(9) back to the separate core parts origination requirement – but that is not what is in the Agreement. As we have explained, Canada is wrong

[45] United States Initial Written Submission, paras. 78-79.

[46] Canada's Rebuttal Submission, paras. 29-32.

[47] Canada's Rebuttal Submission, paras. 29-32.

that the text as written does not expressly limit the use of the special calculation methodologies to the core parts origination requirement.

44. As noted,[48] the special calculation methodologies at Articles 3(8)(b) and 3(9) give the producer greater flexibility in meeting the core parts origination requirement by not requiring that each part individually meet the RVC requirement. If the North American value of the "single part" meets the required threshold, then all core parts in column 1 of Table A.2 are considered to meet the core parts origination requirement at Article 3(7). This flexibility allows importers, exporters, or producers to meet the rule set out in Article 3(7), even if some of the core parts would not meet the RVC for a part on their own.

45. Further, Mexico's argument that Articles 3(8)(b) and 3(9) of the Autos Appendix set out methodologies that are applicable for purposes of calculating the RVC of the vehicle or parts used in producing the vehicle, because of the relationship between Article 3(9) and Articles 3(2) – and that the United States does not explain how a core part originating pursuant to these special methodologies is not originating for purposes of the calculating the vehicle RVC – is incorrect.[49] The United States explained in its initial submission just that.[50] The language in Article 3(9) contains an express limitation on the use of the special calculation methodologies for the core parts origination requirement, and the structure of Article 3 requires a two-prong approach. Further, Article 3(6) omits paragraphs 7-9 from its list of provisions that "apply" "[f]or the purposes of calculating the regional value content" of a passenger vehicle or light truck and the core parts in Table A.1, among other auto parts.[51] To interpret the applicability of the special methodologies when calculating the vehicle RVC would therefore read into the text something that is not there.

C. The Existence of Two Core Parts Tables in the Autos Appendix Confirms that there Are Two Separate Requirements, with Different Calculation Methodologies Applicable to Each

46. As detailed in our initial written submission, the existence of two separate, but overlapping tables (Table A.1 and A.2), evidences that two separate requirements were developed and included in the Appendix for two separate purposes.[52] Complainants fail to rebut this fact.

47. Canada argues that Table A.1 serves two purposes, neither of which are to determine when roll-up applies to a core part: when determining whether a core part traded on its own

[48] *See also*, United States Initial Written Submission, para. 80.

[49] Mexico's Rebuttal Submission, para. 38.

[50] United States Initial Written Submission, paras. 77-84.

[51] United States Initial Written Submission, paras. 80-81.

[52] United States Initial Written Submission, paras. 85-91.

meets requirements, and to provide greater certainty concerning which parts could not qualify as originating using a tariff shift rule.[53] The United States does not dispute that these are two of the purposes of Table A.1. The U.S. argument is not solely that Table A.1 exists in part to determine when roll-up applies to a core part, but rather that the existence of the two tables (A.1 and A.2) evidences that two separate requirements were developed and included in the Appendix for two separate purposes. Further, as a matter of operation, any part under Table A.1 that is originating would be subject to roll up because the standard calculation methodologies are the only methodologies applicable to determining whether the parts in Table A.1 meet the RVC thresholds at Article 3(2) of the Autos Appendix. The same cannot be said for those parts listed in Table A.2.

48. Specifically, Table A.1 is referenced when determining whether a core part meets the RVC threshold to be considered originating, and is referenced at Articles 3(2) and 3(3) of the Appendix. As explained in our initial submission,[54] parts listed in Table A.1 are subject to the standard RVC calculations at Articles 4.5.2 and 4.5.3 of the Agreement.

49. Table A.2 of the Autos Appendix is referenced in the Autos Appendix at Articles 3(7), 3(8), 3(9), and 3(10) only for purposes of determining whether a vehicle meets the core parts origination requirement. The special calculation methodologies for purposes of the separate core parts origination requirement for core parts listed at Table A.2 are not listed in Article 3(6), which applies for purposes of calculating the overall RVC of the vehicle.[55]

50. Further, Canada's argument that Table A.1 also exists to provide significantly greater certainty with respect to which core parts are subject to the tariff shift rule does nothing to rebut the U.S. interpretation.[56] In fact, it does the opposite. When undertaking the overall vehicle RVC calculation, why would the drafters have permitted producers to rely on a table that provides less certainty about which core parts are subject to the tariff shift rule (a rule that provides much greater flexibility). As Canada notes "Table A.2 simply identifies the core parts and their key components that are relevant to the core parts RVC calculation and the core parts that must be originating for a vehicle to be considered originating."[57] This is correct. Table A.2 only identifies the core parts and their key components that are relevant for the core parts origination requirement.

51. Canada also argues that because Article 3(3) and Article 3(7) use the same language with respect to the RVC threshold requirement for core parts in Table A.1 and A.2, that a part is

[53] Canada's Rebuttal Submission, paras. 40-47.

[54] United States Initial Written Submission, paras. 53-54.

[55] United States Initial Written Submission, paras. 86-90.

[56] Canada's Rebuttal Submission, para. 45.

[57] Canada's Rebuttal Submission, para. 45.

"originating only if it satisfies the regional value content requirement in paragraph 2", core parts which satisfy the RVC requirement in paragraph 2 should be treated the same – regardless of the calculation methodology applied.[58] Canada does not substantiate this argument. As explained in section II.A above, and our initial submission[59], the text and context of Articles 3(3) and 3(7) limit the relationship to Article 3(2), and each have separate purposes in Article 3 of the Autos Appendix.

52. The names and titles of the tables do not, as Complainants argue,[60] confirm core parts considered originating pursuant to the special calculation methodologies should be subject to roll up. The lack of support is reflected in the argument that the Tables are labeled "A.1" and "A.2" (rather than "A" and "B") to indicate that core parts originating pursuant to the special calculations should be treated the same as those originating pursuant to the standard calculations.[61] There is no textual support for this proposition. Rather, as the United States has explained, each table is referenced for separate purposes throughout the Autos Appendix. Further, as both Canada and Mexico point out, each table has its own title,[62] which speaks to the separate function of each table .

53. Contrary to Complainants' argument,[63] the reference to Article 3 as a whole, rather than a specific paragraph in the title of Table A.2, does not demonstrate, when taken in context, that Table A.2 was intended to be used only for purposes of the core parts origination requirement. Table A.2 is titled "Parts and Components for Determining the Origin of Passenger Vehicles and Light Trucks under Article 3 of this Appendix". The Uniform Regulations provide context that confirms that the reference to Article 3 is to the core parts origination requirement in paragraph 7. Specifically, in the Uniform Regulations, there is explanatory text before Table A.2 that states "[t]he following table sets out the parts and components applicable to Table A.2 and their related tariff provisions, to facilitate implementation of *the core parts requirement pursuant to Article 3.7 of the Appendix* to the Annex 4-B of the Agreement."[64] The Uniform Regulations agreed by the three USMCA Parties confirm that Table A.2 exists to facilitate the implementation of the core parts origination requirement under Article 3(7).

54. Mexico argues that the United States does not address the issue that the note in Table A.1 refers to "requirements" and not a particular RVC requirement in a particular paragraph of Article 3. It is not clear what Mexico is getting at with this argument. For reference, the note

[58] Canada's Rebuttal Submission, para. 46.

