Before the Panel established pursuant to Chapter 31 (Dispute Settlement) of the United States-Mexico-Canada Agreement (USMCA)

United States – Automotive Rules of Origin

(USA-MEX-2022-31-01)

Initial Written Submission of Mexico

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Abbreviation	Full Title
ASR	Alternative Staging Regime
Automotive Appendix	Appendix (Provisions Related to the Product-Specific Rules of Origin for Automotive Goods) to Annex 4-B (Product-Specific Rules of Origin) of Chapter 4 (Rules of Origin).
CBP	U.S. Customs & Border Protection.
LVC	Labor value content.
Mexico	United Mexican States.
NAFTA	North American Free Trade Agreement.
NC	Net cost.
OEMs	Original equipment manufacturers.
Panel	Panel established pursuant to Article 31.6 (Establishment of a Panel) of the USMCA.
ROO	Rules of origin.
RVC	Regional value content.
URs	Uniform Regulations regarding the interpretation, application, and administration of Chapter 4 (Rules of Origin), Chapter 5, (Origin Procedures), Chapter 6 (Textile and Apparel Goods, Chapter 7 (Customs administration and trade facilitation) of the Agreement between the United States of America, the United Mexican States and Canada.
U.S., United States	United States of America.
USMCA, Agreement, Treaty	United States-Mexico-Canada Agreement.
USTR	Office of the United States Trade Representative.
VCLT, Vienna Convention	Vienna Convention of the Law of Treaties, done at Vienna on May 23, 1969.
VNM	Value of non-originating material.
WTO	World Trade Organization.

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I. INTRODUCTION

1. The United Mexican States ("Mexico"), Canada, and the United States of America ("United States") are all major hubs for the manufacture of motor vehicles. There is considerable cross-border integration in all aspects of the automotive industry among the three countries to the point that it currently constitutes a sole "North American auto industry". That industry supports over 10 million direct or indirect jobs across the region.[1]

2. The growth of the North American auto industry was among the primary successes of the North American Free Trade Agreement ("NAFTA"), the predecessor of the Agreement between the United States of America, the United Mexican States, and Canada ("USMCA"), such that it has become a key region for global auto production and innovation.

3. In 2017, when negotiations on the USMCA began, the Parties set out to update several NAFTA disciplines, among them, the rules of origin ("ROO") and origin procedures, which had been in place for more than 23 years.

4. In general terms, the Parties agreed on the need to update the ROO and origin procedures, In the first round of negotiations, both the United States and Mexico submitted proposals to modernize ROO and origin procedures, while Canada did the same during the second round of negotiations. Through these proposals, it became clear that achieving consensus would be difficult in the automotive sector ROO.

5. Mexico viewed the negotiation of the USMCA as an opportunity to modernize the trilateral agreement and engaged in the negotiations with a clear mandate to maintain and enhance the competitiveness of Mexican industry.[2] Notwithstanding the above, the Mexican government did

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[1] *See* Ministry of Economy & ProMéxico, *The Mexican Automotive Industry: Current Situation, Challenges and Opportunities,* Oct. 2016, at 9 and 64, **Exhibit MEX-01**. (Noting that total direct employment in the automotive sector was over 875,000 as of 2015 in Mexico); Alliance for Automotive Innovation, *Driving the U.S. Economy* (last accessed Feb. 11, 2022), **Exhibit MEX-02**. (Noting that the auto manufacturing sector supports 10.3 million U.S. jobs); J. Irwin, *Canada gaining auto jobs, even in its factories*, AUTOMOTIVE NEWS CANADA, May 2, 2019, **Exhibit MEX-03**. (Noting that according to data provided by DesRosiers Automotive Consultants, Inc. 823,052 Canadians are employed in auto-related jobs in 2018).

[2] Ministry of Economy, *Mexico's priorities in the Negotiations to modernize the North American Free Trade Agreement,* Aug. 2, 2017, **Exhibit MEX-04**. The Mexican Government expressly identified the following aspects as central to maintaining and enhancing Mexican competitiveness in the region:

not receive any proposal from the Mexican automotive industry to modify the existing ROO, which is why Mexico sought to maintain the same ROO in the automotive sector contained in NAFTA.[3]

6. However, the United States, under the administration of President Donald Trump, entered the negotiations under the premise that NAFTA had supposedly severely damaged the U.S. economy, and that the main objective should be to eliminate, or at least substantially reduce, the U.S. trade deficit with Mexico.[4] Given the fact that the largest part of the U.S. trade deficit with Mexico is found in the automotive sector,[5] in the view of the United States, the NAFTA automotive ROO were outdated, permitted "free riding" by countries outside of North America, and discouraged manufacturing and investment in the U.S. automotive sector.[6] This difference of views made the automotive discussions one of the most protracted and difficult aspects of the USMCA negotiation.

7. The negotiations eventually resulted in a delicate balance where new automotive ROO were set, that are by far the most stringent of any past or present free trade agreement. Those ROO impose higher Regional Value Content ("RVC") threshold compared to NAFTA, establish entirely new sourcing requirements for core parts, steel, and aluminum, and create a new Labor Value

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Maintain preferential access for Mexican goods and services in the markets of the NAFTA countries and to promote measures that prevent standards, rules and regulations from constituting unjustified barriers or disguised obstacles to free trade.

3 *See* Affidavit by [[ ]], March 10, 2022, ¶ 8, **Exhibit MEX-19**

4 Office of the U.S. Trade Representative ("USTR"), *Summary of Objectives for the NAFTA Renegotiation* (Jul. 17, 2017), at 2, **Exhibit MEX-05**.

5 Ministry of Economy, *Reporte T-MEC No. 1*, Jun. 12, 2019, **Exhibit MEX-07**. Note that a substantial portion of trade reflects the movement of the same items back and forth across the border after processing and incorporation into other products. U.S. Congressional Research Service, U.S.-Mexico Trade Relations, April 26, 2021, **Exhibit MEX-06** ("A significant portion of merchandise trade between the United States and Mexico occurs in the context of production sharing as manufacturers in each country work together to create goods. The flow of intermediate inputs produced in the United States and exported to Mexico and the return flow of finished products greatly increased the importance of the U.S.-Mexico border region as a production site.").

6 *See, for example*, USTR *USMCA Fact Sheet: Automobiles and Automotive Parts,* (no date), **Exhibit MEX-08**. This assertion was questionable. *See* U.S. Congressional Research Service, *U.S.-Mexico Trade Relations*, April 26, 2021, **Exhibit MEX-06.** ("In the auto sector, for example, there are multilayered connections between U.S. and Mexican suppliers and assembly points. An automobile produced in the United States, for example, can have thousands of parts that come from different U.S. states and various Mexican locations.").

Content ("LVC") requirement. In particular, with respect to passenger vehicles and light trucks,[7] these changes included:

- An increase in the RVC requirement for finished vehicles from 62.5% (NAFTA) to 75% (USMCA);[8]

- The creation of three categories of auto parts required to achieve an RVC of 75% (core parts), 70% (principal parts), and 65% (complementary parts) respectively, in addition to the requirement that a vehicle may only be considered originating if the core parts are originating[9];

- New requirements that at least 70% of the aluminum used in vehicles be produced in North America and that at least 70% of steel purchases by the producer be melted and poured in the region;[10] and

- A new requirement for producers to comply with a LVC of 40%, using a combination of high-wage material and manufacturing, technology, and assembly expenditures.[11]

8. When implemented as written and trilaterally agreed, the USMCA automotive ROO will incentivize billions of dollars in new investments in vehicle and part production in the North American region. This, in turn, will result in thousands of new jobs in the automotive sector across the territories of all three Parties. By contrast, when any Party, for domestic political purposes, unilaterally applies requirements based on a new after-the-fact, unilateral interpretation of the automotive ROO, that is directly contrary to the own text of the Agreement and unlike the interpretation discussed and agreed to by the Parties, the entire North American auto industry, its workers, and the flow of trade and investment among the Parties are negatively affected.

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7 Similar requirements apply to the production of heavy trucks, with different applicable percentages.

8 USMCA, Article 3.1 of the Appendix to Chapter 4 (Rules of Origin) on Provisions Related to the Product-Specific Rules of Origin for Automotive Goods (hereinafter "the Automotive Appendix").

9 USMCA Automotive Appendix, Articles 3.2-3.7.

10 USMCA Automotive Appendix, Article 6.

11 USMCA Automotive Appendix, Article 7.

9. Sadly, the United States is now doing just that by trying to unilaterally impose arbitrary and baseless requirements that were never on the negotiating table, let alone in the final treaty text, or in the Uniform Regulations ("UR").

10. As will be explained in detail below, the agreed ROO establish that once a good qualifies as originating, by complying with the Treaty requirements, the value of non-originating materials ("VNM") in that good shall not be considered in calculating the RVC of another good into which it is subsequently incorporated. This is equally true for vehicles and other goods.

11. However, the United States, contrary to the text and what was trilaterally agreed, is interpreting, and applying the automotive ROO in such a way that the VNM of the core parts of a vehicle must still be considered when calculating the RVC of the finished passenger vehicle and or light trucks, regardless of whether those core parts qualified as originating.

12. The United States is thus demanding two separate and independent RVC calculations for a vehicle to be considered originating; that is, it requires two calculations for the same good: *i)* for the core parts and *ii)* for the same core parts when incorporated into a finished vehicle. According to the U.S. interpretation, the result of the first calculation is independent from and cannot be in any way considered in the second calculation. This makes no sense. The USMCA negotiators did not negotiate methodologies to determine that a vehicle's core part is originating only for that fact to be irrelevant for the finished vehicle's RVC

13. The new U.S. interpretation of the automotive ROO and its application are fully inconsistent with the plain text of the USMCA, its object and purpose, and the trilateral instruments related to the USMCA such as the URs. This new U.S. unilateral interpretation breaks the careful balance that the three countries achieved in the USMCA. Moreover, had the United States insisted on this unilateral interpretation during the negotiations, it would have amounted to a deal-breaker on this subject.

14. This new interpretation – only made known to Mexico by the United States after the USMCA entered into force – is in fact an attempt to replace the Agreement's careful balance, clearly reflected in a unified methodology for calculating the RVC of a motor vehicle, with a

bifurcated calculation methodology that is burdensome, expensive, and without support in the treaty text.

15. The new U.S. unilateral interpretation and its application ignore the express text of several provisions of the Agreement, and ignore the minimum conditions maintained by Mexico in order to accept a new, stricter set of ROO that affects a key sector of Mexican exports. The unilateral interpretation by the United States and its application seek to obtain what the United States was unable to obtain in a good faith negotiation.

16. In addition to being unsupported by the treaty text, the unilateral U.S. interpretation and its application weaken the USMCA by jeopardizing the policy goals sought by all three Parties. Specifically, the new U.S. interpretation and its application would nullify the originating status of motor vehicles that would otherwise qualify for the benefits of the Agreement when its plain text rules are applied.

17. By improperly denying preferential treatment, the new U.S. unilateral interpretation and its application cause significant supply chain disruptions and would harm the relative position of all three Parties in the global auto trade. They also negate the balance carefully negotiated by the Parties and the billions of dollars in investments and compliance efforts already made by the auto industry over the past three years, in reliance on the automotive ROO pursuant to the text of the Agreement, as well as the statements the U.S. negotiators made to the companies about the U.S. position in the negotiations.[12] This new U.S. interpretation now threatens future investments, purchases, and jobs in all three Parties.[13] It would increase compliance costs for automakers beyond what is competitive, thereby creating the unfortunate incentive to supply the region with products manufactured elsewhere, because the costs would outweigh the benefits of duty-free

[12] *See* USTR, *Estimated Impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. Automotive Sector,* Apr. 18, 2019, **Exhibit MEX-09**. (Highlighting $15.3 billion in announced investments and $34 billion in overall planned investments by automakers, and noting that automakers intend to comply with the rules).

[13] Letter from American Automotive Policy Council and others, to Amb. Katherine Tai, Jun. 3, 2021, **Exhibit MEX-10**. (Noting the "uncertainty clouding future investments" caused by the unilateral U.S. interpretation). *See also* **Exhibit MEX-09**, at 1-2 (noting that USTR's estimates for investment, purchases, and employment figures were calculated over five years, a time period not yet reached in the duration of the Agreement).

treatment.[14] Also, because the U.S. interpretation is inconsistent with that of Mexico and Canada, it is resulting in inconsistent application of the ROO in the Parties to the Treaty.

18. In short, the unilateral U.S. interpretation and its application will have the effect that the USMCA automotive ROO achieve exactly the opposite effect of that intended by the Agreement's negotiators, which is present in the objectives of the treaty itself, foreseen in the Preamble, which establishes a clear and predictable legal and commercial framework for business planning. Such a result would be a clear loss for automakers, workers, and the Parties. This is not and was never the intention of the Parties when negotiating, drafting, and concluding the text of the Agreement. For Mexico, the negotiation of the ROO for the automotive sector was one of the highest priorities, considering that this sector is one of its main exports to the United States, and in light of the fact that the U.S. itself has mandated that the ROO must be updated and strengthened to "ensure that the benefits of NAFTA go to products genuinely made in the United States and North America."[15]

19. Mexico considers that the United States should comply with what was agreed in the Agreement and not seek interpretations that are unsupported by the text of the Agreement, nor by the negotiating history; which would affect a key sector in the competitiveness of the North American region and would, affect the business environment and legal certainty, discouraging new investments, trade and supply throughout the region.

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[14] *E.g.,* U.S. International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors (with errata)*, Investigation No. TPA 105-003, Pub. No. 4489, Apr. 2019, at 84, 86 and 89, **Exhibit MEX-11**. ("[S]ome manufacturers have stressed that the provisions have created significant cost burdens on their current North American operations. They have suggested the possibility of shifting production for some models outside of North America instead of making the substantial investments to their operations needed to make USMCA-compliant vehicles."), ("The new ROO would also lead to an increase in U.S. imports from outside North America. The direction of change in U.S. imports from Canada would be mixed: a reduction in imports of small cars and MPVs and an increase in imports of mid- and full-size cars. Small cars are more heavily affected by the changes in ROO because these vehicles tend to source more content from outside North America, so it is more expensive for manufacturers to bring those vehicles into compliance."), ("Also like the Commission, [other industry analysts] note that vehicle manufacturers that decide the cost associated with complying with the USMCA is too high may decide to shift production outside North America [...]").

[15] *See* **Exhibit MEX-05**, p. 6. For clarity, "North America" includes Mexico.

20. In bringing this dispute, Mexico thus seeks U.S. to maintain and apply the plain text of the USMCA automotive ROO, as all three Parties agreed at the time of the negotiation and conclusion of the Agreement, as well as with the provisions set forth in the URs.

21. Mexico has structured this submission as follows.

- **Section II** briefly outlines the procedural background of this dispute.
- **Section III** describes the Panel's terms of reference pursuant to Mexico's Request for the establishment of a Panel.
- **Section IV** sets forth the Panel's standard of review and applicable rules of interpretation.
- **Section V** provides the factual background relevant to the matter in dispute, including a summary of the negotiation process that led to the final treaty text and the proper interpretation of the unified RVC calculation methodology contained in that treaty text.
- **Section VI** identifies the subject matter of this dispute under Article 31.2 (Scope) of USMCA and describes the measures through which the United States has manifested and applied its unilateral interpretation.
- **Section VII** demonstrates that the unilateral U.S. interpretation and its application, including as manifested in certain measures, is inconsistent with the clear (unambiguous), ordinary meaning of the USMCA text. For this purpose, Mexico first establishes the proper reading of the automotive ROO, then shows how the new U.S. interpretation and application is inconsistent with that reading. Mexico also explains how these inconsistencies result in violations of the following provisions:
    - Paragraph 4 of Article 4.5 (Regional Value Content) (**Section VII.A**)
    - Paragraphs 7, 8, and 9 of Article 3 of the (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) Automotive Appendix (**Section VII.B** through **Section VII.D**)
    - Article 4.2(b) (Originating Goods) (**Section VII.E**)
    - Paragraphs 1 and 2 of Article 4.11 (Accumulation) (**Section VII.F**)
    - Paragraph 6 of Article 5.16 (Uniform Regulations) (**Section VII.G**)
    - Paragraphs 1, 2, and 3 of Article 8 (Transitions) of the Automotive Appendix (**Section VII.H**).
    - Finally, and in the alternative, Mexico shows that the unilateral U.S. interpretation nullifies or impairs a benefit Mexico reasonably expected to receive within the meaning of Article 31.2(c) (Scope) (**Section VII.I**).

- **Section VIII** concludes and contains Mexico's requests for findings, determinations, and recommendations.

II. PROCEDURAL BACKGROUND

22. On August 20, 2021, Mexico requested consultations with the United States pursuant to Article 31.4 (Consultations) of the USMCA. Canada notified its intention to participate in the consultations as a Third Party on August 26, 2021 given its substantial interest in the matter raised by Mexico. Consultations occurred between the Parties on September 24, 2021.

23. On January 6, 2022, Mexico requested the establishment of a Panel to hear this dispute pursuant to paragraph 1 of Article 31.6 (Establishment of a Panel) of the USMCA. On January 13, 2022, Canada requested to join the dispute as Co-complainant.

24. On March 23, 2022, the disputing Parties confirmed that the Panel was composed on March 22, 2022, as follows: the Parties selected Mr. Elbio Rosselli to serve as Chairperson; Mexico appointed Ms. Ann Ryan Robertson; Canada appointed Ms. Kathleen Claussen; and the United States appointed Messrs. Jorge Miranda and Donald McRae.

III. TERMS OF REFERENCE

25. In its request, Request for the Establishment of a Panel, Mexico requested the establishment of this Panel with respect to:

> (a) The incorrect interpretation by the United States of the relevant provisions of Chapter 4 (Rules of Origin) of the USMCA and the Uniform Regulations of the USMCA as reflected in the Alternative Staging Regime (ASR) approval letters sent to auto manufacturers;
>
> (b) The current and prospective application by the United States of the incorrect interpretation, which results in the imposition of certain measures that are inconsistent with various obligations of the USMCA and affecting the calculation and determination of origin of passenger vehicles, light trucks and parts thereof, including, but not limited to:

(i) a requirement to calculate the Regional Value Content (RVC) of passenger vehicles, light trucks, and parts thereof based on the incorrect interpretation indicated above as provided in the ASR Approval Letters;

(ii) a requirement for a vehicle producer to calculate RVC based on the incorrect interpretation referred above "*for all vehicles (not just those covered by [its] alternative staging request*)", as provided in the ASR Approval Letters;

(iii) a requirement to submit an annual report based on the incorrect calculation methodology as provided in the ASR Approval Letters;

(iv) a requirement to apply the incorrect U.S. interpretation indicated above as a condition of continued approval of an ASR as provided in the ASR Approval Letters; and

(v) the result of future origin verifications based on the incorrect calculation methodology described above; and

(c) Alternatively, Mexico considers that the measures described above nullify or impair a benefit that Mexico reasonably expected to accrue to it under Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures) and the Uniform Regulations of the USMCA.[16]

26. The disputing Parties have not decided on terms of reference other than those provided in Article 31.7 (Terms of Reference) of the USMCA. In that regard, Mexico requested that the Panel examine the matter in accordance with the terms of reference defined in paragraphs 1 and 2 of Article 31.7(Terms of Reference) of the USMCA.

27. Accordingly, this Panel must:

[16] Mexico's Request for the Establishment of a Panel, Jan. 6, 2022, ¶ 3, **Exhibit MEX-12**.

(a) examine, in light of the relevant provisions of [the USMCA], the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel); and

(b) make findings and determinations and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 31.17 (Panel Report).[17]

28. Alternatively, Mexico has pointed out in its panel request that the application of several provisions "nullify and impair the benefits that Mexico could reasonably have expected […] within the meaning of Article 31.2 (Scope)",[18] hence the examination of such complaint falls within this panel's terms of reference, pursuant to paragraph 2 of Article 31.7, (Terms of Reference) of the USMCA.

IV. STANDARD OF REVIEW AND RULES OF INTERPRETATION

29. Paragraph 1, Article 31.13, (Function of Panels) of the USMCA sets out the role and function of a dispute settlement panel "to make an objective assessment of the matter before it" and to present a report containing factual findings, determinations, recommendations, and its reasons.

30. In making that assessment, paragraph 4 of Article 31.13 (Function of Panels) further provides that, in making that assessment, a panel must interpret the USMCA "in accordance with customary rules of interpretation of public international law", as reflected in Articles 31 and 32 of the *Vienna Convention of the Law of Treaties, done at Vienna on May 23, 1969* "VCLT".

31. Article 31 of the VCLT provides the general rules of interpretation as following:

Article 31

General rule of interpretation

[17] USMCA, Paragraph 1 of Article 31.7 (Terms of Reference).

[18] Mexico's Request for the Establishment of a Panel, Jan 6, 2022, ¶ 17, **Exhibit MEX-12**.

> 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 the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
>
> (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
>
> 3. There shall be taken into account, together with the context:
>
> (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.
>
> 4. A special meaning shall be given to a term if it is established that the parties so intended.

32. Article 32 of the VCLT allows for an additional recourse to supplementary means of interpretation as follows:

> Article 32
>
> *Supplementary means of interpretation*
>
> Recourse may be had 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.

33. A prior USMCA panel described its obligation to apply Articles 31 and 32 of the VCLT as follows:

> […] The Panel must therefore start by identifying the plain and ordinary meaning of the words used. In doing so, the Panel will take into consideration the meaning actually to be attributed to each of the terms of the relevant provisions by looking at the text as a whole, examining the context in which the words appear, and considering them in the light of the object and purpose of the treaty to best illuminate the provision's plain and ordinary meaning.[19]

34. The panel continued by noting that its analysis under the VCLT was also guided by two "longstanding and foundational principles of treaty interpretation." In particular:

> […] The first key principle applied by the Panel is that "[a]n interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility." This can also be understood as the interpreter's obligation to "give meaning and effect to all the terms of the treaty," and reject interpretations that "deprive [the provision] of effectiveness." Effectiveness must be achieved through an interpretation that gives full meaning to all provisions of a treaty, beyond purely nominal effectiveness.
>
> A second key principle applied by the Panel is that interpretation must be designed to "ascertain the 'common intention' of the parties, not the intention of [one party] alone." In these proceedings, this means that unilateral evidence of intention . . . is insufficient for interpretation of treaty provisions.[20]

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[19] Panel Report, *Canada – Dairy TRQ Allocation Measures (USMCA)*, CDA-USA-2021-31-010, Dec. 20, 2021, ¶ 55, **Exhibit MEX-13**, (Internal citations omitted). *See also Panel Report, United States – Cross-Border Trucking Services (NAFTA)*, USA-MEX-98-2008-01, February 6, 2001, ¶¶ 217-224, **Exhibit MEX-38.**

[20] Panel Report, *Canada – Dairy TRQ Allocation Measures (USMCA)*, CDA-USA-2021-31-010, Dec. 20, 2021, ¶¶ 58-59, **Exhibit MEX-13**, (internal citations omitted).

35. Articles 31 and 32 of the Vienna Convention are of particular importance in this dispute because the new unilateral U.S. interpretation of the USMCA provisions identified in Mexico's Request for the Establishment of a Panel, and in this submission, together with its current and future application ignore the plain and ordinary meaning of the treaty text,[21] its context, and its object and purpose.[22] Available supplementary means of interpretation also readily "confirm" the proper meaning and further highlight the inconsistency of the U.S. position.[23]

V. FACTUAL BACKGROUND

A. Background on the USMCA Automotive ROO Negotiations

36. Negotiations to replace NAFTA with the USMCA commenced in August 2017 and concluded in the signing of the trilateral agreement on November 30, 2018. That agreement, the USMCA, contains a major modification of the ROO related to trade in automotive goods among the three Parties, and specific additional provisions, contained within the Appendix (Provisions Related to the Product-Specific Rules of Origin for Automotive Goods) to Annex 4-B (Product-

[21] Panel Report, *Canada – Dairy TRQ Allocation Measures (USMCA)*, CDA-USA-2021-31-010, Dec. 20, 2021, ¶ 55, **Exhibit MEX-13**. *See also* Appellate Body Report, *US – Carbon Steel*, ¶ 62, **Exhibit MEX-14** ("The task of interpreting a treaty provision must begin with its specific terms."); Appellate Body Report, *Japan – Alcoholic Beverages II***,** at 22, **Exhibit MEX-15** ("The words actually used in the Article provide the basis for an interpretation that must give meaning and effect to all its terms. The proper interpretation of the Article is, first of all, a textual interpretation."); and Appellate Body Report, *EC – Hormones***,** ¶ 181, **Exhibit MEX-16**. ("The fundamental rule of treaty interpretation requires a treaty interpreter to read and interpret the words actually used by the agreement under examination, and not words which the interpreter may feel should have been used.").

[22] Panel Report, *Canada – Dairy TRQ Allocation Measures (USMCA)*, CDA-USA-2021-31-010, Dec. 20, 2021, ¶¶ 55-57, **Exhibit MEX-13**. *See also* Panel Report, *US – Section 301 Trade Act***,** ¶ 7.22, **Exhibit MEX-17** ("Text, context and object-and-purpose correspond to well established textual, systemic and teleological methodologies of treaty interpretation, all of which typically come into play when interpreting complex provisions in multilateral treaties. For pragmatic reasons the normal usage, and we will follow this usage, is to start the interpretation from the ordinary meaning of the 'raw' text of the relevant treaty provisions and then seek to construe it in its context and in the light of the treaty's object and purpose. However, the elements referred to in Article 31 –text, context and object-and-purpose as well as good faith– are to be viewed as one holistic rule of interpretation rather than a sequence of separate tests to be applied in a hierarchical order.")

[23] Panel Report, *Canada – Dairy TRQ Allocation Measures (USMCA)*, CDA-USA-2021-31-010, Dec. 20, 2021, ¶¶ 129-130, **Exhibit MEX-13**.

Specific Rules of Origin) of Chapter 4 (Rules of Origin), commonly known as the "Automotive Appendix".[24]

37. [[ ]]

38. Mexico and Canada considered this U.S. proposal disruptive and unacceptable, as it did not adequately incorporate the interests of either Party,[27] and it did not account for the interests of the "North American auto industry", which characterized the U.S. proposal as a deliberate "poison pill."[28] Nearly 75 members of the U.S. Congress agreed that the original U.S. proposal would "adversely affect" the auto industry and would "eliminate [its] competitive advantages."[29] Given the divergent positions, discussions on the automotive ROO did not substantially progress for several months.

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24 *See* USMCA Article 4.10 (Automotive Goods) and the Automotive Appendix.

25 *See, e.g.,* D. Lawder, *U.S. demands regional steel, aluminum in NAFTA auto rules: sources*, REUTERS, Oct. 13, 2017, **Exhibit MEX-18**.

26 *See* Trilateral Report of the Rules of Origin Group to the Chief Negotiators on the Fourth Round., **Exhibit MEX-78.** *See also* Affidavit by [[ ]], March 10, 2022, ¶ 9, **Exhibit MEX-19,** Affidavit by [[ ]], March 9, 2022, ¶ 12, **Exhibit MEX-23,** and Affidavit by [[ ]], March 21, 2022, ¶ 10, **Exhibit MEX-77**.

27 *Lighthizer hits Mexico, Canada for 'resistance,' announces round five delay*, INSIDE U.S. TRADE, Oct. 19, 2017, **Exhibit MEX-20**.

28 *See Business groups form coalition to urge protection of NAFTA, oppose some U.S. proposals*, INSIDE U.S. TRADE, Oct. 19, 2017, **Exhibit MEX-21**.

29 Letter to Hon. Robert Lighthizer from U.S. Members of Congress, Nov. 15, 2017, **Exhibit MEX-22.**

39. [[ ]]

40. The discussions that resulted in the carefully-written Automotive Appendix took place after the seventh official round of negotiations, during technical and ministerial meetings held in Washington, D.C., during the so-called permanent round of negotiations.

41. [[ ]]

42. [[ ]]

[[ ]]

30 *See* Affidavit by [[ ]], March 15, 2022, ¶ 13, **Exhibit MEX-23**. *See also* Affidavit by [[ ]], March 10, 2022, ¶ 10, **Exhibit MEX-19**.

31 *See* Affidavit by [[ ]], March 15, 2022, ¶ 14, **Exhibit MEX-23**.

32 *See* Trilateral Report of the Rules of Origin Group to the Chief Negotiators on the Sixth Round, **Exhibit MEX-81**.

33 Affidavit by [[ ]], March 15, 2022, ¶ 15, **Exhibit MEX-23**.

43. In the automotive ROO discussions, Mexico and Canada argued that the onerous requirements originally tabled by the United States would hurt the region and would likely cause automakers to leave North America. As the negotiation of the ROO was a priority for Mexico, these negotiations were very intensive. In fact, the Mexican government and its auto industry had continuously pushed back against the original proposal of the United States in order to ensure that the overall competitiveness in the sector would not be diminished.[34]

44. However, as the negotiation progressed, Mexico and Canada, in collaboration with original equipment manufacturers ("OEMs") with presence in the three Parties, went to great lengths to seek constructive approaches and ways to evaluate and update the ROO in light of the technological developments, with the objective of contributing to the competitiveness of the automotive industry in North America.

45. [[ ]]

[[ ]]

46. [[ ]]

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34 *See, e.g.*, I. Rodríguez, *Estados Unidos gana a México en la negociación automotriz...pero no lo noquea*, EXPANSION, Aug. 27, 2018, **Exhibit MEX-24**.

35 United States, *NAFTA 2.0 Rules of Origin Autos and Auto Parts*, March 13, 2018, **Exhibit MEX-25**.

36 *See* Affidavit by [[ ]], March 15, 2022, ¶ 16, **Exhibit MEX-23**.

[[ ]]

[[ ]]

47. [[ ]]

48. [[ ]]

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37 *See NAFTA Auto ROO AIP (Agreement in Principle US-CA),* April 20, 2018, **Exhibit MEX-80**.

38 *See* Affidavit by [[ ]], March 10, 2022, ¶ 12, **Exhibit MEX-19**.

39 United States, *Concept Paper – Rules of Origin for Automotive Goods,* Apr. 26, 2018, **Exhibit MEX-26**.

40 *See* Affidavit by [[ ]], March 15, 2022, ¶ 15, **Exhibit MEX-23** and *see* Affidavit by [[ ]], March 10, 2022, ¶ 17, **Exhibit MEX-19**. See also United States, *NAFTA 2.0 Rules of Origin Autos and Auto Parts*, March 13, 2018, ¶¶ 23 and 24, **Exhibit MEX-25**.

41 "Roll-up" is the principle whereby materials that have acquired originating status are allowed to be considered as 100% originating when used as an input in a subsequent production. *See* paragraph 60 below. On the other hand, the tracing system is that by which compliance with origin is focused on the value of certain materials, allowing the value of the other materials to be counted as originating. *See* paragraph 53 below.

[[redacted]]

49. [[redacted]]

B. The Negotiations Resulted in USMCA Automotive ROO That Are Substantially Stricter and More Complex than Their Prior NAFTA Counterparts

50. The final result of these negotiations (discussed in greater detail below) is reflected in the text of the USMCA, namely a 75% RVC threshold for vehicles upon full implementation of the

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42 *See* Affidavit by [[redacted]], March 10, 2022, ¶ 16, **Exhibit MEX-19**.

43 *Agreement in Principle on Rules of Origin for Automotive Goods,* Aug. 27, 2018, ¶ 26, **Exhibit MEX-27**.

44 In NAFTA vehicles' RVC was calculated under a net cost with tracing system that focused origin compliance on the value of certain materials ('traceable materials'), allowing the value of other types of non-originating materials ('non-traceable materials') to be deemed originating. *See also* Affidavit by [[redacted]], March 15, 2022, ¶ 18, fn 5 **Exhibit MEX-23**.

45 *See* Affidavit by [[redacted]], March 10, 2022, ¶ 19, **Exhibit MEX-19**. *See also* Affidavit by [[redacted]], March 15, ¶ 22, **Exhibit MEX-23**.

46 *See* Affidavit by [[redacted]], March 10, 2022, ¶ 19, **Exhibit MEX-19**. *See also*, Affidavit by [[redacted]], March 15, ¶ 18, **Exhibit MEX-23**.

47 Affidavit by [[redacted]], March 21, 2022, ¶ 15, **Exhibit MEX-77.**

Agreement.[48] That 75% RVC threshold requirement[49] is supported by an RVC threshold at the same 75% level for designated "core parts",[50] as well as slightly lower RVC thresholds for "principal parts" (70%) and "complementary parts" (65%). In this way, the text provides for a unified calculation methodology whereby a vehicle producer may choose to use different variables to determine whether a vehicle meets both the RVC for the core parts and the RVC for the finished vehicle, as described in detail below.[51]

51. These RVC requirements are subject to a transition period to allow all participants in the automotive industry to make the necessary adjustments and investments to conform to these new, stricter requirements. The staged requirements under the general transition period for passenger vehicles and light trucks are depicted in Figure 1 below.[52]

Figure 1: Normal RVC Staging Requirements

Requirement	Entry into Force (EIF)	1 year after EIF	2 years after EIF	3 years after EIF
Vehicle RVC	66%	69%	72%	75%
Core Parts RVC	66 %	69 %	72%	75%
Principal Parts RVC	62.5%	65%	67.5%	70%
Complementary Parts RVC	62%	63%	64%	65%

Source: Own preparation.