[59] United States Initial Written Submission, paras. 66-84.

[60] Canada's Rebuttal Submission, para. 47; Mexico's Rebuttal Submission, paras. 44-45.

[61] Canada's Rebuttal Submission, para. 47; Mexico's Rebuttal Submission, para. 46.

[62] Canada's Rebuttal Submission, para. 47; Mexico's Rebuttal Submission, para. 45.

[63] Canada's Rebuttal Submission, para. 47; Mexico's Rebuttal Submission, para. 45.

[64] *See* Uniform Regulations, §§182.111-182.114, p. 579 (emphasis added) (Exhibit CAN-6).

provides "[t]he Regional Value Content *requirements* set out in Article 3 of this Appendix apply to a good for use in a passenger vehicle or light truck".[65] This note also appears in Table A.1, B and C. The purpose of this note is that the RVC requirements in Article 3 apply not just to parts assembled in a vehicle, but to parts that are for use in a vehicle and are shipped outside of that vehicle. For purposes of Table A.1, the "requirements" that this note logically refers to are the RVC requirements at Article 3(2), which establishes the RVC threshold, and the requirement at Article 3(3), which clarifies that a part in Table A.1 is only originating if it meets the RVC threshold in Article 3(2) – rather than pursuant to a tariff shift. The Uniform Regulations confirm this.

55. Finally, Mexico's argument that, if the calculations were meant to be independent, the drafters would have made the Tables "A and B," is beside the point.[66] Again, that Mexico considers that negotiators should have accomplished their goal of setting out two separate requirements in some other way has no bearing on whether they in fact did set out such requirements in the text as it stands in the Agreement. And as we have explained, Complainants are wrong that the text as written does not achieve that end. Further, regardless of numbering, there exists two separate tables, with two different titles, that are referenced in separate provisions in the Autos Appendix, for separate purposes.

56. The existence of two separate tables, containing the same core parts, reflects that the Parties developed two separate requirements, which each require separate calculations.

D. The Object and Purpose of the Agreement Supports a Finding that the Core Parts Origination Requirement and the Overall Vehicle RVC Calculation Are Separate Requirements Requiring Independent Calculations

57. The object and purpose of the USMCA, as set forth in the Preamble to the USMCA — incentivizing production and source of goods and materials within North America, enhancing competitiveness of regional businesses, and establishing a clear, transparent and predictable legal framework for businesses — support the application of a two-prong approach to determine whether a vehicle is originating, and will receive duty free treatment under the USMCA. Complainants fail to demonstrate otherwise, and in doing so fail to substantiate their argument that their interpretation supports the objectives of the USMCA while the U.S. interpretation does not.[67]

58. As the United States detailed in our initial submission, the U.S. interpretation supports each of these objectives. If the core parts calculated pursuant to the special calculation methodologies were able to be "rolled-up" into the overall RVC calculation, they would

[65] Autos Appendix, Table A.1 (emphasis added).

[66] Mexico's Rebuttal Submission, para. 46.

[67] Canada's Rebuttal Submission, paras. 53-65.

significantly reduce – rather than enhance – the actual regional value content of the vehicle — which would run counter to the objectives of the Preamble. This would turn what was clearly intended to be an additional, heightened content requirement into an effective loop hole.[68]

59. Estimates calculated by the U.S. International Trade Commission based on producer and trade data show a range of North American content *loss* between eight percentage points to *thirty-three percentage points* when applying Complainants' interpretation.[69] One vehicle manufacturer estimated that, on average, the core parts original requirement flexibilities would *reduce* the North American content by about *ten percentage points*[70]; another vehicle manufacturer reported an increase of [[]] in its standard RVC when calculated according to complainants' interpretation.[71] These outcomes undermine the objective of incentivizing production and sourcing of goods and materials within North America and cannot have been intended by the negotiators.[72] Complainants attempts to rebut these facts fail.

1. The calculations submitted by the United States demonstrate that the Complainants' interpretation inflates the RVC in vehicles

60. With regard to the calculations the United States submits,[73] Canada and Mexico each make flawed arguments.

61. First, Canada argues that the examples provided by the United States show that the Canadian interpretation increased the RVC of vehicles by [[]] above NAFTA, and thus, achieves the goal of increasing the RVC above NAFTA thresholds.[74] This argument is both incorrect and misses the point. It is not the Canadian interpretation, but the U.S. interpretation which, pursuant to a producer calculation, increases the RVC of vehicles by [[]] above NAFTA. Specifically, the projected difference between the vehicle RVC under the competing interpretations in 2025 under these producer calculations is [[]].

62. The information in Exhibit USA-19 also does not support Mexico's interpretation.[75] Specifically, Mexico asserts that the exhibit shows that in almost all cases the RVC of the

[68] United States Initial Written Submission, para. 14.

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

[70] *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".

[71] Foreign auto producer calculations, Exhibit USA-20 (Confidential).

[72] United States Initial Written Submission, para. 15.

[73] *See* Exhibit USA-2; Exhibit USA-20.

[74] Canada's Rebuttal Submission, para. 57.

[75] Mexico's Rebuttal Submission, paras. 80-83.

vehicles is at or over the NAFTA RVC threshold. This exhibit is a chart produced by an auto producer of the core parts methodology calculation that indicates an artificial increase in the RVC of 3 percentage points when "accounting for VNM of key parts only" and another 7 percentage points relying on a "roll-up of qualifying core parts" – a total of 10 percentage points. Under this specific example, the RVC is higher than under the NAFTA, but the application of Complainants' interpretation reduces the RVC content actually in a vehicle from the level that would need to be met under the correct interpretation of USMCA.

63. That Complainants' interpretation increases the RVC above NAFTA levels misses the point.[76] As the United States detailed in our initial submission, Complainants' interpretation artificially inflates the RVC by permitting producers to apply flexibilities to the vehicle, which were only intended for the core parts origination requirement.

64. Canada's convoluted argument that the Canadian interpretation increases the RVC by 16.5 percent over NAFTA levels due to the elimination of the deemed rule and tracing list also misses the point, and is irrelevant. The fact that the RVC increased an additional 10 percentage points, as Canada estimates, due to the elimination of the deemed rule and tracing list, is not an effect of Complainants' or the U.S interpretation. And, as a matter of fact, Canada's interpretation results in an artificially higher RVC than the U.S. interpretation – and Canada has not and cannot establish otherwise.[77]

65. Second, the United States does not "fabricate" evidence by providing a hypothetical example of calculating a super-core part, as Mexico asserts.[78] As an initial matter, this hypothetical was intended to illustrate a concept, rather than serve as the results of a particular calculation based on actual data. However, the evidence for this concept is provided through a producer calculation, and also through several sample calculations, which estimate the impact of Complainants' interpretation using several data sources.[79] In case of any confusion, [80] the United States clarifies if Complainants' interpretation were adopted, it would allow producers to treat all of the individual core parts of the "single part" as originating for purposes of calculating the vehicle's RVC, *even if* certain core parts were not originating – and in turn, to *disregard* for purposes of the vehicle RVC calculation all of the non-originating material in those core parts.

66. This would create an enormous loophole, and seriously undermine the basis on which the USMCA has been agreed. For example, if under the methodology at Article 8(9)(b) of the Autos

[76] Canada's Rebuttal Submission, paras. 57-58; Mexico's Rebuttal Submission, paras. 80-83.