52. The USMCA also requires each Party to provide automakers the opportunity to petition for the use of an ASR with certain minimum requirements that would lengthen the transition period from three to five years and provide targets to automakers on an individual basis.[53]

48 USMCA Automotive Appendix, Article 3.1(d).

49 More than an additional 10% to NAFTA's requirement and even higher due to the elimination of NAFTA's tracing list.

50 USMCA Automotive Appendix, Article 3.2(d) and Article 3.7.

51 USMCA Automotive Appendix, Articles 3.7, 3.8 and 3.9.

52 Similar requirements apply to production of heavy trucks, with different applicable percentages.

53 USMCA Automotive Appendix, Article 8 (Transitions).

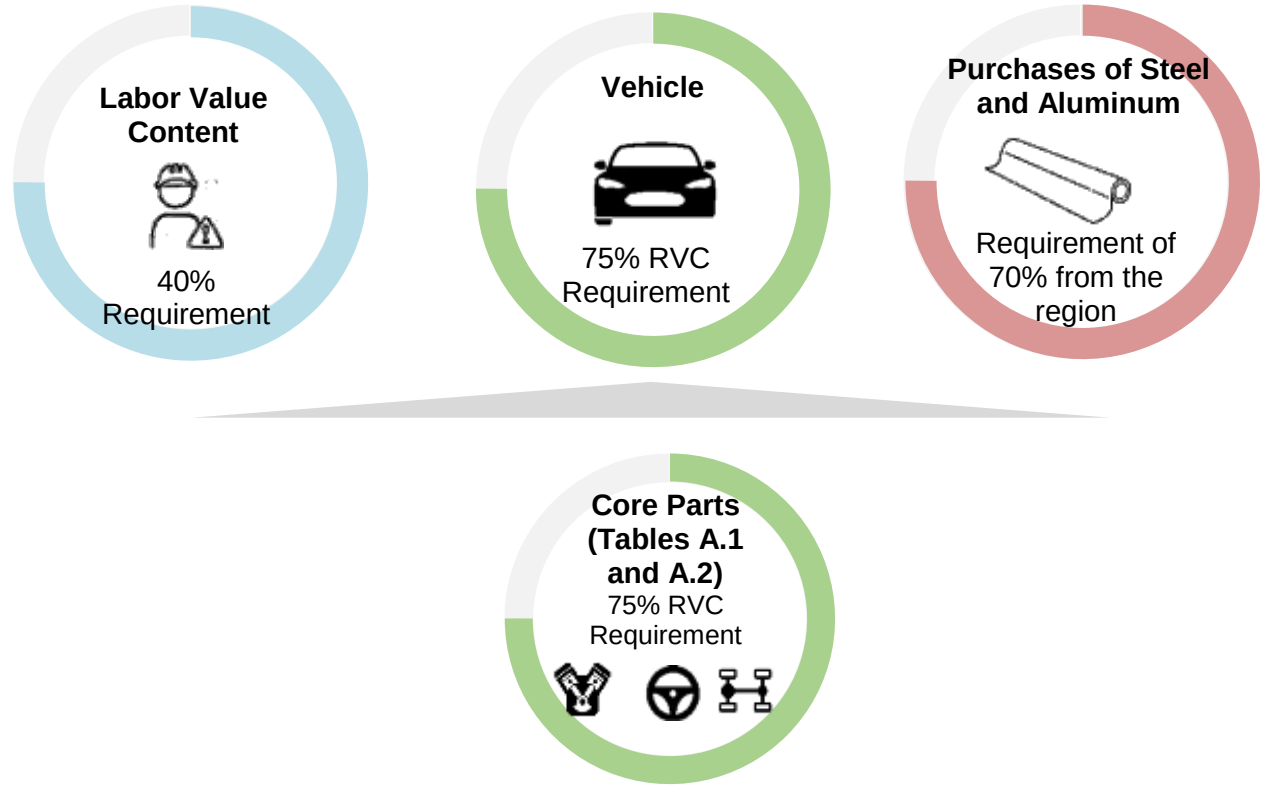
53. For comparative purposes, to determine whether a vehicle was originating, NAFTA exclusively demanded that the good complied with a 62.5% of RVC under the net cost method using a tracing system that focuses compliance with the origin in the value of certain materials ("traceable materials"), allowing that the value of other non-originating materials ("non-traceable materials") could be accounted as originating ("deemed originating"). The following Figure shows the USMCA RVC components from a NAFTA approach.

Figure 2: NAFTA Approach to an Originating Vehicle

Source: Own preparation.

54. The following Figure contains the requirements of the treaty for the compliance of the automotive ROO's RVC pursuant to the USMCA approach (with their final threshold values) and the main differences compared to the NAFTA approach.

Figure 3: USMCA Approach to an Originating Vehicle



Source: Own elaboration.

C. The USMCA Automotive Rules of Origin Contain a Unified Methodology for RVC Calculation of Core Parts and Finished Vehicles

55. At the heart of this dispute is the methodology by which automakers must calculate the RVC of their finished vehicles, and how that methodology incorporates the RVC of the core parts. In this Section, Mexico describes the proper interpretation and application of the USMCA automotive ROO, which provide for a single, unified methodology for the calculation of the RVC of core parts and finished motor vehicles. This interpretation is clearly supported by the plain and ordinary meaning of the treaty text (**Section V.C.1**), the treaty context (**Section V.C.2**), and its object and purpose (**Section V.C.3**). The negotiating history and other preparatory work further confirm the ordinary meaning (**Section V.C.4**).

1. The Ordinary Meaning of the USMCA Text is Clear and Mandates a Unified RVC Calculation Methodology

56. At its most fundamental level, this dispute concerns a determination as to whether certain goods – that is, motor vehicles and their parts – are "originating" under the terms of the USMCA such that they qualify for duty preferences and other benefits.

57. An "originating good" or "originating material" is a "good or material that qualifies as originating" under Chapter 4 (Rules of Origin) of the USMCA.[54] In that respect, specifically relevant here, Article 4.2 (b) (Originating Goods) states that:

> "Each Party shall provide that a good is originating if it is [...] produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all applicable requirements of Annex 4-B (Product Specific Rules of Origin) [...] and the good satisfies all other applicable requirements".

58. Article 4.5 (Regional Value Content) of the USMCA sets forth the methodologies and formulas used for the calculation of the RVC of a good such that it can be considered "originating." Respectively, paragraphs 2 and 3 of Article 4.5 provide for a "transaction value method" and a "net cost method" for calculating the RVC. For both methods, the main variables in the calculation are the value of the good and the value of the non-originating materials ("VNM") used in the production of the good. Pursuant to Article 2 and Article 3.1 of the Automotive Appendix vehicle's RVC must be calculated using the net cost ("NC") methodology That formula is as follows:

$$RVC = \frac{(NC - VNM)}{NC} x\ 100$$

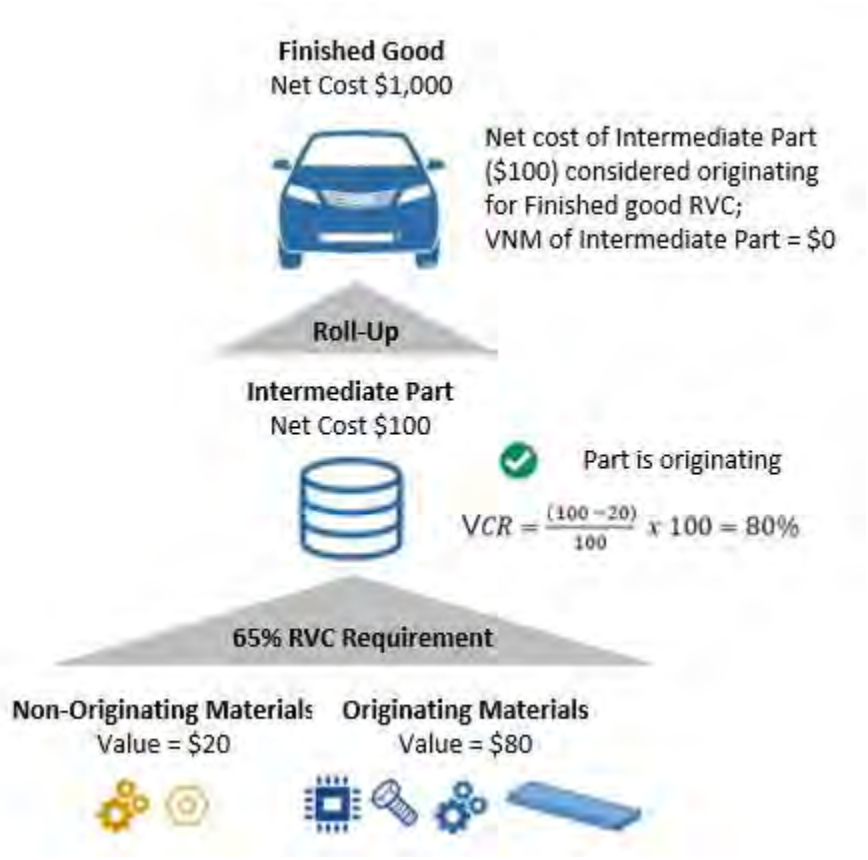
59. Paragraphs 4 and 5 of Article 4.5 (Regional Value Content), read together with Article 4.11 (Accumulation), explicitly set forth the additional principles of roll-up and accumulation, which are applicable to calculating the VNM variable in the formula above, which are common across many free trade agreements.

60. "Roll-up" (also known as absorption) is the well-known, basic principle that allows materials that have acquired originating status by meeting specific processing or content requirements to be considered 100% originating when used as an input in further production. Thus, when roll-up is permitted, non-originating content in the input or intermediate component is not

[54] USMCA, Article 4.1 (Definitions).

taken into account in the calculation of the originating content of the subsequent product.[55] In other words, it is not included in the VNM used in the RVC calculation of the finished good because the entire cost of that input or intermediate component is considered originating for purposes of that RVC calculation, as shown below.

Figure 4: Illustration of Roll-Up



Source: Own elaboration

61. Paragraph 4 of Article 4.5 (Regional Value Content) of the USMCA allows the VNM to be disregarded on a good that has already qualified as 'originating'. This provision incorporates the roll-up principle by providing:

> "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

[55] International Trade Centre, World Customs Organization & World Trade Organization, *Rules of Origin Facilitator: Roll-up*, **Exhibit MEX-30**.

> used to produce originating materials that are subsequently used in the production of the good." (Emphasis added)

62. In other words, once a non-originating material is used in the production of an originating material that is subsequently used in the production of a finished good, the value of that non-originating material *must not be included within the VNM* used in the calculation of the RVC of the finished good.

63. As explained in further detail in the next section, this concept is specifically developed for passenger vehicles, light trucks and parts thereof in Section 14(1) of the UR entitled "Roll-Up of Originating Materials", which establishes that:

> "The value of non-originating materials used by the producer in the production of a passenger vehicle, light truck and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good".

64. The Parties were well familiar with the roll-up concept when negotiating the USMCA because an equivalent provision was included within the NAFTA at Article 402.4 (Regional Value Content): "Except as provided in Article 403(1) and for a motor vehicle identified in Article 403(2) or a component identified in Annex 403.2, the value of non-originating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value content of the good [...] include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good."

65. Likewise, accumulation (also known as cumulation) is the well-known, basic principle that allows producers to include as part of the RVC of a finished good any regional value added by suppliers of non-originating materials used to produce the finished good, regardless of whether that added value was sufficient to confer originating status to the material.[56] Thus, accumulation allows producers to reduce the VNM used in the production of the finished good when calculating its RVC, by taking into account the regional contributions to the otherwise non-originating materials.

[56] International Trade Centre, World Customs Organization & World Trade Organization, *Rules of Origin Facilitator: Accumulation/Cumulation*, **Exhibit MEX-31**.

66. Accumulation of materials is expressly provided for in paragraph 1 of Article 4.11(Accumulation) of the USMCA, which states:

> "Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.2 (Originating Goods) and all other applicable requirements in this Chapter."

67. Moreover, paragraph 4 of Article 4.5 (Regional Value Content) reiterates this principle. Like the roll-up principle, accumulation was also provided for in the NAFTA, at Article 404 (Accumulation).

68. Thus, notwithstanding the many changes between USMCA and NAFTA, it is clear that the fundamental concepts of roll-up and accumulation were maintained so as to form an essential component of the Agreement's carefully constructed balance between stricter automotive ROO requirements and alternative methods for compliance provided for in the Agreement, to ensure continued industry competitiveness.

69. Article 4.10 (Automotive Goods) of the USMCA then notes that additional provisions contained in the Automotive Appendix apply to RVC calculations for automotive goods. The Automotive Appendix is an Appendix to Annex 4-B (Product Specific Rules of Origin), and, as an integral part thereof, is part of the applicable ROO to automotive goods, as described in Article 4.2(b). In this sense, Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix further describes the RVC requirements for passenger vehicles and light trucks.

70. Article 3 of the Automotive Appendix begins by stating the RVC thresholds required for passenger vehicles and light trucks (paragraph 1), core parts listed in Table A.1 (paragraph 2), principal parts listed in Table B (paragraph 4), and complementary parts listed in Table C (paragraph 5). These thresholds under general staging were reproduced above in **Figure 1**. Paragraph 3 notes that a core part "is originating only if it satisfies the [RVC] requirement in paragraph 2," but provides an exception to paragraph 2 for advanced batteries used for electric vehicles.

71. Paragraph 6 of Article 3 of the Automotive Appendix establishes that for the RVC calculation of passenger vehicle, light truck, core parts, principal and complementary parts, the cross-cutting provisions set forth in Articles 4.5 (Regional Value Content), 4.6 (Value of Materials Used in Production), 4.7 (Further Adjustments to the Value of Materials) and 4.8 (Intermediate Materials) of Chapter 4 and Article 5 (Averaging) of the Automotive Appendix shall apply. This provision clarifies and instructs importers or manufacturers on how to treat specific materials used to produce the goods in question, and in particular on how to calculate the VNM. Its location within Article 3 is a consequence of the fact that all specific thresholds for parts and vehicles are determined in the previous paragraphs. In other words, paragraph 6 confirms that the general formulas and principles set forth in Article 4.5 apply to RVC calculations of motor vehicles and their various parts, including core parts.

72. Core parts are those listed in Table A.1 of the Appendix, which are repeated in shorthand in Column 1 of Table A.2, and include, engines, transmissions, body and chassis, axles, suspension systems, steering systems, and (for electric vehicles only) advanced batteries. Specifically, Tables A.1[57] and A.2[58] of the Automotive Appendix read as follows:

TABLE A.1
CORE PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

Note: The 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.

HS 2012	**DESCRIPTION**
8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc

[57] USMCA Automotive Appendix, Table A.1, **Exhibit MEX-32**.

[58] USMCA Automotive Appendix, Table A.2, **Exhibit MEX-33**. The revised URs adopted bythe USMCA's Free Trade Commission Decision No. 2, dated May 18, 2021, contain a clarified and more specific version of Table A.2 which includes references to the applicable HS subheadings for the applicable components (i.e., key parts) of the core parts identified in Column 1. Table A.2 as it appears in the URs is attached as **Exhibit MEX-34**.

8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc
Ex 8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of subheading 8704.21 or 8704.31
8409.91	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, suitable for use solely or principally with spark-ignition internal combustion piston engines
8409.99	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, other
8507.60	Lithium-ion batteries
8706.00	Chassis fitted with engines, for the motor vehicles of heading 87.03 or subheading 8704.21 or 8704.31
8707.10	Bodies for the vehicles of heading 87.03
8707.90	Bodies for the vehicles of subheading 8704.21 or 8704.31
Ex 8708.29	Body stampings
8708.40	Gear boxes and parts thereof
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles; parts thereof
8708.80	Suspension systems and parts thereof (including shock absorbers)
8708.94	Steering wheels, steering columns, and steering boxes; parts thereof
Ex 8708.99	Chassis frames

TABLE A.2
PARTS AND COMPONENTS FOR DETERMINING THE ORIGIN OF PASSENGER VEHICLES AND LIGHT TRUCKS UNDER ARTICLE 3 OF THIS APPENDIX

Column 1	Column 2
PARTS	**COMPONENTS**
ENGINE	Heads, Blocks, Crankshafts, Crankcases, Pistons, Rods, Head subassembly
TRANSMISSION	Transmission cases, Torque converters, Torque converter housings, Gears and gear blanks, Clutches, Valve body assembly
BODY AND CHASSIS	Major body panels, Secondary panels, Structural panels, Frames
AXLE	Axle shafts, Axle housings, Axle hubs, Carriers, Differentials
SUSPENSION SYSTEM	Shock absorbers, Struts, Control arms, Sway bars, Knuckles, Coil springs, Leaf springs
STEERING SYSTEM	Steering columns, Steering gears/racks, Control units
ADVANCED BATTERY	Cells, Modules/arrays, Assembled packs

73. Pursuant to paragraph 7 of Article 3 of the Automotive Appendix, a passenger vehicle is only originating if its core parts are originating. Paragraph 7 then confirms the requirement in paragraph 3 that the core parts are only originating if they "satisf[y] the regional [RVC] requirement in paragraph 2" (aside from advanced batteries). Paragraph 7 thus explicitly refers back and instructs that a calculation be made pursuant, to paragraph 2, which itself refers to Article 4.5. Paragraph 7 also permits the Parties to further define and clarify the parts and components listed in Table A.2 in the URs, which the Parties have subsequently reflected in such URs.[59]

74. For purposes of calculating the RVC of a vehicle's core parts – and, thus, their originating status – paragraphs 8 and 9 of Article 3 of the Automotive Appendix provide, the alternative methodologies of calculating the VNM aspect of the RVC equation that is otherwise set forth in Article 4.5 of Chapter 4. Either can be used "at the producer's option"[60] to determine whether the core parts qualify as "originating".[61]

75. Paragraph 8(a) of Article 3, allows producers to calculate the VNM of each core part individually by adding the values of all non-originating materials used in the production of that part. In conjunction with paragraphs 2 and 3 of Article 4.5 of Chapter 4, paragraph 8(a) of Article 3 of the Automotive Appendix sets forth the standard methodology to calculate the RVC of a core part in that it parallels the method that would be used for all other goods to account for the values of a combination of originating and non-originating parts that were used in the production of that good.

76. For the first alternative methodology, paragraph 8 (b) allows producers to qualify the core parts as originating by only considering the VNM of the non-originating components listed in Column 2 of Table A.2, instead of all non-originating materials used in those parts.

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[59] *See* Free Trade Commission, Decision No. 2., Annex I: URs, Table A.2, May 18, 2021, **Exhibit MEX-34**.

[60] USMCA Automotive Appendix, Article 3, paragraphs 8 and 9.

[61] Paragraph 8 states, "Each Party shall provide that for the purposes of calculating the regional value content *under Article 4.5* [...] for a part under Column 1 of Table A.2" (emphasis added), while paragraph 9 then begins with "[f]urther to paragraph 8 [...]" and describes an equally acceptable alternative to the option provided in paragraph 8. The calculations pursuant to paragraphs 8 and 9 are thus made "under Article 4.5".

77. Parts listed in Column 2 of Table A.2 are otherwise known as "key parts." Key parts, which are specifically itemized for each core part based on tariff classification, are the major parts of the core part. For example, even though the axle core part may contain over 100 total parts, the "key parts" of the axle core part, according to Column 2 of Table A.2, only include the axle shafts, axle housings, axle hubs, carriers, and differentials.

78. Thus, under the standard methodology for calculating the VNM of the core parts provided in subparagraph 8(a), a producer should add together the value of *all* of the non-originating materials used in the production of the core parts. Under the first alternative focused value method in subparagraph 8(b), however, the producer need only add up the value of non-originating materials used in the key parts listed in Column 2 of Table A.2. Whether a producer uses the method in paragraph 8(a) or 8(b) to calculate the VNM of the core part, the entire core part qualifies as originating when the RVC meets or exceeds the threshold listed in paragraph 2 of Article 3 of the Automotive Appendix.

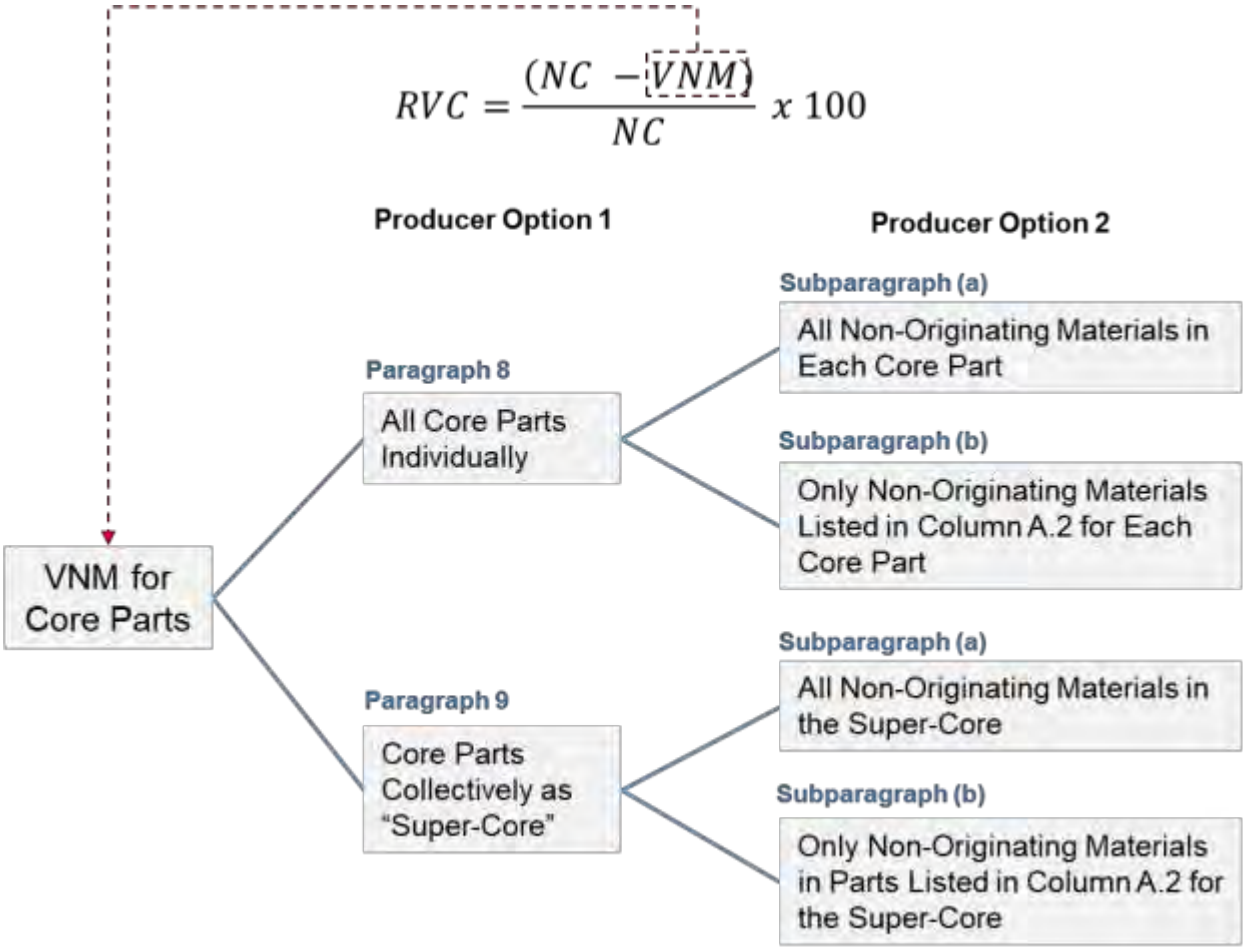
79. For the second method alternative, paragraph 9 of Article 3 allows producers to calculate the VNM of all the core parts listed on Column 1 of Table A.2 as a single "super-core part", again using, at the producer's option, either:

(a) the sum of the VNM of all non-originating materials used in the production of the super-core part; *or*

(b) the sum of the VNM of only the components that are identified in Column 2 of Table A.2 (*i.e.*, the key parts), that are used in the production of the super-core part.

80. Paragraph 9 of Article 3 further provides that if the super-core part RVC meets the required threshold (75%), 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*" that core parts be originating (emphasis added). The VNM calculation options "at the producer's option" are collectively depicted below.

Figure 5: VNM Calculation Methods "at the Producer's Option"



Source: Own elaboration

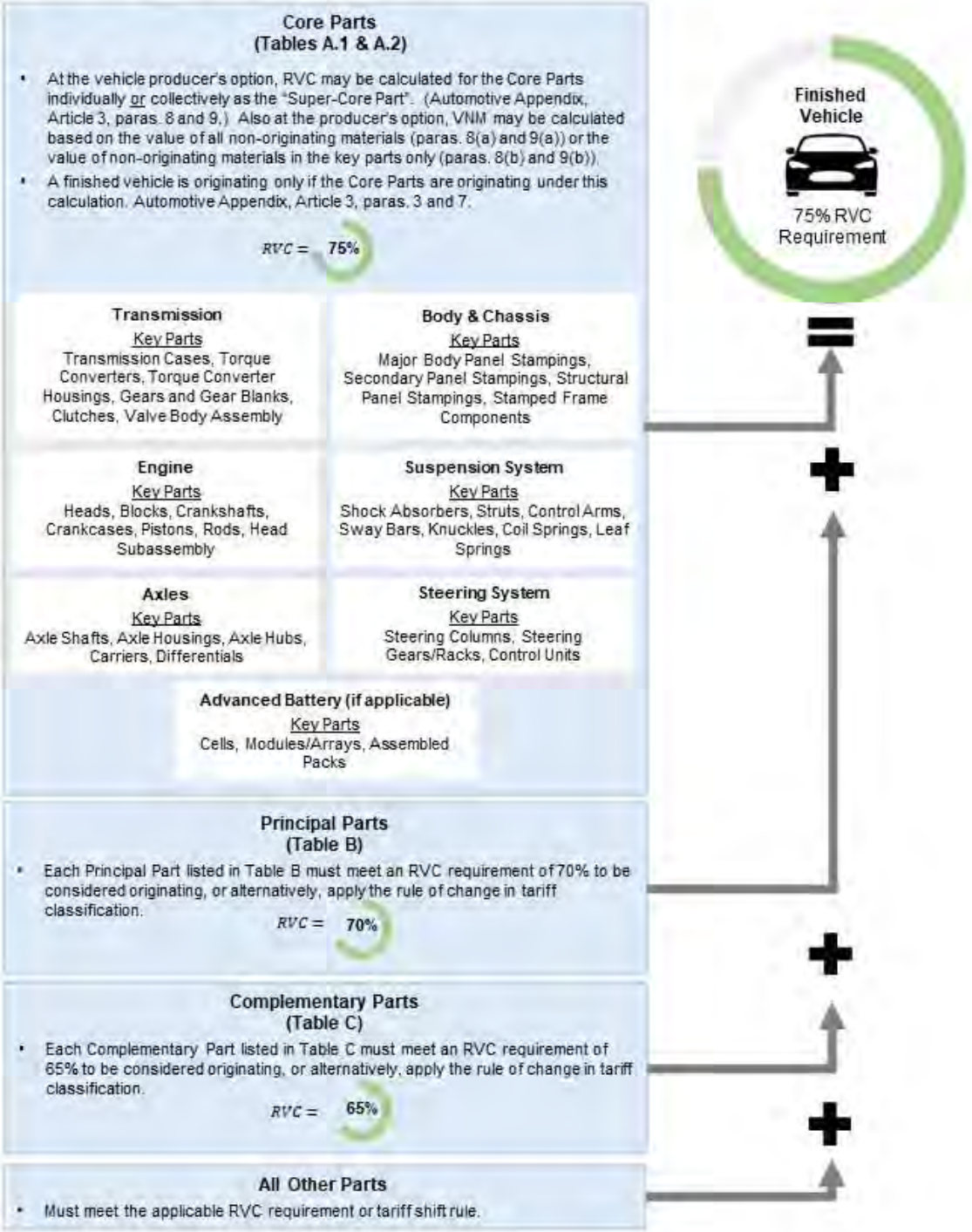
81. In other words, at the choice of a producer, the RVC of a vehicle's core parts may be calculated as individual parts under paragraph 8 of Article 3 of the Automotive Appendix, or as a single super-core part under paragraph 9 of said Article. Under either method, regardless of how the producers elected to calculate the VNM, the core parts are considered 100% originating once the RVC threshold for the core parts (individually or as a super-core part) is met, and, the total value of the core parts may be considered originating in the RVC calculations of the finished vehicle to which they will be incorporated.

82. Finally, regarding the determination of the RVC of the finished vehicle under Article 4.5 of the USMCA, paragraph 4 of that provision stipulates that the VNM for purposes of calculating the RVC of that good "shall not [...] include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good."

83. Accordingly, the VNM of a finished vehicle "shall not include" the VNM of any non-originating material used to produce a core part, since all core parts would have already been determined to be "originating" under paragraphs 7 through 9 of Article 3 of the Automotive Appendix. In this way, the USMCA requires the Parties to implement a single, unified calculation methodology that rolls up originating materials used in the production of the core parts into the RVC calculation of the finished vehicle. Specifically, it prohibits the inclusion of the VNM for materials (i.e., key parts or other parts and components) used in the production originating of core parts (or the super-core part) within the VNM of the finished vehicle in the finished vehicle's RVC calculation. For better reference, a visual depiction of the full calculation is provided in Figure 6 below.

Figure 6: Depiction of Full RVC Calculation pursuant to Article 3 of the Automotive Appendix of USMCA

More detailed depiction of RVC calculation



Source: Own elaboration

2. The result of the URs negotiations in the Context of the USMCA Confirm Mexico's Interpretation

84. According to paragraph 1 of Article 5.16 (Uniform Regulations) of the USMCA, the Parties adopted through Decision No. 1 of the Free Trade Commission,[62] the URs regarding the interpretation, application, and administration of certain chapters of the Agreement, including Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures). The URs thus interpret, elaborate, and clarify the provisions of the USMCA, and cannot go beyond what was agreed in the Agreement. Besides, the URs are designed to guarantee a consistent and even treatment, with the aim of offering certainty to importers, exporters, and producers of all three countries.[63]

85. After the USMCA was signed in November 2018, discussions regarding implementation continued between the Parties, and with automakers and suppliers, over the next eighteen months. These discussions focused on the drafting of the URs, the development of the ASRs for automakers requiring additional time to transition to the USMCA's more stringent ROO, and discussions with industry regarding their transition plans.

86. [[ ]]

62 Such decision establishes that "The Agreement requires certain actions be taken by the date of entry into force of the Agreement", and it was adopted "in light of the entry into force of the Agreement", Free Trade Commission Decision No. 1, July 2, 2020, **Exhibit MEX-35**. The Urs were subsequently replaced by the versions annexed in the Free Trade Commission Decision No. 2, **Exhibit MEX-36.***See* Free Trade Commission Decision No. 2, May 18, 2021.

63 *See* Affidavit by [[ ]], March 15, 2022, ¶ 25, **Exhibit MEX-23**. *See also* Ministry of Economy, Reporte T-MEC No. 49, Jun. 15, 2020, **Exhibit MEX-79.**

64 *See* Affidavit by [[ ]], March 15, 2022, ¶ 29, **Exhibit MEX-23**.

87. In December 2018, the United States began soliciting preliminary alternative staging plans from automakers. In developing these plans throughout 2019 and early 2020, automakers continued to routinely consult with the negotiators from all three Parties to gain clarity on the operation of rules contained within the Automotive Appendix and the manner in which RVC calculations should be performed consistent with those provisions.[65]

88. Representatives of many automakers also met in person with the relevant Mexican, Canadian, and U.S. officials throughout this process. Throughout this time, the Parties and their negotiators were giving consistent advice to the automakers, and were doing so consistent with the text of the Agreement, which was based in a unified RVC calculation method, as demonstrated by materials distributed at these meetings and explained in further detail below.[66] Mexico even became aware that as early as October 2019, well before the United States advanced its new unilateral interpretation of the Automotive ROO, the United States Trade Representative at the time, Robert Lighthizer, even gave preliminary personal approval of some automakers' transition plans that relied on this unified RVC calculation method and related guidance from officials in the Office of the USTR in that sense.

89. Simultaneously, the Parties continued the trilateral negotiations needed to reach agreement on the URs provisions applicable to the Automotive Appendix. The URs were eventually posted publically by each Party on June 3, 2020, subject to a final "legal scrub". The USMCA and the URs then entered into force on July 1, 2020. It should be noted that, during the negotiation of the URs, applicable to the interpretation, application and administration of Chapters 4 to 7 of the Agreement, the Parties agreed to provide practical information and rules of operation for a better understanding, as well as the correct application of the provisions on rules of origin. In particular, Section 14 of the URs describes in greater detail the application of the roll-up principle and the use of alternative methodologies for core parts.

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65 Sample Correspondence between Automakers and USTR Officials, 2018-2019, **Exhibit MEX-28**.

66 *E.g.,* U.S., "USMCA Rules of Origin for Automotive Goods", March 6, 2020, at 3, 6 and 11, **Exhibit MEX-29**. ("The value of non-originating materials cannot include the value of non-originating materials used to produce originating materials subsequently used in the production of the good."), ("NO MORE TRACING; 'Roll-up' of originating intermediate parts; Accumulation of originating content"). The presentation materials were prepared by the United States to hold a meeting with representatives of Mexico's auto industry.

90. The URs are therefore directly related to the conclusion of the USMCA, particularly, with its application, administration and interpretation, in order to ensure proper compliance with the rules set forth in Chapters 4 to 7 and constitute an "agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty" within the meaning of Article 31(2)(a) of the VCLT. Simultaneously, the URs can also be considered a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" as provided for in Article 31.3(a) of the VCLT.[67]

91. Thus, the URs must therefore be taken into account as relevant context in interpreting specific USMCA provisions under Article 31 of the VCLT. In this regard, the URs serve as further evidence of the incorrect nature of the U.S. unilateral interpretation.

92. In the case of URs for automotive ROO, [[ ]].[68] With this understanding, Section 14 of the URs sets out "further requirements related to the regional value content for passenger vehicles, light trucks, and parts thereof." As mentioned above, Subsection 14(1), entitled "roll-up of originating materials"[69], repeats the foundational principle articulated in paragraph 4 of Article 4.5 (Regional Value Content) as stated above, and adds that "[f]or greater certainty, if the production undertaken on non-originating materials results in the production of a good that qualifies as originating, *no account is to be taken of the non-originating material contained therein if that good is used in the subsequent production of another good*" (emphasis added). This was included to instruct economic operators on the application of the roll-up provision for vehicle and

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67 *See, e.g.*, Appellate Body Report, *China - Auto Parts*, ¶ 151, **Exhibit MEX-37**. ("The realm of context as defined in Article 31(2) is broad. 'Context' includes all of the text of the treaty—in this case, the WTO Agreement—and may also extend to 'any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty' and 'any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty'. Yet context is relevant for a treaty interpreter to the extent that it may shed light on the interpretative issue to be resolved, such as the meaning of the term or phrase at issue.")