[77] Canada's Rebuttal Submission, para. 60.

[78] Mexico's Rebuttal Submission, para. 78.

[79] Estimated Impacts of Complainants' Interpretation, Exhibit USA-2; Foreign auto producer calculations, Exhibit USA-20 (confidential).

[80] United States Initial Written Submission, para. 94.

Appendix the producer found that the combined "single part" had an RVC of 75 percent, even if only 70 percent of the value of the core parts (combined) were originating under the standard calculation methodology, auto producers would then apply 100 percent of the value of those core parts as originating content in calculating the vehicle's RVC. Under the U.S. interpretation, the auto producer would use the RVC of each part pursuant to the standard calculation, where depending on the RVC of each part, it would or would not roll-up the VNM, and the 70 percent figure in calculating the overall RVC would be more accurately reflected.

67. Third, contrary to Mexico's arguments, the example from an auto manufacturer (Exhibit USA-20)[81] does not present "several mistakes".[82] The results of these calculations confirm that the Complainants' interpretation artificially inflates the RVC of the vehicle.[83] Mexico's only argument is that this exhibit lacks a "coherent explanation" but fails to explain what additional explanation is needed. As stated in confidential Exhibit USA-20, these are [[]]. These calculations by a producer using its own, actual business confidential data plainly demonstrate that the Complainants' interpretation artificially inflates the overall RVC of a vehicle, significantly reducing – rather than enhancing – the actual regional value content of the vehicle.

2. Complaints do not provide evidentiary support for their assertion that the U.S. interpretation runs counter to the object and purpose expressed in the Preamble

68. Complainants attempt, but fail, to show that the U.S. interpretation runs counter to the objectives in the Preamble. They point to no concrete evidence that, by encouraging increased North American sourcing and investment, producers will instead move investment outside of the region and reduce production and trade in the region.[84]

69. Complainants both place significant weight on the *amici* submissions from Global Automakers Canada (GAC) and the Mexican Automotive Industry Association (AMIA), and also letters from Automotive Associations,[85] to assert that the U.S. interpretation runs counter to the object and purpose of the USMCA. The statements by the *amici* submitters and the associations do not provide any supporting evidence concerning their claims on the "possibility" of moving production outside of the United States, the damage to North American value chains, and the divestment away from electric vehicles. These statements are just that – statements.

[81] The United States notes the incorrect exhibit number (with the correct exhibit title) was provided in footnote 54 of the U.S. Initial Written Submission; the correct reference is Exhibit USA-20 (confidential).

[82] Mexico's Rebuttal Submission, paras. 79-81.

[83] United States Initial Written Submission, para. 96; Exhibit USA-20 (confidential).

[84] Canada's Rebuttal Submission, para. 65; Mexico's Rebuttal Submission, paras. 59-76.

[85] Mexico's Rebuttal Submission, paras. 60-63.

70. To the contrary, the USTR Report cited by Mexico in its initial written submission, highlights the $13.5 billion in planned investments in the region.[86] And since that report, there have been additional investments in the region. For example, in April of 2021, General Motors announced plans to invest $1 billion in a manufacturing plant in Mexico.[87] In February 2022, Nissan announced that it was investing $500 million in its Mississippi plant to produce electric vehicles and battery packs.[88] In March 2022, Honda Canada announced a $1.38 billion investment over the next six years to upgrade certain manufacturing plants.[89] In June 2022, Bosch announced $420 million in investments in the North American market for electrification and fuel cells.[90] General Motors Canada is also investing $2 billion in its manufacturing operations, beginning in December 2022.[91] These investments have been announced in the period since USMCA entry into force and with knowledge of the U.S. interpretation of the core parts origination requirement – flatly contradicting Complainants' and amicis' assertions.

71. Mexico also submits two statements by U.S. officials to assert that USTR stated to producers that once a core part is considered originating, regardless of the RVC calculation methodology used, it maintains originating status for purposes of calculating the vehicle RVC.[92] Not only do these statements not demonstrate Mexico's assertion, but neither statement shows that the U.S. interpretation runs counter to the objectives in the Preamble.

[86] Mexico's First Written Submission, para. 99; USTR, *Estimated Impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. Automotive Sector*, Apr. 18, 2019 (Exhibit MEX-09).

[87] GM to Invest $1 bln in Mexico to build electric vehicles, Reuters, April 29, 2021, https://www.reuters.com/business/autos-transportation/general-motors-make-1-bln-electric-auto-investment-mexico-2021-04-29/ (Exhibit USA-22).

[88] Nissan is investing in EV production in the USA, elevrive.com, February 18, 2022, https://www.electrive.com/2022/02/18/nissan-is-investing-in-ev-production-in-the-usa/#:~:text=The%20Japanese%20carmaker%20Nissan%20has,be%20produced%20there%20from%202025 (Exhibit USA-23).

[89] Honda of Canada Mfg. to Invest more than $1.38 billion in Ontario Manufacturing Plants in Preparation for Electrified Future, Honda Canada News, March 16, 2022, https://hondanews.ca/en-CA/releases/release-b7c602e7f6feb65d30b129b0f62591e2-honda-of-canada-mfg-to-invest-more-than-138-billion-in-ontario-manufacturing-plants-in-preparation-for-electrified-future (Exhibit USA-24).

[90] Bosch Boosting North American Technology Investments, WardsAuto, June 9, 2022, https://www.wardsauto.com/industry-news/bosch-boosting-north-american-technology-investments (Exhibit USA-25).

[91] Continued Investment in Canadian automotive production, MRO Magazine, July 18, 2022, https://www.mromagazine.com/features/continued-investment-in-canadian-automotive-production/ (Exhibit USA-26).

[92] Mexico's Rebuttal Submission, para. 70.

72. The first statement Mexico submits is a statement made by Senator Tim Scott. [93] This statement does not evidence that the U.S. interpretation is inconsistent with the object and purpose of the Agreement. The only thing this statement does is express the *opinion* of a U.S. official, who is repeating information received from automakers. This statement is not evidence that the U.S. interpretation is inconsistent with the object and purpose of USMCA.

73. The second statement that Mexico cites is a statement from former USTR Lighthizer. [94] However, the excerpt Mexico reproduces in its rebuttal brief is taken out of context, and does not evidence that the U.S. interpretation is inconsistent with the object and purpose of the Agreement. To the contrary, the statement speaks to the very purpose of the flexibilities in the special calculations – that is, the ''super core'' calculation is intended *for purposes of meeting the core parts requirement*. [95] The statement says nothing about the purpose of the flexibilities and their applicability when calculating the vehicle RVC. In fact, the question to former USTR Lighthizer expresses skepticism about the availability of such flexibilities, and asks the former USTR to explain how these flexibilities strengthen, rather than weaken the automotive rules of origin ("What are some scenarios in which a producer would elect calculate the VNM of column 1 parts as separate rather than together as a ''super core'' part? *Can you describe how Article 3.9 strengthens, rather than weakens, the automotive rules of origin*?"). The exchange is fully consistent with the U.S. interpretation. Complaints fail to demonstrate that the U.S. interpretation does not establish a clear, transparent and predictable legal framework for businesses

74. Finally, Canada asserts that the U.S. position concerning the lack of relevance of the unilateral statements made by USTR staff after negotiations concluded to the interpretation of the provisions at question, are relevant in light of the objective of establishing a "clear, transparent, and predictable legal and commercial framework". [96] However, Canada does not provide further argument beyond that assertion as to why these statements are relevant to that purpose, and why this is relevant to the VCLT Article 31 analysis on the *interpretation* of the provisions in question. [97]

[93] Mexico's Rebuttal Submission, para. 70 (*citing* United States-Mexico-Canada Agreement Implementation Act, Report together with additional views, 116th Congress 2nd Session, Senate Report 116-283, October 21, 2020 (Exhibit MEX-87)).