68 *See* Affidavit by [[ ]], March 15, 2022, ¶ 26, **Exhibit MEX-23**.

69 In the English version, Section 14 (1) is titled "Roll-up of originating materials". However, in both Spanish and French versions, the word *roll-up* has been translated to *acumulación/cumulation*.

auto parts RVC calculations, which must not include the VNM used for producing originating materials that are subsequently used in the production of a good.[70]

93. The URs thus plainly state that the USMCA text should be read and interpreted so as to permit "roll-up of originating materials," meaning that a non-originating material used in the production of an originating material becomes originating for purposes of the RVC when used in the production of yet another good. Applying the automotive ROO terminology, a non-originating component used to produce an originating core part must be considered originating once that core part is used in the production of a finished vehicle.

94. Subsection 14(4) of the URs reaffirms the requirement that core parts be originating for a finished vehicle to be considered originating. By connecting the originating status of the core parts and the finished vehicle, Subsection 14(4), like paragraphs 3 and 7 of Article 3 of the Automotive Appendix, thus underscores that there is no need to even undertake a calculation of the RVC of a finished vehicle without knowing the result of whether the core parts are originating. The results of the core parts RVC calculation therefore necessarily inform the vehicle RVC calculation, such that they form a unified calculation methodology.

95. Subsection 14(4) further notes that the VNM for those RVC calculations "must be calculated in accordance with subsections 14(7) through 14(8), or, at the choice of the vehicle producer or exporter, subsections 14(9) through 14(11)." Subsections 14(7) through 14(8) are the URs' corollary to paragraph 8 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix, and again repeat that automakers may calculate the RVC of core parts individually, with the VNM taking into consideration either (a) the value of all non-originating materials used in the production of that part or (b) only the VNM of non-originating components listed in Column 2 of Table A.2 of the Automotive Appendix used in the production of that part. Subsection 14(8) further specifies, however, that for an automaker electing option (b), "any parts not listed in Column 2 of Table A.2 or materials or components used to produce such parts should also not be part of the VNM calculation" (*i.e.*, any other parts of core parts that are not key parts).

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70 *See* Affidavit by [[[redacted]]], March 15, 2022, ¶ 27, **Exhibit MEX-23**.

96. Subsections 14(10) through 14(11) are the URs' corollary to paragraph 9 of Article 3 of the Automotive Appendix. In that sense, subsection 14(10) reiterates that automakers may calculate the RVC of core parts collectively as a super-core part, with the VNM taking into consideration either (a) the sum of the value of all non-originating materials used in the production of the super-core part, or (b) the sum of the VNM of only the components used in the production of the super-core part that are identified in Column 2 of Table A.2 (*i.e.*, key parts). Subsection 14(11) adds that "if non-originating material used in the production of a component listed in Column 2 of Table A.2 undergoes further production such that it satisfies the requirements of [the Uniform] Regulations, the component is treated as originating when determining the originating status of the subsequently produced part listed in column 1 of Table A.2."

97. Thus, the URs reaffirm the proper interpretation and application of the text of Article 4.5 and Article 3 of the Automotive Appendix.

3. The Object and Purpose of the USMCA Also Support the Application of a Unified RVC Calculation Methodology

98. A unified automotive RVC calculation methodology that permits roll-up of the RVC of originating core parts into the RVC of the finished vehicle is also fully in accordance with the object and purpose of the USMCA. The Preamble to the USMCA outlines its object and purpose and the collective intent of the Parties in that regard.[71] Relevant to this dispute, the Preamble of the USMCA expresses the desire of the Parties to "PRESERVE AND EXPAND regional trade and production by further incentivizing the production and sourcing of goods and materials in the region," while at the same time "ENHANC[ING] AND PROMOT[ING] the competitiveness of regional exports and firms in global markets, and conditions of fair competition in the region." The Preamble also reflects the goal of the Parties to "ESTABLISH a clear, transparent, and predictable legal and commercial framework for business planning, that supports further expansion of trade and investment."

99. As described above, the unified RVC calculation methodology was designed specifically to (i) incentivize further sourcing and manufacturing in the North American region by raising RVC

[71] *See, e.g.*, Final Report of the Panel, *Cross-Border Trucking Services (NAFTA)*, USA-MEX-98-2008-01, Feb. 5, 2001, ¶ 219, **Exhibit MEX-38**. (Analyzing NAFTA's preamble as evidence of "purpose" for the treaty as a whole under Article 31 of the VCLT).

thresholds compared to NAFTA, while also (ii) preserving industry competitiveness by focusing primarily on higher-value parts and components and (iii) enabling roll-up of the values of those parts into the RVC of finished vehicles. Automakers' responses to the text of the automotive ROO as they are written, and as they were explained to industry throughout the negotiations and up until June 2020, demonstrate the success of this carefully balanced approach— in fact, automakers announced substantial investments in the region and their intent to source additional components and parts in the region to comply with the new rules.[72] Application and compliance with the automotive rules of origin as they were written and explained to stakeholders promote the transparency and predictability that are required for successful investment planning in the capital-intensive auto industry.[73]

100. Without the flexibility that the unified RVC calculation methodology offers, automakers operating in Canada and Mexico will not be able to comply with the new requirements pursuant to the Automotive ROO, or will be forced to incur massive investments to the point that it is no longer commercially viable to comply with the ROO requirements. As stated by [[

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Consistent with the object and purpose of the Agreement, the final text included carefully balanced origin requirements that were acceptable for all three Parties, as well as the entire North American auto industry and its workers. In this regard, [[ ]]

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72 USTR, *Estimated Impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. Automotive Sector*, Apr. 18, 2019, **Exhibit MEX-09**. (Highlighting $15.3 billion in announced investments and $34 billion in overall planned investments by automakers in their efforts to comply with the rules).

73 Press Release *Autos Drive America Statement on the Composition of a USMCA Dispute Settlement Panel on the Auto Rules of Origin*, March 23, 2022, **Exhibit MEX-39**. Letter from the American Automotive Policy Council and others to C.J. Mahoney, Luz María de la Mora, and Steve Verheul from the *American Automotive Policy Council, and others,* Aug. 14, 2020, **Exhibit MEX-40**.

74 *See* Affidavit by [[ ]], March 10, 2022, ¶ 20, **Exhibit MEX-19**.

> principle, which was not provided in the agreement in principle, nor was it established in the final text of the USMCA, which was signed on November 30, 2018 in Buenos Aires, Argentina."[75]]]

101. By contrast, the new, unilateral U.S. interpretation of the automotive ROO and its current and prospective application threaten future investments, purchases, and jobs in all three Parties.[76] By improperly denying the possibility of rolling up the full net cost of the core parts of a vehicle, based on any of the standard or alternative core part calculation methods, to further determine whether the finished vehicles originating, the new U.S. interpretation and its unilateral application cause significant supply chain disruptions and harm the competitive positions of all three Parties in the global auto trade. The U.S. interpretation and unilateral application also artificially increase requirements and compliance costs for automakers beyond what is provided by the Agreement, thereby affecting their competitiveness.[77] This is just as true for the United States as it is for Mexico and Canada. The onerous costs required to meet the new U.S. interpretation does not mean more automobiles will be manufactured in the United States, but instead it will lead to more automobiles being produced outside of the USMCA free-trade zone. As such, the U.S. unilateral interpretation of the treaty text is undermining its object and purpose.[78]

4. The Negotiating History and Other Preparatory Work Further Confirm the Ordinary Meaning of the USMCA Text and its Requirement that Parties Apply a Unified RVC Calculation Methodology

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75 Affidavit by [[[redacted]]], March 21, 2022, ¶ 16, **Exhibit MEX-77**.

76 Press Release *Autos Drive America Statement on the Composition of a USMCA Dispute Settlement Panel on the Auto Rules of Origin*, March 23, 2022, **Exhibit MEX-39**.] *See also* Letter from American Automotive Policy Council and others, to Amb. Katherine Tai, Jun. 3, 2021, **Exhibit MEX-10**; Letter from the American Automotive Policy Council and others to C.J. Mahoney, Luz María de la Mora, and Steve Verheul from the A*merican Automotive Policy Council, and others,* Aug. 14, 2020, **Exhibit MEX-40**.

77 *See, e.g.,* U.S. International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors (with errata)*, Investigation No. TPA 105-003, Pub. No. 4489, Apr. 2019, ¶¶ 84, 86 and 89, at 84, **Exhibit MEX-11**.

78 Appellate Body Report, *EC-Chicken cuts*, ¶ 238, **Exhibit MEX-41**. ("[T]he starting point for ascertaining 'object and purpose' is the treaty itself, in its entirety. [However], we do not believe that Article 31(1) [of the Vienna Convention] excludes taking into account the object and purpose of particular treaty terms, if doing so assists the interpreter in determining the treaty's object and purpose on the whole.")

102. As explained above in Section IV, Article 32 of the VCLT allows for further recourse to other "supplementary means of interpretation," such as the negotiating history and other preparatory work, as additional resources "to confirm the meaning" of the treaty text and context.[79]

103. When viewed within the context of the Agreement as a whole, it is evident that the negotiators designed unified RVC calculation methodology for the core parts and finished vehicle via the concept of roll-up, described above, specifically to work together with the higher RVC requirement relative to NAFTA, which was established in the USMCA, in face of the elimination of the NAFTA tracing list.[80] This was the non-controversial understanding of all three Parties to the Agreement during and after the USMCA negotiations, and this understanding is clearly reflected in the treaty text and the URs, as outlined above.

104. As noted in the Factual Background section, during and after the USMCA negotiations, the negotiators of the automotive ROO participated in numerous discussions with automakers to gain their input and support for the updated rules and to educate them as to the new requirements. Correspondence between automakers and the U.S. automotive ROO negotiators – USTR officials – indicate uniformly that the United States, during and immediately after the negotiations, considered that the USMCA text provided for a unified RVC calculation method for core parts and finished vehicles.[81] Mexico has attached indicative samples of such correspondence at Exhibit MEX-28 but also understands that USTR officials gave the same advice to automakers on phone conferences and in numerous presentations and site visits.

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79 *See* Panel Report, *US – Washing Machines*, fn 73, **Exhibit MEX-42** ("Article 32 of the Vienna Convention allows recourse to the preparatory work of the treaty in order inter alia to confirm the meaning resulting from the application of Article 31"); Panel Report, *Peru – Agricultural Products*, ¶ 7.11, **Exhibit MEX-43** ("Article 32 of the Vienna Convention provides that recourse may be had 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 leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable. The Appellate Body emphasized that Article 32 does not define exhaustively the supplementary means of interpretation to which an interpreter may have recourse, so that an interpreter has a certain flexibility in considering relevant supplementary means in a given case so as to assist in ascertaining the common intentions of the parties.")

80 *See* Affidavit by [[[redacted]]], March 15, 2022, ¶ 29. **Exhibit MEX-23.**

81 Sample Correspondence between Automakers and USTR Officials, 2018-2019, **Exhibit MEX-28.**

105. USTR officials have confirmed in interactions with automakers, the application of the *roll-up* provision for core parts, as well as the RVC unified calculation for a finished vehicle. One of those presentations took place in Mexico City on March 6, 2020, among USTR officials, representatives of the Mexican automotive industry, and officials of the Mexican Ministry of Economy,[82] where the application of such principle and the unified RVC calculation was recalled.[83]

106. In this regard, Mexico recalls that USTR is an agency of the U.S. federal government, created by Act of Congress and situated within the Executive Office of the President.[84] It is given a variety of authorities and responsibilities under a number of U.S. federal statutes,[85] including the power to make rules and regulations,[86] as well as the power and responsibility for the conduct of all international trade negotiations on behalf of the United States.[87] Also, USTR has primary responsibility for developing, and for coordinating the implementation of U.S. international trade policy.[88] It follows that statements made by USTR and its officials on the interpretation of U.S. trade agreements, particularly when made contemporaneously, during the negotiation of the treaty text, carry an undeniable weight.

107. International tribunals have considered that public statements of government officials, even when reported in the press, may serve as evidence to assess the facts in dispute.[89] For example, the WTO Panel in *Argentina – Import Measures* noted that "[c]onsistent public statements made on the record by a public official cannot be devoid of importance, especially when they relate to a topic in which that official has the authority to design or implement policies" and "[i]t is

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82 *See* List of Participants to the informative meetings on ASR and UR between the Ministry of Economy, the USTR and the industry, March 6, 2020, **Exhibit MEX-44**.

83 United States, *"USMCA Rules of Origin for Automotive Goods"*, March 6, 2020, **Exhibit MEX-29**.

84 19 U.S.C. §2171(a). **Exhibit MEX-45**.

85 *See, e.g.,* 19 U.S.C. §§ 2171(c)-(f). **Exhibit MEX-45**.

86 19 U.S.C. §2171(e)(3). **Exhibit MEX-45**.

87 19 U.S.C. §2171(c)(1)(A). **Exhibit MEX-45**.

88 19 U.S.C. §2171(c)(1)(A). **Exhibit MEX-45**.

89 *See, e.g.,* Panel Report, *Australia – Automotive Leather II*, fn 210 to ¶ 9.65, **Exhibit MEX-46**; Panel Report, *EC – Approval and Marketing of Biotech Products*, ¶ 7.532, **Exhibit MEX-47**; Panel Report, *Mexico – Taxes on Soft Drinks*, ¶¶ 8.76-8.77, **Exhibit MEX-48**; Panel Report, *Turkey – Rice*, ¶¶ 7.78-7.79 and fn 367, **Exhibit MEX-49**; and Panel Report, *Argentina – Import Measures*, ¶¶ 6.79-6.81, **Exhibit MEX-50**.

appropriate for the Panel to assume that these officials have authority to make statements in the matters that relate to their respective competences."[90]

108. The International Court of Justice has also noted that "statements [...] emanating from high-ranking official political figures [...] are of particular probative value when they acknowledge facts or conduct unfavorable to the State represented by the person who made them. They may then be construed as a form of admission."[91] To assess the strength and credibility of USTR's legal interpretations as presented in this case, and consistent with the ability of supplementary means of interpretation to "confirm" the meaning of treaty text under Article 32 of the VCLT, the Panel must therefore give weight to prior statements made by USTR and its representatives in the exercise of their function as described above, for the issue in dispute.[92]

109. For example, in October 2018, during an intense period of discussions in which the legal text was being finalized, USTR explained to an automaker the option of using either the "core parts" or "super-core part" method for calculating VNM. In summarizing the impact of the two methods, USTR explained:

> Moreover, *the value of these parts can be rolled up in either of these calculation [sic]* so if the RVC of the parts, either individually or as a super-core, reaches 75%, then the entire value (100%) of the net cost is considered originating when meeting the RVC for the vehicle.[93] (Emphasis added)

110. Similarly, in November 2018, USTR responded as follows to a question from an automaker:

> Question from Automaker: "When I calculate my super core, I will get a 'Super Core VNM'. Is this the VNM I should take for my vehicles RVC calculation?"

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90 Panel Report, *Argentina – Import Measures*, ¶ 6.79, **Exhibit MEX-50**.

91 *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (1986), ¶¶ 64-65, **Exhibit MEX-51**. *See also*, *Fisheries Case (United Kingdom v. Norway)* (1951), pp. 23-24, **Exhibit MEX-52**; Judgment, *Nuclear Tests (New Zealand v. France)* (1974), ¶¶ 33-44, **Exhibit MEX-53**; Jurisdiction of the Court and Admissibility of the Application, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)* (2006), ¶¶ 45-55, **Exhibit MEX-54**; and Judgment, *Frontier Dispute (Burkina Faso v. Mali)* (1986), ¶¶ 36-40, **Exhibit MEX-55**.

92 Panel Report, *Canada – Dairy TRQ Allocation Measures (USMCA)*, CDA-USA-2021-31-010, December 20, 2021, ¶¶ 134-137, **Exhibit MEX-13**.

93 Sample Correspondence between Automakers and USTR Officials, 2018-2019, p. 28, **Exhibit MEX-28**.

> USTR Response: "If the super core is originating, there is no need to use the "super core VNM" for the VNM calculation for the vehicle as the entire super core (including any VNM) should be originating."[94]

111. And when later asked for confirmation "whether all the parts that make up the super core can be rolled up even if those parts wouldn't be rolled up if the core parts RVC were calculated individually," USTR unequivocally stated in April 2019 "Yes you can. That was the general purpose behind the super core."[95] That same day, USTR confirmed that "you can roll up the key parts content if the core part (or the super core) is originating."[96]

112. USTR maintained this same position in a briefing to members of the Mexican auto industry nearly one year later on March 6, 2020, as demonstrated by materials prepared by the United States and presented at that meeting.[97] The slides presented by the U.S. emphasize that "[t]he value of non-originating materials cannot include the value of non-originating materials used to produce originating materials subsequently used in the production of the good," and that "Roll-up' of originating intermediate parts [and] Accumulation of originating content" replaced the NAFTA tracing list approach.[98]

113. Moreover, then-USTR Amb. Lighthizer touted the benefits of the "super-core" calculation method provided for under paragraph 9(b) of Article 3 of the Automotive Appendix as part of his testimony on the record before the U.S. Congress – which the unilateral U.S interpretation seeks to now prevent automakers from using –. Ambassador Lighthizer stated:

> "The "super core" calculation allows such producers to meet the core parts requirement without having to segregate each of the parts and do separate, burdensome calculations. The super core calculation incentivizes U.S. producers to use more originating content and maintains their

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94 Sample Correspondence between Automakers and USTR Officials, 2018-2019, p. 22, **Exhibit MEX-28**.

95 Sample Correspondence between Automakers and USTR Officials, 2018-2019, p. 4, **Exhibit MEX-28**.

96 Sample Correspondence between Automakers and USTR Officials, 2018-2019, p. 9, **Exhibit MEX-28**.

97 United States, *"USMCA Rules of Origin for Automotive Goods"*, March 6, 2020, **Exhibit MEX-29**.

98 *Id.*, at pp. 3, 6.

> competitiveness without accruing any possible efficiency losses from having to segregate core parts."[99]

114. In this sense, the current U.S. interpretation is contradictory to the intention expressed by Ambassador Lighthizer of avoiding "separate, burdensome calculations".

115. USMCA Chief Negotiators held several conversations throughout the negotiation where Mexico and Canada explained the importance of including for vehicles and their parts the accumulation and roll-up principles provided in the NAFTA,[100] and the United States agreed. No Party suggested during the negotiations that these basic principles up would be inapplicable to the USMCA (despite the plain text of the Agreement at paragraph 4 of Article 4.5) or would have any meaning other than what is plainly provided in that text. Furthermore, as mentioned by [[ ]]

116. [[ ]]

99 U.S. Senate Committee on Finance, Hearing on 2019 Trade Policy Agenda and the United States-Mexico-Canada Agreement (June 18, 2019), Questions for the Record for Ambassador Robert Lighthizer, p. 35, **Exhibit MEX-56**.

100 NAFTA Article 402.4 (Regional Value Content). In particular, with respect to roll-up, the customs authorities of the Parties were also accustomed to applying the principle. For example, CBP issued an advance ruling letter in 2016 describing and applying the rule to components of an audio amplifier. CBP Headquarters Ruling Letter HQ H277701 (Aug. 13, 2016), **Exhibit MEX-57**. CBP concluded that because one of the components qualified as an originating good based on its RVC, the value of non-originating materials used in the production of that component should not be included in the value of non-originating materials for purposes of calculating the RVC of the finished audio amplifier. *Id.* ("As the printed circuit board assembly qualified as an originating good, is a self-produced material, and is designated as an intermediate material, the value of any non-originating materials used in the production of the printed circuit board assembly is not included in the value of non-originating materials for purposes of calculating the RVC of the finished audio amplifie[r].")

101 *See* Affidavit by [[ ]], March 15, 2022, ¶ 18, **Exhibit MEX-23**.

102 United States, *Concept Paper Rules of Origin for Automotive Goods*, Apr. 26, 2018, ¶ 3, **Exhibit MEX-26**.

[redacted]]

117. [[redacted]]

118. The text of the USMCA is thus unambiguous that the principles of accumulation and roll-up apply to the calculation of a vehicle's RVC. The subsequent text of Section 14 of the URs, the negotiating history and other supplementary means of interpretation only confirm the meaning of that text, pursuant to Article 32 of the VCLT.

VI. IDENTIFICATION OF THE MEASURES AND SUBJECT MATTER OF THE CLAIM

119. In this section, Mexico describes the circumstances by which automakers and the Government of Mexico (Mexico understands it was also the case for the Government of Canada) learned that the United States had developed and begun applying an entirely new, unilateral interpretation that is unsupported by the text of the Agreement or the result of the negotiations of the automotive ROO that is the subject of this dispute (**Section VI.A**). Mexico then addresses the scope of its claims under USMCA Article 31.2 (Scope) (**Section VI.B**).

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103 United States, *Concept Paper Rules of Origin for Automotive Goods*, Apr. 26, 2018, ¶ 24, **Exhibit MEX-26**.

104 United States, *Concept Paper Rules of Origin for Automotive Goods*, Apr. 26, 2018, ¶ 5, **Exhibit MEX-26**.

105 Agreement in Principle on Rules of Origin for Automotive Goods, Aug. 27, 2018, ¶¶ 4, 5, 25, 26, and 28 **Exhibit MEX-27**.

A. The United States Adopted and Began Applying a New, Unilateral Interpretation of the USMCA Automotive Rules of Origin

120. On April 21, 2020, USTR issued a public notice requesting formal ASR plans from automakers.[106] The notice provided details on the information that should be included in the plans and instructed automakers that "all methods and calculations for the requirements or thresholds [...] should be made according to the applicable provisions in Chapter 4 of the Agreement."[107]

121. In this sense, on June 10, 2020, automakers seeking clarifications on the functioning of automotive ROO, in order to finalize their ASR petitions learned, for the first time through U.S. CBP, that the United States had adopted a new interpretation of the USMCA text.

122. On that date, CBP officials corresponded with representatives of an automaker and indicated that RVC calculations made for purpose of meeting the core parts requirement under paragraph 9(b) of Article 3 of the Automotive "can't be used to treat the super-core as a single "part" when calculating the RVC of the vehicle itself." In other words, automakers would not be able to roll-up the entire value of the super-core part when calculating the vehicle RVC, even if the super-core part was originating, in terms of the methodology under Article 3.9(b) of the Automotive Appendix.[108]

123. Neither the Mexican nor the Canadian governments were informed of the new U.S. interpretation. In fact, the very next day after the above-referenced correspondence, the U.S. negotiators responsible for the automotive ROO portion of the Agreement affirmed the longstanding trilateral understanding, consistent with the text of the USMCA, by telling the Canadian automotive ROO negotiators the exact opposite of what CBP had said the day before to vehicle producers. Specifically, the United States negotiators confirmed to Canada that once automakers calculated the RVC of the core parts or the super-core part and found them originating,

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106 USTR, *Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks to Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods*, 85 Fed. Reg. 22,238, Apr. 21, 2020, **Exhibit MEX-58**.

107 *Id.*

108 Email from R. Cunningham (CBP) to Automaker Representatives re: USMCA URs Roll-Up Question, Jun. 10, 2020, **Exhibit MEX-59**.

automakers could "'roll up' the entire net cost" of either the core parts or the super-core part "when calculating the RVC for a passenger vehicle or light truck."[109]

124. It was not until July 22, 2020—over three weeks *after entry into force* of the Agreement,[110] that the United States disclosed its new, unilateral interpretation to the Mexican and Canadian governments in a trilateral, technical-level teleconference.[111] USTR followed up that teleconference with an email that was drafted by CBP purporting to provide an "explanation" of its position[112] and that mirrored the position given to the automaker on June 10, 2020.

125. In the months following entry into force, Mexico learned in discussions with automakers that several automakers had interactions with CBP and USTR officials that reflected the same position of June 10 and contradicted the longstanding U.S. position, which had been confirmed by the U.S. negotiators as recently as June 11.[113] Mexico further understands that automakers were informed by CBP and USTR that the requirements had changed from what they had previously been advised during the course of negotiations, including after the treaty text was finalized.[114] The timing of this unilateral interpretation was of particular concern to the automakers because of the due date of their formal alternative staging plans, as previously requested by USTR, which entailed

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109 Email from J. Bernstein (USTR) to M. Thornell (Global Affairs Canada) re: core parts, Jun. 11, 2020, **Exhibit MEX-60**. Mexico notes that the affirmation came in response to a question from Canada regarding whether the United States considered it possible to roll-up individual core parts first into the super-core part and then again into the finished vehicle such that an automaker would be employing both paragraphs 8 and 9 of Article 3 of the Automotive Appendix simultaneously. The Parties agree that this double roll-up is not permissible.

110 Well after: (i) the USMCA text was concluded, signed, and ratified by the Parties' legislatures; (ii) extensive consultations between the Parties and industry about the text took place; (iii) discussions on the URs had concluded; (iv) USTR had instructed automakers to make calculations preparing their ASR plans, consistent with the text of the Agreement, and (v) the Parties had notified the conclusion of their legal, internal procedures for the entry into force of USMCA

111 Email from K. Shigetomi (USTR) re: USMCA, Core Parts, Jul. 22, 2022, **Exhibit MEX-61**.

112 *Id.*

113 Press Release *Autos Drive America Statement on the Composition of a USMCA Dispute Settlement Panel on the Auto Rules of Origin*, March 23, 2022, **Exhibit MEX-39**. *See,* Letter from the American Automotive Policy Council and others to C.J. Mahoney, Luz María de la Mora, and Steve Verheul from the A*merican Automotive Policy Council, and others,* Aug. 14, 2020, **Exhibit MEX-40**.

114 Press Release *Autos Drive America Statement on the Composition of a USMCA Dispute Settlement Panel on the Auto Rules of Origin*, March 23, 2022, **Exhibit MEX-39**. *See* Letter from the American Automotive Policy Council and others to C.J. Mahoney, Luz María de la Mora, and Steve Verheul from the A*merican Automotive Policy Council, and others,* Aug. 14, 2020, **Exhibit MEX-40**.

commitments to achieve certain RVC thresholds reliant upon the proper calculation methodology.[115]

126. Mexico immediately began raising its concern about the shift in the U.S. interpretation and its inconsistency with the USMCA text in technical meetings. Eventually, Mexico elevated the issue to the ministerial level when the United States would not revert to its original interpretation. Canada took similar measures and expressed similar concerns during those technical meetings with the United States.[116]

127. In December 2020, following several months of engagement with the U.S. government regarding this issue by the auto industry, Mexico and Canada,[117] USTR began issuing ASR Approval Letters to certain automakers.[118] Mexico considers that the unilateral interpretation of the United States is manifested in those Letters, which contain the following wording (or similar) as issued to the individual automakers:

> "[Y]our plan is approved based on USTR's understanding that [the automaker] will calculate its RVC in a manner consistent with the text of the Agreement, the Uniform Regulations, *and direction from USTR and U.S. Customs and Border Protection whereby the calculation for a vehicle's RVC and the calculation for the core parts requirement in Article 3.7 of the Appendix to the Annex 4-B of the Agreement are calculated separately and independently of one another. More specifically, this means that your plan is approved provided that your vehicle RVC calculation for all vehicles (not just those covered by your alternative staging request) does not count otherwise non-originating components and parts as originating for purposes of the vehicle RVC calculation simply because the same part or component was used as part of the calculation to meet the core parts requirement. Should the manner in which you calculate the vehicle RVC for any North American vehicle for which you claim preferential USMCA treatment upon import into the United States not adhere to this direction, USTR may rescind this*

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115 Press Release *Autos Drive America Statement on the Composition of a USMCA Dispute Settlement Panel on the Auto Rules of Origin*, March 23, 2022, **Exhibit MEX-39**.

116 *See* email from M. Thornell (Global Affairs Canada) to K. Shigetomi (USTR) re: core parts, Sep. 2, 2020, **Exhibit MEX-60**.

117 *See, e.g.,* Letter from *the American Automotive Policy Council, and others to Amb. Katherine Tai*, Jun. 3, 2021. **Exhibits MEX-10**; Letter from American Automotive Policy Council and others to C.J. Mahoney, Luz Maria de la Mora, and Steve Verheul, Aug. 14, 2020, **MEX-40**; *CBP official: USMCA auto rules will be enforced amid confusion over interpretation,* INSIDE U.S. TRADE, March 30, 2021, **Exhibit MEX-62**.

118 These letters were issued pursuant to the U.S. regulation implementing the ASR mechanism, **Exhibit MEX-58**.

> *approval of your alternative staging plan, and you will be required to re-submit a request for alternative staging for consideration by USTR and the Interagency Committee on Trade in Automotive Goods*" (emphasis added).[119]

128. Based on this text, the United States is imposing a domestically, legally binding obligation on automakers who petitioned for ASR to follow a "direction from USTR and U.S. Customs and Border Protection."[120] This condition is fundamentally inconsistent with the USMCA text, its context, and the expectations of the Parties and automakers throughout the entire negotiation (and on which the latter had forecasted substantial production adjustments, business strategies and massive investments).

129. The ASR Approval Letters apply USTR's new interpretation by imposing: (i) a requirement whereby the calculation for a vehicle's RVC and the calculation for the core parts' RVC requirement are calculated separately and independently of one another; (ii) a requirement to calculate the vehicle's RVC based on the flawed "direction" from USTR and CBP; (iii) a requirement to apply the incorrect U.S. interpretation as a condition for the approval of an ASR as provided in the ASR approval letters; and (iv) a requirement to submit an annual progress report based on the same incorrect calculation methodology.[121]

130. In so doing, USTR and CBP are essentially coercing automakers to undertake additional production adjustments, to modify their business strategies, and to incur into hundreds of millions of dollars in new investments. On the one hand the United States is requiring automakers to comply with the USMCA and the URs.[122] On the other hand it is forcing automakers to modify their RVC calculations to reflect the new U.S. "direction" whereby the automakers "[can]not count otherwise non-originating components and parts as originating for purposes of the vehicle RVC calculation simply because the same part or component was used as part of the calculation to meet the core parts requirement".[123] Should automakers fail to comply with these two contradictory

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119 ASR Approval Letters, **Exhibit MEX-63**.

120 ASR Approval Letters, **Exhibit MEX-63**.

121 ASR Approval Letters, **Exhibit MEX-63**.

122 *See* Mexico's Request for the Establishment of a Panel, Jan 6, 2022, ¶ 14; **Exhibit MEX-12**; Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Uniform Regulations Regarding Rules of Origin, 85 Fed. Reg. 39,690, Jul. 1, 2020, **Exhibit MEX-64**.

123 ASR Approval Letters, **Exhibit MEX-63**.

requirements, their imports will be stripped of their preferential status, and they will be forced to pay millions of dollars in import tariffs and potential penalties.

131. Additionally, Mexico notes that the ASR Approval Letters require automakers to utilize USTR's incorrect "direction" when they calculate the RVC for "*all vehicles (not just those covered by your alternative staging request)*" and when they "calculate the vehicle RVC for *any North American vehicle* for which [they] claim preferential USMCA treatment" (emphasis added), not only those vehicles for which they petitioned for alternative staging.[124] In other words the ASR Approval Letters seem to indicate that the United States may prospectively apply the same incorrect interpretation to "any North American vehicle," including vehicles made by other automakers that did not petition for ASR.[125] Such requirement could take the form of a negative result of future origin verifications based on the incorrect calculation methodology, which the United States could conduct at any time as provided for under Article 5.9 (Origin Verification).

132. Moreover, Mexico is aware that the United States has also informally told automakers that they are restricted from using the core part VNM calculation options based only on the value of non-originating key parts, as provided in paragraphs 8(b) and 9(b) of Article 3 of the Automotive Appendix, despite the fact that the *chapeaux* to paragraphs 8 and 9 clearly provide that it is the "producer's option" to select its own VNM calculation method, not the "unilateral mandate by one Party."

133. Following the issuance of the ASR Approval Letters, the United States has continued to maintain its position in further informal discussions with automakers, as well as in official discussions and the formal consultations on the matter conducted between the Parties on September 24, 2021, pursuant to the proceeding established under Chapter 31 (Dispute Settlement).

B. Scope of Mexico's Claims

134. Article 31.2 (Scope) of the USMCA provides that its dispute settlement mechanism applies in three circumstances: (a) when disputes arise between the Parties "regarding the interpretation

124 ASR Approval Letters, **Exhibit MEX-63**.

125 ASR Approval Letters, **Exhibit MEX-63**.

or application of this Agreement;" (b) "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;" and (c) "when a Party considers that a benefit it could reasonably have expected to accrue to it [...] is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement". Article 31.6 (Establishment of a Panel) further confirms that a Party may identify either a "measure" or "other matter at issue" in its Request for the Establishment of a Panel.

135. For the avoidance of doubt, this dispute concerns all three circumstances contemplated by Article 31.2 (Scope). Specifically, Mexico requested consultations with respect to Article 31.2(a) (Scope) and subsequently requested the establishment of a panel with respect to the incorrect U.S. "interpretation and application" of the automotive ROO.[126] Mexico has also challenged the U.S. interpretation and application as a measure identified in the Request for the Establishment of a Panel pursuant to Article 31.2(b), as well as the nullification and impairment of benefits caused by those measures pursuant to Article 31.2(c).

136. With respect to Article 31.2(b) and (c), Article 1.5 (General Definitions) of the USMCA defines a "measure" to include "any law, regulation, procedure, requirement, or practice." This definition is exactly the same as the one contained in Article 201 of the NAFTA. Under WTO law, the concept "measure" has generally been construed very broadly to encompass any act or omission attributable to a Member, including in the form instruments that are binding or non-binding,[127] written or unwritten,[128] and that have either present or prospective application.[129]

137. For further clarity, the Diccionario de la Lengua Española defines "interpretar" as:

> *"1. tr.* ***Explicar o declarar el sentido de algo, y principalmente el de un texto****.*
> *2. tr. Traducir algo de una lengua a otra, sobre todo cuando se hace oralmente.*

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126 Mexico's Request for Consultations, Aug. 20, 2021, at 1, **Exhibit MEX-65**; Mexico's Request for the Establishment of a Panel, Jan 6, 2022, ¶¶ 1, 3(a), and 3(b), **Exhibit MEX-12**.