[94] Mexico's Rebuttal Submission, para. 71 (*citing* Hearing Report, Committee on Finance U.S. Senate, 116th 1st session, p. 65 (June 18, 2019) (Exhibit MEX-88).

[95] Hearing Report, Committee on Finance U.S. Senate, 116th 1st session, p. 65 (June 18, 2019) (emphasis added) (Exhibit MEX-88).

[96] Canada's Rebuttal Submission, para. 64.

[97] Canada's Rebuttal Submission, para. 64.

75. In any event, the U.S. interpretation is supported by the text of the Agreement, and is reflected in the legal framework that implements the USMCA automotive rules of origin provisions, including the Uniform Regulations, and the ASR approval letters.[98]

III. Review of Supplementary Means of Interpretation Is Not Necessary, And in Any Event Supports the U.S. Interpretation

A. Complainants Mischaracterize the United States Argument on the Use of "Supplementary Means of Interpretation" under Article 32 of the VCLT

76. Canada errs[99] in asserting that the Panel does not have discretion to confirm its interpretation derived under Article 31 of the VCLT by referring to supplementary means of interpretation under Article 32 of the VCLT, under the U.S. view. The U.S. argument rather is that the text is clear, and the materials submitted by Complainants that are not supplementary means of interpretation would have this Panel arrive at a conclusion that is contrary to the meaning of the text, taken in context, and in light of the object and purpose of the Agreement.

77. The terms of the treaty are the first and best evidence of the common intention of the parties.[100] This follows from the textual approach set out in Article 31 of the Vienna Convention,[101] and the delineation of specific circumstances in which recourse may be made to supplementary means of interpretation in Article 32.[102] The recent USMCA panel in *Canada—Dairy* (USMA), for example, examined Articles 31 and 32 and reached this very conclusion. The panel agreed "with the United States that the terms of the Treaty 'are the first and best

[98] Alternative Staging Plan Approval Letters from USTR to Automotive Producers, December 28, 2020 (Confidential) (Exhibit USA-14).

[99] Canada's Rebuttal Submission, paras. 67-70.

[100] United States Initial Written Submission, para. 106. See also, ILC Commentaries (Exhibit USA-17), p. 223 para. 18 (noting that the formulation of Article 31 provides the "primary criteria for interpreting a treaty."); ILC Commentaries (Exhibit USA-17), p. 223 para. 19 (Articles 27 and 28 as referred to in the ILC Commentaries eventually became Articles 31 and 32, respectively, of the Vienna Convention) (noting that the word "supplementary", as used in the title of Article 32 ("Supplementary means of interpretation"), "emphasizes that article [32] does not provide for alternative, autonomous, means of interpretation but only for means to aid an interpretation governed by the principles contained in article [31].").

[101] *Vienna Convention on the Law of Treaties* ("Vienna Convention"), Article 31(1) ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.").

[102] Vienna Convention, Article 32 ("Recourse may be made to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

evidence.'"[103] The panel further assessed that "[e]vidence submitted under Article 32 therefore should be viewed carefully and should not be used to override the plain meaning of the Treaty."[104] As the panel recognized, "[T]here is a distinct evidentiary hierarchy under the Vienna Convention" and "Article 32 evidence is 'considered to be considerably less reliable' than the text of the Treaty itself and other forms of evidence available under Article 31."[105] As in this dispute, in the USMCA *Dairy* dispute Canada attempted to rely on extensive alleged supplementary means of interpretation to advance an interpretation that was not based on the terms of the USMCA

78. As detailed in the U.S. initial submission[106], most of the alleged supplementary material submitted by Complainants does not qualify as either negotiating history or circumstance of conclusion because there is no indication that these materials "were at some point introduced into the negotiation process," and all but one of these materials arose after negotiations concluded.[107] Further, these materials cannot speak to the context of the negotiations since they occurred after negotiations concluded, and some were even between certain U.S. officials and automotive companies who were not present at the negotiations.[108] Accordingly, these materials cannot speak to the "factual circumstances present at the time of conclusion and the historical background of the treaty, which is supposed to have been present in the minds of those who concluded it."[109]

79. There are only a handful of negotiating documents submitted by Complainants that can be considered supplementary materials, but these negotiating documents do not support Complainants' interpretation, but rather support the U.S. interpretation.[110] The only attempt to rebut the U.S. argument that these materials support the U.S. interpretation is an assertion by Mexico that the negotiating history shows that the initial U.S. negotiating objective, "similar to its present unilateral interpretation", was rapidly rejected by Mexico and Canada, and that that rejection led to the rules of origin text currently in effect under the USMCA.[111] Not only does

[103] *Panel Report, Canada—Dairy TRQ Allocation Measures* (CDA-USA-2021-31-010), para. 137, December 20, 2021 (Exhibit CAN-24). (agreeing with the statement made by the United States during the hearing, that the terms of the treaty "are the first and best evidence of the common intentions of the Party.").

[104] *Panel Report, Canada—Dairy TRQ Allocation Measures* (CDA-USA-2021-31-010), para. 137, December 20, 2021 (Exhibit CAN-24).

[105] *Panel Report, Canada—Dairy TRQ Allocation Measures* (CDA-USA-2021-31-010), para. 137, December 20, 2021 (Exhibit CAN-24).

[106] United States Initial Written Submission, paras. 115-119.

[107] United States Initial Written Submission, paras. 113, 115-119.

[108] United States Initial Written Submission, paras. 113, 115-119.

[109] United States Initial Written Submission, paras. 113, 115-119.

[110] United States Initial Written Submission, paras. 114, 120-136.

[111] Mexico's Rebuttal Submission, para. 103.

this not rebut the U.S. position that these materials support the U.S. interpretation, but this statement is completely without support because the U.S. negotiating objectives that were initially rejected by Canada and Mexico (i.e. U.S. content requirement)[112] are not related to the interpretive question in this dispute. It is not clear, and Mexico does not explain, how the initial U.S. proposal, which is unrelated to core parts, is "similar to its present unilateral interpretation"[113] and thus it is not clear how this statement by Mexico rebuts the U.S. interpretation. Accordingly, rather than rebutting the U.S. argument[114] that the indisputable negotiating history supports the U.S. interpretation, Complainants attempt to draw into the interpretive exercise materials which in fact fall outside the scope of Articles 31 and 32 of the Vienna Convention.

B. The United States Does Not Place "Arbitrary" Limits on the Evidence that can be Considered as Supplementary Materials under Article 32 of the VCLT

80. Complainants argue that the U.S. "misinterprets" Article 32 of the VCLT by placing arbitrary limits on what may constitute "supplementary materials", and only focuses on two examples of materials captured under Article 32.[115] Complainants' claims are inaccurate and unconvincing.

81. Contrary to Complainants' arguments, while the supplementary materials available for consideration under Article 32 may go beyond preparatory materials and material in connection with the conclusion of the treaty, the types of materials under Article 32 are not limitless as Complainants suggest. Commentaries cited by all the disputing Parties recognize that clear limits exist. For example, O. Dörr and K. Schmalenbach state:

> Any material that was not stricto sensu part of the negotiating process, but played a role because it covers the substance of the treaty *and the negotiators were able to refer to it*, can thus be introduced into the process of interpretation as other "supplementary means". Documents or facts may be considered that are sufficiently closely connected to the preparation of the treaty and have, therefore, in the eyes of the interpreter, a direct bearing on the interpretation. This includes . . . documents originating from independent

[112] *See* Trilateral Report of the Rules of Origin Group to the Chief Negotiators on the Fourth Round., Exhibit MEX-78 (Confidential).

[113] Mexico's Rebuttal Submission, para. 103.

[114] United States Initial Written Submission, paras. 120-136.

[115] Canada's Rebuttal Submission, paras. 71-78; Mexico's Rebuttal Submission, paras. 97-100.

bodies, such as the ILC, and preparatory work on treaties that are identical or similar to the one under consideration.[116]

82. Therefore, because the materials to which the Complainants cite – communications both between certain U.S. officials and private companies[117] and between certain U.S. officials and Canada,[118] presentations,[119] and affidavits [120]– were not available to all the negotiating parties such that they might refer to them in the course of the negotiations, these materials are not "supplementary means of interpretation" within the meaning of the Vienna Convention.

83. Canada's reliance on WTO panel and Appellate Body reports to the contrary is unavailing.[121] Canada cites the panel report in *EC – Chicken Cuts (Brazil)* to assert that "*subsequent practice* that cannot qualify under Article 31(3)(b) VCLT" could still be considered under Article 32 if it can shed some light on the meaning of the treaty.[122] Subsequent practice is not before this Panel. Therefore, whether or not such practice can be considered under Article 32 is not relevant to the Panel's interpretation. And in any event, Complainants have not shown how the communications in question could have been referenced by the Parties in their negotiations (as required per the Commentaries) and thereby had an influence on "the specific

[116] Vienna Convention Law of Treaties, A Commentary, O. Dörr and K. Schmalenbach, p. 627 (emphasis added) (Exhibit USA-21).

[117] Email from Volkswagen Mexico, forwarded on April 8, 2019 to USTR lead Rules of Origin negotiators by [[]], Volkswagen Group of America Inc. (Exhibit CAN-15) (Confidential); Email exchange between USTR officials and [[]] Volkswagen Group of America Inc., dated November 2018 (Exhibit CAN-16) (Confidential); Email from Volkswagen Mexico, forwarded on April 8, 2019 to USTR lead Rules of Origin negotiators by [[]], Volkswagen Group of America Inc.(Exhibit CAN-17) (Confidential); Email from USTR official, to [[]], Volkswagen Group of America Inc. dated, January 24, 2019 and earlier email from Volkswagen Mexico to USTR officials, dated, December 6, 2018 (Exhibit CAN-25) (Confidential); Sample Correspondence between Automakers and USTR Officials, 2018-2019 (Exhibit MEX-28) (Confidential); Email from J. Bernstein (USTR) to M. Thornell (Global Affairs Canada), re: core parts, Jun. 11, 2020 (Exhibit MEX-60) (Confidential).

[118] Email from USTR lead negotiator to Canadian lead negotiator, dated June 11, 2020 (Exhibit CAN-14); see also June 11-12, 2020 communications between USTR and Canadian official, dated June 11-12, 2020 (Exhibit USA-6).

[119] USTR officials presented to vehicle parts producers in April and June of 2019, providing an overview of the USMCA autos ROO provisions. These presentations did not speak to whether core parts that were determined to meet the core parts originating requirement through the special calculations at Articles 3(8) and 3(9) could be considered originating for purposes of calculating the standard vehicle RVC. *See* Supplier Briefing United States-Mexico-Canada Agreement, April 19, 2019, p. 14 and 18 of PDF (Exhibit CAN-18) (Confidential); MEMA South Carolina Regional Supplier Briefing on USMCA, June 24, 2019 (Exhibit CAN-19) (Confidential).

[120] Affidavit by [[]], March 10, 2022 (Exhibit MEX-19) (Confidential); Affidavit by [[]], March 15, 2022 (Exhibit MEX-23) (Confidential); Affidavit by [[]], March 21, 2022 (Exhibit MEX-77) (Confidential).

[121] Canada's Rebuttal Submission, para. 75 (*quoting Panel Report, EC – Chicken Cuts (Brazil)*, para. 7.422 (Exhibit CAN-45).

[122] Canada's Rebuttal Submission, para. 75 (*quoting Panel Report, EC – Chicken Cuts (Brazil)*, para. 7.422 (Exhibit CAN-45).

aspects of the ultimate text"[123] (as the panel in *EC – Chicken Cuts* considered was necessary). The appellate report in the same case adds only a reminder that the relevance of these documents is in whether they speak to the common intentions of the parties at the time of the conclusion.[124] The documents at issue here do not so speak, and cannot therefore be relied on by the Panel in making its findings here.

84. Canada provides no support for its assertion that the documents in Exhibits CAN-14 to CAN-19 (communications between U.S. officials and Volkswagen Mexico and communications between U.S. officials and Canada) are "timely" and are therefore appropriate under Article 32 because they occur prior to the USMCA entry into force.[125] Nor is it correct in asserting that the United States claims that a material may not be recognized under Article 32 simply because it is unilateral in nature.[126] The United States recognizes, like Canada and the panel in *Canada – Dairy (USMCA)*, that "even unilateral acts, instruments or statements of individual negotiating parties may be useful to discerning common intent."[127] Further, the fact, in and of itself, that the communications in question occurred prior to the entry into force of USMCA is not relevant for determining whether the material is a material of the kind that may be referenced under Article 32. Again, the materials listed under Article 32 are only available "in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31 […] leaves the meaning ambiguous or obscure, or […] leads to a result which is manifestly absurd or unreasonable".[128]

85. In *Canada – Dairy (USMCA)*, when analyzing a unilateral statement of a Canadian negotiator on his recollection of the interpretation during the negotiations, the panel stated "there is no evidence that Canada communicated its interpretation . . . . to the United States during the negotiations."[129] As we explained in our initial submission,[130] there is no evidence that the statements made by the USTR negotiators to companies were shared with the Parties during the negotiations and Complainants' submit no evidence and make no arguments to the contrary. The only evidence of the common intent of the negotiating Parties is the text of the agreement, which

[123] *Panel Report, EC – Chicken Cuts (Brazil)*, para. 7.343 (Exhibit CAN-45).

[124] Canada's Rebuttal Submission, para. 75 (*quoting Appellate Body Report, EC – Chicken Cuts (Brazil)*, para. 305 (Exhibit MEX-41).

[125] Canada's Rebuttal Submission, paras. 77.

[126] Canada's Rebuttal Submission, para. 78.

[127] Canada's Rebuttal Submission, para. 78 (*quoting Canada – Dairy TRQ Allocation Measures* (CDA-USA-2021-31-010), December 20, 2021, para. 153, footnote 157 (Exhibit CAN-24).