127 *See*, *e.g.*, Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, ¶ 187, **Exhibit MEX-66**.

128 *See*, *e.g.*, Appellate Body Report, *US – Zeroing (EC)*, ¶ 193, **Exhibit MEX-67**.

129 *See*, *e.g.*, Appellate Body Report, *US – Anti-Dumping Methodologies (China)*, ¶ 5.164, **Exhibit MEX-68**.

> *3. tr. Explicar acciones, dichos o sucesos que pueden ser entendidos de diferentes modos.*
> *4. tr. Concebir, ordenar o expresar de un modo personal la realidad.*
> *5. tr. Representar una obra teatral, cinematográfica, etc.*
> *6. tr. Ejecutar una pieza musical mediante canto o instrumentos.*
> *7. tr. Ejecutar un baile con propósito artístico y siguiendo pautas coreográficas.*
> *8. tr. Der.* ***Determinar el significado y alcance de las normas jurídicas.*** *"*[130]

138. By the same token, the Diccionario de la Lengua Española also defines "*aplicar*" in the following manner:

> *1. tr. Poner algo sobre otra cosa o en contacto de otra cosa.*
> *2. tr.* ***Emplear, administrar o poner en práctica un conocimiento, medida o princ ipio, a fin de obtener un determinado efecto o rendimiento en alguien o algo.***
> *3. tr. Referir a un caso particular lo que se ha dicho en general, o a un individuo l o que se ha dicho de otro.*
> *4. tr. Atribuir o imputar a alguien algún hecho o dicho.*
> *5. tr. Destinar, adjudicar, asignar.*
> *6. tr. Der. Adjudicar bienes o efectos.*
> *7. intr. Am. Presentar una solicitud oficial para algo, como un puesto de trabajo, una beca o una plaza en la universidad.* La joven aplica A varias universidades.
> *8. intr. Am.* ***Tener validez o relevancia para algo.*** La norma no aplica A las comps hechas en el extranjero.
> *9. prnl. Poner esmero, diligencia y cuidado en ejecutar algo, especialmente en est udiar."*[131]

139. Based on the above, it is clear that the terms "*interpretación*" and "*aplicación*" clearly fit within the meaning of, at least "procedure, requirement, or practice" contained in the definition of "measure" as contained in Article 1.5 of the USMCA. Besides, it is evident that the ASR Approval Letters fall under the scope of what is considered a "measure" in terms of a dispute settlement procedure. These letters are one way in which the U.S. has stated and applied their new interpretation.

140. Thus, reading Article 31.2 (Scope) and Article 31.6 (Establishment of a Panel), in light of Article 1.5 (General Definitions), Mexico considers that the broad scope of the term "measure" makes it clear that matters of "interpretation" and "application" of treaty text can not only be

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[130] Real Academia Española, Diccionario de la Lengua Española, *Interpretar*, **Exhibit MEX-69**. (emphasis added).

[131] Real Academia Española, Diccionario de la Lengua Española, *Aplicar*, **Exhibit MEX-70**. (emphasis added).

challenged under Article 31.2(a), but that matters of "interpretation" and "application" may also constitute "measures" for the purposes of USMCA dispute settlement that thus can be challenged under Article 31.2(b) and (c). Furthermore, the U.S. "interpretation" and "application" of the U.S. in this case is also manifested in the requirements contained within the ASR Approval Letters issued to automakers, , as well as any future letters, future guidance and determinations of future origin verifications, which are themselves a measures being challenged in this dispute.[132]

141. In sum, Mexico considers that the United States new interpretation, including several of its manifestations, violates various provisions of the USMCA, and is thus asking the Panel to rule on these measures as such and as applied, so as to prevent any future application of this illegal new interpretation, be it through origin verifications or otherwise.

VII. LEGAL ARGUMENTS

142. In stark contrast to the textual approach for calculating the RVC of vehicles and their core parts, as interpreted and applied by Mexico and Canada and described above, the United States subsequently, unilaterally, and without any legal basis, developed a new interpretation that is inconsistent with the text. As described above, the United States only made this position known to the Government of Mexico after the entry into force of the agreement.[133] In fact, the United States did not espouse any of its new positions at any time during the negotiations and furthermore maintained this position even after it had already contradicted itself.[134] In this regard, [[ ]] stated the following:

[[ ]]

132 Mexico's Request for the Establishment of a Panel, ¶ 3(b), **Exhibit MEX-12.**

133 Sample Correspondence between Automakers and USTR Officials, 2018-2019, **Exhibit MEX-28.**

134 *See* Affidavit by [[ ]], March 15, 2022, ¶¶ 29-32, **Exhibit MEX-23.**

135 *See* Affidavit by [[ ]], March 10, 2022, ¶ 22, **Exhibit MEX-19.**

143. It was not until after USMCA's entry into force, during ASR discussions, as pointed out by [[ ]],[136] and its relation with the RVC calculation of the finished vehicle.[137] In response to those concerns raised by both Canada and Mexico, the U.S. sent an e-mail explaining their new and surprising interpretation.[138]

144. As unilaterally interpreted by the United States, and as manifested in its ASR Approval Letters and statements to automakers as well as to Mexico and Canada, the calculation of the RVC of a finished vehicle and the RVC calculation for that vehicle's core parts must be made "separately and independently of one another."[139] More specifically, the new U.S. interpretation states that two separate RVC calculations are needed for vehicles and their core parts, one to satisfy the RVC requirement for the core part and another to satisfy the RVC requirement for those core part incorporated into the vehicle.

145. Thus, according to the U.S. position, the result of the RVC calculation for core parts pursuant to paragraphs 7, 8, and 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix does not inform the RVC calculation for the finished vehicle pursuant to Article 4.5 (Regional Value Content) of the USMCA. According to the new U.S. unilateral interpretation, the RVC calculation for the finished vehicle would need to consider the entire value of all non-originating materials contained in the vehicle once again, regardless of whether those non-originating materials were subsequently transformed into originating materials (i.e., the core parts) during the production of the vehicle.

146. In the following sections of this submission, Mexico demonstrates how this unilateral interpretation constitutes a direct violation of:

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136 *See* Affidavit by [[ ]], March 15, 2022, ¶ 30, **Exhibit MEX-23**.

137 *See* Affidavit by [[ ]], March 15, 2022, ¶ 30, **Exhibit MEX-23**.

138 *See* e-mail from K. Shigetomi (USTR), re:USMCA, Core Parts, Jul. 22, 2022, **Exhibit MEX-61**.

139 ASR Approval Letters, **Exhibit MEX-63**.

- Paragraph 4 of Article 4.5 (Regional Value Content) (**Section VII.A**);
- Paragraphs 7, 8, and 9 of Article 3 of the Automotive Appendix (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) (**Sections VII.B** through **VII.D**)
- Article 4.2(b) (Originating Goods) (**Section VII.E**);
- Paragraphs 1 and 2 of Article 4.11 (Accumulation) (**Section VII.F**);
- Paragraph 6 of Article 5.16 (Uniform Regulations) (**Section VII.G**);
- Paragraphs 1, 2, and 3 of Article 8 of the Automotive Appendix (Transitions) (**Section VII.H**) and,

147. In the alternative, Mexico established a way in which the U.S. unilateral interpretation nullifies and impairs a benefit Mexico reasonably expected under the Agreement (**Section VII.I**).

A. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraph 4 of Article 4.5 (Regional Value Content) of the USMCA

1. Legal Standard

148. As described above, paragraph 4 of Article 4.5 (Regional Value Content) of the USMCA states that:

> "*Each Party shall provide* that the value of non-originating materials used by the producer in the production of a good shall not, for the purposes of calculating the regional value content of the good under paragraph 2 or 3 include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good" (emphasis added).

149. That provision is specifically interpreted and applied to motor vehicles by subsection 14(1) of the URs, which further adds that:

> "For greater certainty, if the production undertaken on non-originating materials results in the production of a good that qualifies as originating, no account is to be taken of the non-originating material contained therein if that good is used in the subsequent production of another good."

150. A Party therefore violates this provision when it does not "provide" what it otherwise must.

2. Application

151. The ASR Approval Letters prohibit automakers from counting the full value of an originating "core part" in their calculation of the RVC of the vehicle. Instead, the ASR Approval

Letters direct that, although a core part or material used to produce a core part might initially be considered originating, that initial determination does not matter at all for purposes of calculating the RVC of the vehicle, and since a wholly "separat[e] and independent" RVC calculation must be undertaken. In doing so, the ASR Approval Letters entirely ignore the explicit text of paragraph 4 of Article 4.5 of the USMCA and subsection 14(1) of the URs, which require that once a part is determined to be originating, its originating value should be rolled up into the RVC calculation of the vehicle, and the VNM of materials that went into the production of that part "shall not" be included in the VNM of the finished vehicle.[140]

152. The language and provisions in the Agreement text, as interpreted and applied by the URs, were intentional and apply a single RVC calculation for the core parts requirement and vehicle RVC. Had a two-pronged RVC approach been intended, as demanded by the ASR Approval Letters, there would be specific provisions or language mandating such an approach in *lieu* of paragraph 4 of Article 4.5 of the USMCA.

153. As such, the United States fails to "provide" what it is required to by paragraph 4 of Article 4.5 and thus violates that provision.

B. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraph 7 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix

1. Legal Standard

154. Article 3 of the Automotive Appendix (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) provides specific instructions for the RVC calculation required by paragraph 4 of Article 4.5 (Regional Value Content) within the context of motor vehicles and their parts. It sets out the relevant RVC thresholds in paragraphs 1 through 5. Paragraph 6 reiterates that Article 4.5 applies for purposes of the RVC calculation. Paragraph 7 notes the requirement that "core parts" must be originating for the vehicle to be originating, which, in relevant part, 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

[140] *See* USMCA, Article 4.5.4.

> 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 [of Article 3 of the Automotive Appendix]" (emphasis added).

155. A Party therefore violates this provision when it does not "provide" what it otherwise must.

2. Application

156. By requiring producers to undertake two separate RVC calculations – one for the core parts (or super-core part) and a separate and independent one for the finished vehicle, the United States imposes a more onerous burden than the treaty text requires. In not allowing roll-up from one calculation to the next, the United States effectively takes the position that the requirement of paragraph 7 of Article 3 is not met even when the core parts (or the super-core part) have satisfied the relevant RVC threshold required by paragraph 2 of Article 3 of the Automotive Appendix. The United States thus ignores – and does not "provide" – what is otherwise required by paragraph 7.

C. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraph 8 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix

1. Legal Standard

157. For purposes of calculating the RVC of a vehicle's core parts – and, thus, their originating status – paragraph 8 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix provides the first of two basic means of calculating the VNM of the core parts to be used in the RVC calculation. Specifically, paragraph 8 states that each Party "shall provide" that producers may calculate the VNM of each core part separately using either: (a) the VNM of all non-originating materials used in the production of the core part; or (b) the VNM of only the key parts used in the production of the core part. Further, paragraph 8 specifies that "each Party shall provide" that vehicle producers have the "option" to use either method (a) *or* (b) to calculate the core part VNM. As noted above, these requirements on the Parties are repeated in Section 14 of the URs, specifically subsections 14(7) - (8).

158. As above, a Party violates paragraph 8 of Article 3 of the Automotive Appendix when it does not "provide" what it otherwise must.

2. Application

159. The U.S. ASR Approval Letters *prohibit* automakers that use the "key parts" methodology to calculate the RVC of the core parts[141], from using the RVC of that core part to determine the finished vehicle's RVC. This negates benefits automakers expected to gain by vehicle producers by adding the VNM of the key parts used in the production of the core part to determine its originating status,

160. Furthermore, there is no language in the USMCA text that limits a vehicle producer from applying the RVC calculation methodology under paragraph 8(b) of Article 3 (and URs subsection 14(7) - (8)) only for the purpose of determining the originating status of a core part, and then not allowing the originating core part to be used in the RVC calculation for a finished vehicle. Yet, the United States has imposed just such a requirement.

161. By <u>not</u> "providing" producers the "option" – as required by the provision – to use either method (a) *or* method (b) to calculate the core part RVC, the U.S. interpretation and its current and future application are inconsistent with paragraph 8 of Article 3 of the Automotive Appendix.

D. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraph 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix

1. Legal Standard

162. For purposes of calculating the RVC of a vehicle's core parts – and, thus, their originating status – paragraph 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix provides the second means of calculating the VNM of the core parts to be used in the RVC calculation. Specifically, paragraph 9 states that each Party "shall provide" that producers "may also" calculate the VNM using the "super-core part" method in which all core parts are considered collectively as one single part and, in calculating the VNM, the following is considered: (a) the sum of the VNM of all non-originating materials used in the production of the super-core part; *or* (b) the sum of the VNMs of only the key parts used in the production of the super-core part.

[141] As provided for in paragraph 8(b) of Article 3 of the Automotive Appendix and subsection 14(7)(b) of the URs.

163. Further, paragraph 9 specifies that "each Party shall provide" that vehicle producers have the "option" to use either method (a) *or* (b) to calculate the super-core part VNM. As noted above, these requirements on the Parties are reiterated in Section 14 of the URs, specifically subsections 14(10) - (11).

164. As above, a Party violates paragraph 9 of Article 3 of the Automotive Appendix when it does not "provide" what it otherwise must.

2. Application

165. Like the analysis under paragraph 8 of Article 3 in the section above, the U.S. ASR Approval Letters prohibit automakers that use the "key parts" methodology to calculate the RVC of the core parts, from using the RVC of that core part provided for in paragraph 9(b) of Article 3 of the Automotive Appendix and subsection 14(10) (b) of the URs to determine the vehicle's RVC. Again, this fully negates benefits automakers expected to gain by adding up the VNM of the key parts used in the production of the core parts of the super-core part to determine its originating status.

166. Furthermore, there is no language in the USMCA text that limits a vehicle producer from applying the RVC calculation methodology under Article 3.9(b) of the USMCA (and URs subsection 14(10) - (11)) only for the purpose of determining the originating status of the super-core part, and then not allowing the originating super-core part to be used in the RVC calculation for a finished vehicle. Yet again, the United States has imposed just such a requirement.

167. Thus, by not "providing" producers the "option" – as required by the Agreement – to use either method (a) or method (b) to calculate the super-core part RVC, the U.S. interpretation and its current and future application are inconsistent with paragraph 9 of Article 3 of the Automotive Appendix.

E. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Article 4.2(b) (Originating Goods) of the USMCA

1. Legal Standard

168. Article 4.2 (b) of the USMCA defines a category of "originating goods" and states that "a Party shall provide that a good is originating if it is […] produced entirely in the territory of one

or more of the Parties using non-originating materials provided the good satisfies all applicable requirements of Annex 4-B (Product-Specific Rules of Origin)". Accordingly, except otherwise provided in Chapter 4, this Article sets two conditions to provide a good that is produced with non-originating materials can obtain originating status: (i) that the good is produced entirely in the territory of one or more Parties, and (ii) that the good satisfies all applicable requirements of Annex 4-B (Product-Specific Rules of Origin).

169. As explained above, Article 3 of Annex 4-B of the USMCA sets the RVC requirements applicable to passenger vehicles, light trucks, and parts thereof. Specifically, paragraphs 1-5 establish the RVC percentage required for vehicles and core parts and paragraphs 6-10 develop the calculation methodologies at the vehicle´s producer option to achieve the established RVC percentages.

170. A Party therefore violates this provision when it does not "provide" what it otherwise must.

2. Application

171. By requiring producers to count in the vehicle's RVC calculation the non-originating materials used in the production of originating core parts (or the originating super-core part), even if those have already met the 75% RVC requirement pursuant to Annex 4-B, the United States. is depriving originating goods of their originating status through the application of its unilateral interpretation of the automotive ROO provisions.

172. For example, according to the ASR Approval Letters, in the context of a vehicle's RVC calculation, the United States effectively takes the position that a core part or super-core part produced with non-originating materials is not an originating good pursuant to Article 4.2 (b) although it is (i) produced entirely in the territory of Mexico and/or Canada, and (ii) satisfies the 75% RVC required by Article 3 of Annex 4-B.

173. As such, the United States fails to "provide" what it is required to by Article 4.2 (b) and thus violates that provision.

F. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraphs 1 and 2 of Article 4.11 (Accumulation) of the USMCA

1. Legal Standard

174. As described above, accumulation is a basic principle of trade agreements that enables Parties to the agreement to share production activities within and across their territories, with the originating value of the constituent materials adding up across the production cycle. Closely related to accumulation is the concept of "roll up," which, as noted above, allows for producers to take no account of VNM used to produce an intermediate good when that good is used in the subsequent production of another good.

175. In that regard, paragraphs 1 and 2 of Article 4.11 (Accumulation) state as follows:

> 1. Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.2 (Originating Goods) and all other applicable requirements in this Chapter.
>
> 2. Each Party shall provide that an originating good or material of one or more of the Parties is considered as originating in the territory of another Party when used as a material in the production of a good in the territory of another Party.