[128] Vienna Convention Law on Treaties, Article 32.

[129] *Canada – Dairy TRQ Allocation Measures* (CDA-USA-2021-31-010), December 20, 2021, para. 153 (Exhibit CAN-24).

[130] United States Initial Written Submission, paras. 115-117.

does not support Complainants' interpretation, or the unilateral statements of U.S. negotiators and recollections of Mexican negotiators.

86. Canada then argues that statements of government officials, when relevant to a dispute, have been considered by international panels and can sometimes bind the state.[131] In making its claim, Canada relies on language from the panel in *Argentina – Import Measures*, noting that statements made by public officials are important "especially when they relate to a topic in which that official has the authority to design or implement policies".[132] Canada's reliance on this report is misplaced. The statements at issue before that panel were public statements made on multiple occasions, which the panel described, in full, as "*[c]onsistent public statements made on the record* by a public official [that] relate to a topic in which that official has the authority to design or implement policies."

87. The statements made by certain former USTR staff that run counter to the U.S. interpretation were not made to the public and were not publicly released. In fact, from the first time the United States made a statement that was conveyed both to the Parties and to interested companies about the U.S. interpretation, it conveyed the same interpretation set out in the U.S. submissions in this dispute.[133] Complainants do not address this in light of the authority they cite, and do not provide any additional support for why these statements should qualify as supplementary materials under Article 32 of the VCLT.

88. Further, Mexico's statement that the email communications submitted by Mexico were to "numerous enterprises" and that the U.S. attempted "to minimize these communications as if they were only" between "'certain U.S. officials' to a producer of vehicles",[134] is factually incorrect. The correspondence submitted by Mexico at Exhibit MEX-28[135] is only between these two USTR staff and one Mexican automaker Volkswagen.

[131] Canada's Rebuttal Submission, paras. 80-83.

[132] Canada's Rebuttal Submission, para. 80 (*citing Panel Report, Argentina – Import Measures*, paras. 6.79-6.81 (Exhibit MEX-50).

[133] July 22, 2020 email correspondence between the Parties, July 22, 2020 (Exhibit USA-8); *see also*, United States Initial Written Submission, paras. 35-36 (noting that the three countries worked together with interested auto companies to develop and approve their Alternative Staging Plans, and that the U.S. and Canadian letters included reference to the U.S. interpretation – Canada's noted that it was without prejudice to the fact that it disagreed with the U.S. interpretation.

[134] Mexico's Rebuttal Submission, para. 101 (*citing* Exhibit MEX-28 (confidential)).

[135] We note that the correspondence on page 29 of Exhibit MEX-28 is redacted and we are unable to see who the USTR staff are communicating with.

89. Aside from the communications submitted by Complainants, Mexico also submitted certain recollections from its USMCA negotiators.[136] Mexico asserts that the recollections from negotiators that it submitted "are well-supported and compatible with other available materials that can be objectively assessed by this panel" and so qualify as appropriate materials under Article 32.[137] However, Mexico does not follow this assertion with any information on which available materials support these recollections, nor do they explain how these alleged materials support the recollections from negotiators. Mexico does not, because it cannot.

90. The unilateral statements by U.S. officials do not qualify as materials under Article 32, and the information available for the panel to assess per Article 32 does not support Complainants' interpretation.[138] Accordingly, there is no evidence that the panel can rely on which would corroborate the affidavits. As we detailed in our initial submission the affidavits cited throughout Mexico's submission, detailing recollections of certain Mexican negotiators that were present during the negotiations cannot be considered supplementary materials.[139]

91. For the reasons explained above and in our initial submission, the communications, both between certain U.S. officials and private companies, and certain U.S. officials and Canada, submitted by Complainants are not supplementary means of interpretation. The arguments presented by Canada and Mexico to the contrary are unpersuasive. And finally, as noted, Canada and Mexico do not rebut the U.S. argument that those materials submitted which are supplementary materials, support the U.S. position.

IV. Claims Under Articles 4.2(b), 4.11 and 5.16 of the USMCA, and Article 8 of the Autos Appendix are Consequential to Complainants' Claims under Article 4.5.4 of the USMCA, and Article 3 of the Autos Appendix

A. Complainants Rebuttal does not Address U.S. Arguments on Complainants' Claims under Articles 4.2(b) and 4.11 of the USMCA

92. Complainants' claims under Articles 4.2(b) and 4.11 of the USMCA are consequential to its claims under Article 4.5.4, and Articles 3(7), 3(8) and 3(9) of the Autos Appendix, and Canada and Mexico do not present arguments that demonstrate otherwise.[140] Canada does not

[136] United States Initial Written Submission, para. 119 (*referring to* Affidavit by [[]], March 10, 2022 (Exhibit MEX-19) (Confidential); Affidavit by [[]], March 15, 2022 (Exhibit MEX-23) (Confidential); Affidavit by [[]], March 21, 2022 (Exhibit MEX-77) (Confidential)).

[137] Mexico's Rebuttal Submission, para. 102.

[138] United States Initial Written Submission, paras. 115-136.

[139] United States Initial Written Submission, para. 119 (*referring to* Affidavit by [[]], March 10, 2022 (Exhibit MEX-19) (Confidential); Affidavit by [[]], March 15, 2022 (Exhibit MEX-23) (Confidential); Affidavit by [[]], March 21, 2022 (Exhibit MEX-77) (Confidential)).

[140] Canada's Rebuttal Submission, para. 51; Mexico's Rebuttal Submission, para. 120-124; *see also*, Mexico's Initial Written Submission, paras. 168-173.

provide arguments rebutting this fact, and Mexico merely repeats the arguments made in its initial submission.

B. The United States does not Fundamentally Misunderstand Canada's Claim under Article 8 of the Autos Appendix

93. The United States does not "fundamentally" misunderstand Canada's claim under Article 8 of the Autos Appendix, as Canada asserts.[141] Article 8(1) and 8(2) of the Autos Appendix set out a list of requirements that a vehicle covered by an ASR must meet in order to be originating. The fact that the United States referenced in its ASR approval letters that approval was "[[]]" that companies would apply the rules for calculating the RVC of the vehicle not subject to the ASR[142] is consistent with the text of the Agreement and is not a breach of Articles 8(1) and 8(2) of the Autos Appendix. The ASR Approval Letters do not require the auto producer to do anything other than what is required in the Agreement. The language challenged by Complainants' indicated to parties only that compliance with the Agreement generally was required notwithstanding the flexibilities granted through the ASRs for specific vehicles.

94. Further, contrary to Mexico's assertion, the United States did not "condition" ASRs on all vehicles complying with the U.S. interpretation "including those that may be exported to other countries or territories of the USMCA, without requesting preferential treatment and without trading them under the terms of the USMCA."[143] The letter plainly (and logically) applies only to those vehicles for which the company may be seeking preferential treatment into the United States. In case there is any doubt, the sentence following the explanation about how the company is expected to apply the RVC calculation consistent with the Agreement states that "[[]]".[144]

95. Therefore, the United States' ASR letters do not breach its obligations under Articles 8(1) and 8(2) of the Autos Appendix, because they simply reflect the obligations set out in the Agreement.

[141] Canada's Rebuttal Submission, paras. 48-50.

[142] Alternative Staging Plan Approval Letters from USTR to Automotive Producers, December 28, 2020 (Exhibit USA-14)(confidential).

[143] Mexico's Rebuttal Submission, para. 130; Mexico's Initial Written Submission, para. 189.

[144] Alternative Staging Plan Approval Letters from USTR to Automotive Producers, December 28, 2020 (emphasis added) (Exhibit USA-14) (confidential).

C. The United States does not Misunderstand Canada's Claim Article 5.16.6 of the USMCA

96. Contrary to Canada's assertion, the United States does not misunderstand Canada's claim under Article 5.16.6 of the USMCA.[145] As we have explained in section IV.B above, the United States is not acting inconsistently with Article 8 of the Autos Appendix. The Uniform Regulations at section 19(2) and 19(4) do not provide any text that is in addition to the commitments in Article 8 of the Autos Appendix. The United States is therefore applying the Uniform Regulations consistently. Accordingly, the Panel should also reject Canada's claims under Article 5.16.6 because Complainants have failed to demonstrate that the U.S. interpretation does not apply obligations contained in the Uniform Regulations, in addition to the obligations in Chapter 4.

V. Recourse Under Article 31.2(c) of the USMCA is Not Available to Complainants Because Complainants Have Not Demonstrated that the Measures Imposed by the United States Nullify or Impair the Benefits Canada and Mexico Could Reasonably Have Expected to Accrue to It

97. Complainants have failed to demonstrate that the U.S. interpretation, as expressed in its ASR approval letters, have nullified or impaired any benefits to Canada and Mexico[146] because they cannot reasonably argue that they could not have anticipated the United States would apply an interpretation of the core parts origination requirements and calculations consistent with the plain meaning of the text in the context of Chapter 4.[147]

A. Complainants Fail to Demonstrate that their Expectations Were Reasonable

98. Complainants have not demonstrated that the measures imposed by the United States nullify or impair benefits that Canada and Mexico could reasonably have expected to accrue to them. Mexico does not provide additional argument as to why it reasonably anticipated that the United States would not apply an interpretation consistent with the text of the Agreement. Rather, Mexico continues to assert that it expected the United States to comply with the agreed text, and it did not reasonably anticipate that the United States would apply an interpretation different to the interpretation "upheld during the negotiations of the Agreement" after the conclusion of the negotiations of the USMCA.[148] Mexico does not identify any evidence for the statement that the U.S. interpretation is one that is different than that during the negotiations of the Agreement. It does not, because there is none. As the United States described in our initial

[145] Canada's Rebuttal Submission, para. 52.

[146] Canada's Rebuttal Submission, paras. 84-93; Mexico's Rebuttal Submission, paras. 131-136.

[147] United States Initial Written Submission, para. 151.

[148] Mexico's Rebuttal Submission, paras. 133-134.

submission,[149] the negotiating history, including the [[]] support the U.S. interpretation and Canada and Mexico provide no additional evidence that their interpretation was expressed during the negotiations.

99. Contrary to what Canada argues, Canada does not show that it had "reasonable grounds to understand that the USMCA would provide greater market access than what the United States"[150] communicated in its ASR letters.[151] Canada bases its argument on (1) [[]] (2) [[]], (3) the objectives of the USMCA, and (4) email communications from USTR negotiators.[152]

100. Canada argues that the communications do not form the basis of Canada's argument but support the expectation of Canada's interpretation based on the [[]].[153] As the United States demonstrated in its initial submission, the [[]] do not support Canada's and Mexico's interpretation, but rather support the U.S. interpretation.[154] As explained above and demonstrated in our initial submission[155], the communications do not qualify as supplementary means of interpretation. Canada also does not offer any arguments to rebut the U.S. explanation that the [[]] are not supportive of the Canadian and Mexican interpretation.

101. Further, Canada's argument that the U.S. interpretation runs counter to the objective of the USMCA by being overly restrictive is unsubstantiated.[156] The U.S. interpretation is not overly restrictive, and Complainants have not provided any evidence that shows the U.S. interpretation has an overly restrictive effect that deters compliance and reduces North American content. That the text of the USMCA, when properly interpreted, creates greater incentives for North American sourcing and investment than Complainants' interpretation does not show that it is contrary to USMCA objectives – to the contrary. As we discussed above and in our initial submission,[157] the core parts origination requirement is an additional requirement under the Agreement. And in order to meet that specific requirement, the drafters included certain flexibilities through the special calculation methodologies at Articles 3(8)(b) and 3(9) of the Autos Appendix. These flexibilities cannot be carried over to calculate the vehicle RVC.

[149] United States Initial Written Submission, paras. 120-136.

[150] Canada's Rebuttal Submission, para. 89.

[151] Alternative Staging Plan Approval Letters from USTR to Automotive Producers, December 28, 2020 (Confidential) (Exhibit USA-14).

[152] Canada's Rebuttal Submission, para. 89.

[153] Canada's Rebuttal Submission, para. 92.

[154] United States Initial Written Submission, paras. 120-136.

[155] United States Initial Written Submission, paras. 115-118.

[156] Canada's Rebuttal Submission, para. 93.

[157] United States Initial Submission, paras. 37-56.

B. Complainants Fail to Show that the U.S. Interpretation Nullifies or Impairs the Benefits of Canada and Mexico

102. In addition to the fact that Complainants cannot demonstrate that they had a reasonable expectation that the U.S. would apply an interpretation inconsistent with the text of the USMCA, Complainants also do not show that there has been a nullification or impairment of a benefit. Mexico asserts that it "demonstrated" that the application of the U.S. interpretation nullifies or impairs a benefit because it "unilaterally reduces the amount of vehicles coming from Mexico that are eligible for the preferential tariff treatment" under the USMCA, and that it modifies the competitive conditions between the vehicles in the region.[158] However, as the United States addressed in our initial submission,[159] these assertions by Mexico[160] are not supported by any evidence.[161]

103. Further, the "evidence" submitted by Canada in its initial written submission[162] does not show that there has been a nullification or impairment of benefits. Canada states that the U.S. interpretation increases the cost for Canadian vehicle producers to obtain preferential tariff treatment, that it increases the compliance requirement, administrative burden, and compliance costs, and that these additional costs will detrimentally impact Canada's competitiveness with U.S. vehicle producers.[163] However, Canada does not provide evidentiary support for these statements to demonstrate that these things are actually happening. Accordingly, Canada does not demonstrate that market access to Canadian or Mexican producers has been restricted in the way that Canada suggests.

104. The United States has demonstrated in this submission,[164] and our initial written submission,[165] that the U.S. interpretation promotes North American investments, which accrue to Canada and Mexico.[166] The U.S. interpretation is not interfering with the benefits that Canada

[158] Mexico's Rebuttal Submission, para. 136 (*citing* Mexico's Initial Written Submission, paras. 200-201).

[159] United States Initial Written Submission, para. 156.

[160] *See e.g.*, Mexico's Initial Written Submission, paras. 200-201.

[161] Mexico's Initial Written Submission, paras. 200-201.

[162] Canada's Initial Written Submission, paras, 211-216.

[163] Canada's Initial Written Submission, paras. 211-216.

[164] *See supra*, section II.D.

[165] United States Initial Written Submission, paras. 92-100.