176. As above, a Party violates this provision when it does not "provide" what it otherwise must.

2. Application

177. As provided in Article 4.2 (b) (Originating Goods), when an originating vehicle or core part is produced entirely in Mexican and/or Canadian territory using non-originating materials but still satisfies the RVC requirements set out in Annex 4-B, the United States "shall provide" that the good is originating when used in further production. Nevertheless, the U.S. interpretation would not consider as originating a core part incorporated into a finished vehicle which is produced in Mexico and/or Canada even if it satisfies the 75% core part RVC requirement according to the unified calculation methodology explained above.

178. By disqualifying the originating status of a core part used in the production of a vehicle, or the vehicle itself that have otherwise satisfied the applicable RVC requirement in the RVC calculation for the finished good, the United States thus acts inconsistently with paragraphs 1 and 2 of Article 4.11.

G. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraph 6 of Article 5.16 (Uniform Regulations) of the USMCA

1. Legal Standard

179. As noted above, Article 5.16 (Uniform Regulations) requires the Parties to adopt and maintain URs "regarding the interpretation, application, and administration" of Chapters 4 through 7 of the Agreement.[142] Paragraph 6 of that article further provides that "[e]ach Party *shall apply* the Uniform Regulations in addition to the obligations in the Chapter" (emphasis added). A Party violates paragraph 6 of Article 5.16 when it does not apply the URs.

2. Application

180. Again, as noted above, the new U.S. interpretation, including as applied through the requirements in the ASR Approval Letters, stipulates that automakers must, at the same time, abide by the URs, and calculate the RVC of a vehicle's core parts and the RVC of the finished vehicle itself "separately and independently of one another." In doing so, the result of the unilateral U.S. interpretation is that non-originating components used to produce an originating core part cannot be counted as originating for purposes of the finished vehicle's RVC calculation, in direct contradiction of the URs. In this way, the ASR Approval Letters effectively instruct automakers to ignore subsections 14(1), 14(7) (b), and 14(10) (b) of the URs, and do not give automakers the "choice" of which variables to include in the core parts RVC calculation as provided by the chapeaux to Subsections 14(7) and 14(10) of the URs.

181. Thus, given that the United States ignores and does formally require automakers to comply with the URs, and at the same time introduces explicit language to calculate the RVC in a manner inconsistent with the URs and with para. 4.5(4) of the USMCA, it is not "apply[ing] and maintain[ing]" subsections 14(1), 14(7) (b), and 14(10) (b) of the URs. Thus, the United States is in clear violation of paragraph 6 of Article 5.16.

H. The Unilateral U.S. Interpretation and Its Current and Future Application Violate Paragraphs 1, 2 and 3 of Article 8 (Transitions) of the Automotive Appendix of the USMCA, in Relation with Sections 19(2) and 19(4) of the URs

1. Legal Standard

142 USMCA, Article 5.16.1.

182. Article 8 (Transitions) of the Automotive Appendix regulates the use of the ASR. In doing so, paragraph 1 of Article 8 clearly states that each Party "shall provide" for a period during which passenger vehicles and light trucks "may be originating pursuant to an alternative staging regime" that lasts five years. The ASR is in contrast to the general, three-year staging regime described in Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Automotive Appendix.

183. Vehicles covered by the ASR do not have to comply with the original core parts requirement.[143] Thus, the provisions of the Automotive Appendix relating to the RVC requirement for core parts are not relevant to vehicles covered by the ASR.

184. Instead, Paragraph 2 of Article 8 explicitly lists the requirements that vehicles subject to an approved ASR petition must meet: *i)* the RVC of the vehicle must not be lower than 62.5% under the net cost method; *ii)* the RVC of the core parts must not be lower than 62.5% under the net cost method or 72.5% under the transaction value method, if the corresponding rule includes a transaction value method; *iii)* the aluminum and steel requirement set out in Article 6 (Steel and Aluminum) must be met, unless otherwise agreed by the Parties; and *iv)* the Labor Value Content requirements under Articles 7.1 or 7,2 (Labor Value Content) must not be reduced by more than 5% for high wage material and manufacturing expenditures, unless otherwise agreed by the Parties. These requirements are repeated nearly verbatim in Subsections 19(2) and 19(4) of the URs.

185. Finally, paragraph 3 limits the quantity of vehicles subject to the ASR to not more than 10% of a producer's total production during a period comprising 12 months prior the entry into force of the USMCA, or the average production in 36 months prior the entry into force of the Agreement, whichever is greater.[144]

186. Paragraphs 1, 2, and 3 of Article 8 constitute the only conditions on the ASR for passenger vehicles and light trucks provided in the text. In other words, vehicles covered by the ASR do not need to otherwise comply with the requirement that core parts must be originating for vehicles to

[143] URs, Section 19(5).

[144] It must be noted that U.S. implemented two types of ASR, some that apply to no more than 10% of the total producer's production, and others that apply to more than 10%,

be originating core parts. Hence, the Automotive Appendix provisions related to the RVC requirement for core parts are not relevant for vehicles covered by the ASR.

187. A Party violates this Article and does not "provide" for the ASR as specified by the text when the Party conditions its approval of an automaker's ASR petition, and thus the originating status of that automaker's vehicles, on the automaker's application of extraneous rules or requirements not contained in the text. A Party also violates this Article when it imposes compliance requirements on vehicles other than those vehicles for which the ASR was requested.

2. Application

188. As provided in Article 8, the only requirements for the approval of an ASR are those described therein, which are repeated in subsections 19(2) and 19(4) of the URs. These requirements are only applicable to those vehicles under which the ASR is sought. Therefore, USTR and CBP's "direction" in the ASR Approval Letters that automakers must apply the new U.S. interpretation to the RVC calculation "for all vehicles (not just those covered by your alternative staging request)" is a clear violation of Article 8 because it: *i)* establishes an additional requirement beyond those provided for in paragraphs 2 and 3, and *ii)* conditions the approval of the ASR to the application of the requirements to vehicles other than those seeking an ASR.

189. Indeed, this "direction" that automakers must apply USMCA rules to "all vehicles," including vehicles that are perhaps exported to other countries or to USMCA territories without requesting preferential treatment and not even traded under the terms of the USMCA, finds absolutely no legal basis in the USMCA or in any other law.

190. Furthermore, by subjecting the approval of automaker's ASR petitions to their compliance with the incorrect interpretation of the United States, the originating character of all the vehicles of a producer, regardless of whether they are covered under an ASR, can be affected, going beyond the provisions of Article 8.

191. Thus, because the United States has imposed a new requirement for the approval of an ASR petition, and has directed automakers to apply its incorrect interpretation to vehicles for which an ASR was never requested, the United States violates paragraphs 1, 2 and 3 of Article 8 of the Appendix to Annex 4-B of the USMCA.

I. In the Alternative, the Unilateral U.S. Interpretation and Its Current and Future Application of the Automotive ROO in its ASR Approval Letters Nullify and Impair a Benefit Mexico Reasonably Expected to Receive within the Meaning of Article 31.2(c) of the USMCA

192. Even if the Panel were to find that the U.S. unilateral interpretation of the automotive ROO, as such and as applied, is somehow consistent with the provisions of this Agreement, Mexico asserts in the alternative that such U.S. interpretation and its current and future application, via the ASR Approval Letters (and other current or future actions), nonetheless nullify or impair benefits Mexico reasonably expected to receive as a result of the U.S. tariff concessions on automobiles under Chapters 2 (National Treatment and Market Access for Goods), 4 (Rules of Origin), and 5 (Origin Procedures) of the USMCA.

193. Before turning to the legal standard and its application to this case, Mexico recalls that so-called "non-violation, nullification and impairment" provisions appear in a number of free trade agreements and the WTO agreements, and have been considered an important means of safeguarding a Party's rights, particularly when another Party adopts a measure that disturbs the careful "balance of rights and obligations" otherwise set out in the agreement, regardless of whether that measure constitutes a direct violation of the provisions of an agreement.[145]

1. Legal Standard

194. Article 31.2(c) (Scope) of the USMCA provides that a Party may make a claim in dispute settlement when it "considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), [...] Chapter 4 (Rules of Origin), [and] Chapter 5 (Origin Procedures) [...] is being nullified or impaired as a result of the application of a measure of another Party that is no inconsistent with this Agreement."

195. The text of Article 31.2(c) envisions that a complaining Party must prove the existence of three elements: (i) the application of a measure by another Party (ii) nullifies or impairs (iii) a benefit that the complaining Party could have reasonably expected under commitments made in the identified chapters. No NAFTA or USMCA Panel has ever fully considered the meaning or application of this provision. However, it is modeled after similar provisions in the WTO

[145] Panel Report, *EC – Citrus (GATT)*, ¶ 4.37, **Exhibit MEX-71**.

agreements, including Article XXIII:1(b) of the GATT 1994, under which panels have concluded that complaining Members must establish identical elements.[146]

196. With respect to the first element, Article 1.5 (General Definitions) of the USMCA defines a "measure" to include "any law, regulation, procedure, requirement, or practice." As noted above, under WTO law, the concept of a "measure" has generally been construed very broadly to encompass any act or omission attributable to a Member, including in the form of instruments that are binding or non-binding,[147] written or unwritten,[148] and that have either present or prospective application.[149]

197. With respect to the second element, WTO panels have primarily considered whether the application of the measure upsets the competitive relationship of imported products,[150] including with respect to tariff concessions.[151] Panels have likewise required complainants to show "a clear correlation between the measures and the adverse effect on the relevant competitive relationships",[152] and that the measure has made more than a *de minimis* contribution to the nullification and impairment. Thus, a measure "nullifies or impairs" a benefit if it causes an upset in the relevant competitive relationships.[153]

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146 *See, e.g.,* Panel Report, *Japan – Film*, ¶ 10.41, **Exhibit MEX-72**.

147 *See*, *e.g.*, Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, ¶ 187, **Exhibit MEX.66**.

148 *See*, *e.g.*, Appellate Body Report, *US – Zeroing (EC)*, ¶ 193, **Exhibit MEX.67**.

149 *See*, *e.g.*, Appellate Body Report, *US – Anti-Dumping Methodologies (China)*, ¶ 5.164, **Exhibit MEX-68**.

150 *See* Panel Reports, *US – COOL (Article 21.5 – Canada and Mexico)*, ¶ 7.713, **Exhibit MEX-73**; *Japan – Film*, ¶ 10.82, **Exhibit MEX-72**.

151 *See* Panel Report, *EC – Seal Products*, ¶ 7.681, **Exhibit MEX-74** quoting Panel Report, *Japan – Film*, ¶ 10.86.

152 *See* Panel Report, *US – COOL (Article 21.5 – Canada and Mexico)*, ¶ 7.714, **Exhibit MEX-73** (citing Panel Report, *Japan – Film*, ¶ 10.82).

153 *See* Panel Report, *US – COOL (Article 21.5 – Canada and Mexico),* ¶ 7.714, **Exhibit MEX-73** (citing Panel Report, *Japan – Film*, ¶ 10.84).

198. As to the third element, the term "benefit" includes "an advantage, a good", and "pecuniary profit".[154] Tariff concessions have been found to give rise to a "benefit" in the form of an expectation of market access opportunities, subject to the conditions of competition inherently bound in the tariff concession.[155] Finally, in assessing whether a measure could reasonably be anticipated by the complaining party, WTO panels have presumed that a complainant cannot reasonably anticipate the adoption of measures introduced *after* the conclusion of the negotiations at which the relevant commitment was crystalized.[156]

2. Application

199. As noted above, the United States holds a new, unilateral and incorrect interpretation of the USMCA automotive ROO, which it presently effectuates through measures such as the ASR Approval Letters. With respect to the ASR Approval Letters specifically, they impose a legally binding obligation on certain North American automakers that received approval for an ASR to calculate the RVC of finished vehicles, pursuant to the "direction" from USTR and CBP therein in order to qualify for USMCA preferential treatment. The ASR Approval Letters thus clearly constitute a procedure, requirement, and practice within the meaning of Article 1.5 and Article 31.2(c) of USMCA.

200. Further, the U.S. unilateral interpretation, as applied in the ASR Approval Letters and other statements and prospective enforcement actions, constitutes a nullification or impairment within the meaning of Article 31.2(c). Specifically, the U.S. reinterpretation upsets the competitive relationship between (i) vehicles domestically produced in the United States that are exported to Mexico and (ii) vehicles imported into the United States from Mexico, by unilaterally decreasing the proportion of imported vehicles that are eligible for duty-free treatment by means of an artificially increased RVC threshold.

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154 *See* Panel Report, *US – COOL (Article 21.5 – Canada and Mexico)*, ¶ 7.681, **Exhibit MEX-73** (citing Shorter Oxford Dictionary, 6th ed., A. Stevenson (ed.) (Oxford University Press, 2007), Vol. 1, p. 220).

155 *See* Panel Report, *EC – IT Products*, ¶ 7.543, **Exhibit MEX-75**.

156 *See* Panel Report, *Japan – Film*, ¶¶ 10.79-10.80, **Exhibit MEX-72**; Panel Report, *EC – Asbestos*, ¶ 8.280, **Exhibit MEX-76**.

201. By contrast, Mexico applies the calculation method as set forth in the plain text of the Agreement at its border and grants preferential treatment under the USMCA to vehicles meeting the RVC requirement under the unified RVC calculation methodology. This necessarily results in a greater proportion of U.S.-made vehicles meeting the requirement compared to Mexican-made vehicles imported under like circumstances into the United States. By favoring its own domestic production and discriminating against Mexican and Canadian production in this manner, the United States upsets the conditions of competition in the auto market, causing a nullification or impairment of negotiated benefits.

202. Lastly, Mexico had reasonable and legitimate expectations of a benefit arising from the U.S. agreement to the USMCA text, its tariff concessions for finished vehicles, and the specific ROO negotiated under the Agreement. The unified RVC calculation methodology was designed and negotiated by the Parties to achieve a delicate balance between incentivizing greater domestic sourcing and maintaining North American competitiveness in the global auto market. It is certainly reasonable to expect that the United States would apply the automotive ROO as negotiated, written, and agreed to by the Parties, not by some later-in-time unilateral reinterpretation designed to restrict duty-free access for vehicles to the U.S. market for domestic political purposes and to provide a useless and contradictory interpretation of Chapter 4 and the Automotive Appendix, which Mexico could not possibly have foreseen.

203. Moreover, adopting the new U.S. interpretation would lead to manifestly absurd results. It simply cannot be the case that the Parties, in seeking to improve upon NAFTA and streamline compliance procedures while maintaining a robust and globally competitive automotive industry, would agree to a text that would visit harm upon that very industry by imposing commercially uncompetitive RVC thresholds and burdensome calculation requirements.

204. By forcing automakers to undertake two separate core parts RVC calculations, the United States thus creates a problem that the negotiators from all three Parties were originally trying to avoid. Indeed, the extra calculation will only substantially increase overall compliance costs and force automakers to prioritize sourcing minor parts over macro-level advancements in vehicle parts and technologies when trying to meet the USMCA's RVC thresholds (not to mention the other requirements related to steel, aluminum, and LVC).

205. Failure to meet that requirement, which takes on greater likelihood under the U.S. unilateral interpretation, would result in an automaker's entire North American production failing to qualify for preferential treatment. This development is particularly nonsensical as automakers have already begun to invest substantially in increased local sourcing in the region, based on prior representations and explanations affirming the proper interpretation of the USMCA by U.S. officials.[157] A new, unilateral interpretation of the plain text of the Agreement, which will manifestly jeopardize the USMCA's overall objectives, certainly could not have been the intention of the Parties.

VIII. REQUEST FOR FINDINGS, DETERMINATIONS AND RECOMMENDATIONS

206. Based on the foregoing, Mexico respectfully requests that the Panel find that:

- The United States is in violation of subparagraph (b) of Article 4.2 (Originating Goods) of the USMCA;
- The United States is in violation of paragraph 4 of Article 4.5 (Regional Value Content) of the USMCA;
- The United States is in violation of paragraph 7 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B of the USMCA;
- The United States is in violation of paragraph 8 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B of the USMCA;
- The United States is in violation of paragraph 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B of the USMCA;
- The United States is in violation of paragraphs 1 and 2 of Article 4.11 (Accumulation) of the USMCA;
- The United States is in violation of paragraph 6 of Article 5.16 (Uniform Regulations) of the USMCA; and
- The United States is in violation of paragraphs 1, 2 and 3 of Article 8 (Transitions) of the Appendix to Annex 4-B of the USMCA and sections 19(2) and 19(4) of the Uniform Regulations; or

[157] *See* Press Release *Autos Drive America Statement on the Composition of a USMCA Dispute Settlement Panel on the Auto Rules of Origin*, March 23, 2022, **Exhibit MEX-39**.

- In the alternative, that the U.S. unilateral interpretation, as applied through the ASR Approval Letters, other statements, and forthcoming enforcement actions, nullifies or impairs a benefit Mexico reasonably expected to receive within the meaning of Article 31.2(c) (Scope) of the USMCA.

207. In light of the above, Mexico requests that the Panel recommend that the United States immediately bring its unilateral interpretation of the automotive ROO, as such and as manifested through various other current or future measures, into conformity with its obligations under the USMCA.