[166] GM to Invest $1 bln in Mexico to build electric vehicles, Reuters, April 29, 2021, https://www.reuters.com/business/autos-transportation/general-motors-make-1-bln-electric-auto-investment-mexico-2021-04-29/ (Exhibit USA-22); Nissan is investing in EV production in the USA, elevrive.com, February 18, 2022, https://www.electrive.com/2022/02/18/nissan-is-investing-in-ev-production-in-the-usa/#:~:text=The%20Japanese%20carmaker%20Nissan%20has,be%20produced%20there%20from%202025 (Exhibit USA-23); Honda of Canada Mfg. to Invest more than $1.38 billion in Ontario Manufacturing Plants in Preparation for Electrified Future, Honda Canada News, March 16, 2022, https://hondanews.ca/en-

and Mexico reasonably expected to accrue to them. To the contrary, and as Mexico and Canada have failed to account in their arguments, the U.S. interpretation accrues benefits to Mexico, Canada, and the United States by incentivizing North American sourcing and investment.

C. The United States Does Not Attempt to Unduly Restrain the Scope of the NVNI Claim

105. Canada argues that the U.S. attempts to dissuade the Panel from considering the NVNI claim by arguing "simply" that these claims are extraordinary measures, only applicable in certain circumstances, and that the Panel should proceed with caution.[167] Canada asserts that the U.S. argument is without merit because the United States (1) erroneously confines the applicability of the NVNI provision to one set of circumstances, and (2) does not provide legal support that the Panel should proceed with caution in evaluating this claim.[168]

106. First, the United States maintains that the circumstances in this dispute are not those in which a non-violation claim would be appropriate. The materials Canada cites to support its argument – a statement by the U.S. delegate of the GATT 1947 and an excerpt from the panel in *Japan – Film*[169] – do not address the factual circumstances of this dispute and Canada does not explain, in light of those citations and the U.S. position, why the circumstances of this dispute are appropriate for an NVNI claim. The statement by the U.S. delegate to the negotiation of a different agreement – that the clause was intended to address matters of protectionism – does not support Canada's position. Specifically, Canada does not explain how the U.S. position of implementing the USMCA according to the plain meaning of its terms is a protectionist action that should, despite its consistency with the USMCA, be subject to an extraordinary remedy. The excerpt from the panel report in *Japan – Film* referring to a measure that provides "assistance" also does not support Canada's position. Canada has not attempted to explain how the U.S. implementation of the text of the USMCA is a form of "assistance".

107. Second, contrary to Canada's assertion,[170] it is not true that the United States did not provide any legal basis for excluding the present circumstances from the scope of NVNI claims.

CA/releases/release-b7c602e7f6feb65d30b129b0f62591e2-honda-of-canada-mfg-to-invest-more-than-138-billion-in-ontario-manufacturing-plants-in-preparation-for-electrified-future (Exhibit USA-24); Bosch Boosting North American Technology Investments, WardsAuto, June 9, 2022, https://www.wardsauto.com/industry-news/bosch-boosting-north-american-technology-investments (Exhibit USA-25); Continued Investment in Canadian automotive production, MRO Magazine, July 18, 2022, https://www.mromagazine.com/features/continued-investment-in-canadian-automotive-production/ (Exhibit USA-26).

[167] Canada's Rebuttal Submission, para. 94.

[168] Canada's Rebuttal Submission, para. 94.

[169] Canada's Rebuttal Submission, para. 95 (*citing* Verbatim Report of the Preparatory Committee of the U.N. Conference on Trade and Employment, 9th mtg. at pp. 23-24, E/PC/T/C.II/PRO/PV/9 (1946), Exhibit CAN-49; Panel Report, *Japan – Film*, para. 10.38, Exhibit CAN-32).

[170] Canada's Rebuttal Submission, para. 96.

The United States cites the GATT Working Party Report on the Australian Subsidy on Ammonium Sulphate[171] to illustrate its view that the circumstances of this dispute are not appropriate for an NVNI claim. The circumstance here is the application of a measure (autos content requirements) that is *consistent* with the agreement provisions that are addressed expressly to that type of measure. While it is conceivable that a measure consistent with an agreement could interfere with reasonable expectations of benefit *from a different commitment* (such as a subsidy undermining a tariff concession) – that is not the situation alleged here. It does not make sense to find the nullification or impairment of benefits from a commitment based on the application of a measure when the application of that measure has been found to be consistent *with that very same commitment*.

108. Contrary to Canada's assertion, the U.S. argument that NVNI claims are exceptional is not a "bare assertion". The United States refers to the panel report in *Japan – Film* and also to the appellate report in *EC – Asbestos*,[172] when stating that NVNI claims are for exceptional circumstances, and should be approached with caution. It is evident on the face of the USMCA that non-violation claims are exceptional; while claims of breach or failure to carry out an obligation may be brought with respect to the entire USMCA,[173] a non-violation claim may be brought only with respect to benefits it could reasonably have expected to accrue under certain USMCA Chapters.[174] Canada does not explain why the Panel should not consider that NVNI claims are exceptional.

109. As to the U.S. position that this Panel should proceed with caution with respect to a non-violation claim, Canada asserts that the Panel should carry out its function in USMCA Article 31.13.1 to make an objective assessment of the matter before it. The United States agrees, and to approach a non-violation claim with caution, or circumspection, is consistent with such an assessment, and further, would promote the maintenance of the Parties' rights and obligations consistent with USMCA Article 31.13.2.[175]

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[171] United States Initial Written Submission, para. 158 (*citing* GATT Working Party, Report on the Australian Subsidy on Ammonium Sulphate, GATT/CP.4/39 (Report adopted on April 3, 1950)).

[172] U.S. Initial Written Submission, para. 149 (citing Panel Report, *Japan – Film*, para. 10.36 and *EC – Asbestos (AB),* para. 186).

[173] USMCA Article 31.2(b) (unless otherwise provided, dispute settlement provisions apply "when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation of this Agreement").

[174] *See* USMCA Article 31.2(c) (unless otherwise provided, dispute settlement provisions apply "when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter[s 2, 3, 4, 5, 6, 7, 9, 11, 13, 15, 20] is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement").

[175] Canada's Rebuttal Submission, paras. 97-98 (*citing* Panel Report, *Japan – Film*, para. 10.37 to explain the function of the panel, and that the function of the panel under the USMCA is very similar).

110. The Panel would consider Canada and Mexico's non-violation claims if it were to conclude that the U.S. measures were not inconsistent with the cited provisions of USMCA. In that case, one might well ask whether the United States reasonably could have expected that Complainants would adopt and promote measures *consistent* with the autos provisions of USMCA, rather than promoting actions and interpretations inconsistent with the Agreement. The Panel may resolve the non-violation claims on either basis suggested previously – no reasonable expectation or no nullification or impairment. It would be fully consistent with the Panel's terms of reference[176] and function – as well as good judgment – for the Panel to approach such an exceptional claim with due caution as it considers appropriate findings and determinations.

VI. Conclusion

111. For the reasons set out above, and in the U.S. initial written submission, Complainants have failed to establish that any U.S. measure is inconsistent with the USMCA in this dispute and have failed to establish any non-violation nullification or impairment of benefits.

[176] USMCA Art. 31.7.1 (terms of reference "to examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel)" and "make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 31.17 (Panel Report)").