*UNITED STATES – AUTOMOTIVE RULES OF ORIGIN*

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

**-before-**

**THE ARBITRAL PANEL ESTABLISHED PURSUANT TO ARTICLE 31 OF THE AGREEMENT AMONG THE UNITED STATES, MEXICO, CANADA WHICH ENTERED INTO FORCE ON JULY 1, 2020**

**-between-**

**THE UNITED MEXICAN STATES**

**and**

**CANADA**

**-and-**

**THE UNITED STATES OF AMERICA**

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# FINAL REPORT

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**PANEL:**

**Elbio Rosselli (Chair)**
**Kathleen Claussen**
**Donald McRae**
**Jorge Miranda**
**Ann Ryan Robertson**

DECEMBER 14, 2022

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# TABLE OF ACRONYMS

| Abbreviation | Description |
|---|---|
| **ASR** | Alternative Staging Regime |
| **CUSMA** | Canada-United States-Mexico Agreement |
| **HS** | Harmonized System |
| **IWS** | Initial Written Submission |
| **RVC** | Regional Value Content |
| **T-MEC** | Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá |
| **USMCA** | United States-Mexico-Canada Agreement |
| **USTR** | Office of the U.S. Trade Representative |
| **VCLT** | Vienna Convention on the Law of Treaties |
| **VNM** | Value of Non-Originating Materials |

# I. INTRODUCTION

1. The Parties to this dispute are the United Mexican States ("Mexico") and Canada (together, "Complainants") and the United States of America ("United States" or "Respondent") (the three together, the "Parties").

2. This dispute concerns the methodologies for determining whether a passenger vehicle or light truck qualifies for preferential tariff treatment under the terms agreed in the United States-Mexico-Canada Agreement, also referred to as the Canada-United States-Mexico Agreement, and as the Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá (hereinafter, the "Agreement").[1]

3. The Parties principally disagree about what the Agreement prescribes concerning how an automotive producer may determine the regional value content ("RVC") of a passenger vehicle or light truck: the content of the vehicle or truck that the Parties consider to be of North American origin. For a vehicle or truck to receive preferential tariff treatment, among other requirements, it must meet or exceed its respective RVC requirement set out in the Agreement.

4. In particular, the Complainants argue that the Agreement permits a producer to determine the RVC of the finished vehicle or truck by relying on any of several calculation methodologies specified in the Agreement for calculating the RVC of certain vehicle or truck parts, whereas the Respondent maintains that the Agreement limits a producer's choices and does not grant it the options identified by the Complainants in that context.

# II. PROCEDURAL HISTORY

## A. The Agreement

5. Negotiations for the Agreement began in August 2017. The Agreement was signed on November 30, 2018.[2] The parties to the Agreement negotiated a Protocol of Amendments to the Agreement in the following year and signed that text on December 10, 2019.[3] The Agreement entered into force on July 1, 2020.[4]

6. Chapter 4 of the Agreement concerns "Rules of Origin" ("Chapter 4"). Article 4.5 of the Agreement, found in Chapter 4, is entitled "Regional Value Content" and sets out

[1] The Parties refer to the Agreement differently. The Panel will not alter the references to the Agreement in passages quoted from the Parties' submissions. They use "T-MEC", "CUSMA", or "USMCA" to refer to the Agreement. The Panel will also abbreviate "passenger vehicle or light truck" in some instances by referring to "vehicle or truck" or simply "vehicle".

[2] Mexico Initial Written Submission ("IWS"), para. 36; Canada IWS, para. 61; United States IWS, para. 25.

[3] Mexico IWS, para. 36; Canada IWS, para. 61.

[4] Mexico IWS, para. 89; Canada IWS, para. 61; United States IWS, para. 25.

requirements that each party is to provide in the RVC calculation of goods covered by the Agreement.[5]

7. Chapter 4 has several annexes that address specific rules of origin matters. Annex 4-B sets forth "Product-Specific Rules of Origin", some of which apply to automotive goods.

8. Annex 4-B contains an appendix entitled "Provisions Related to the Product-Specific Rules of Origin for Automotive Goods". The Parties refer to this appendix as the "Autos Appendix". The Panel will likewise adopt this term.

9. Finally, the parties to the Agreement adopted Uniform Regulations, regulations that elaborate certain requirements set forth in the Agreement and that are called for by the Agreement.[6] The Uniform Regulations were made effective from the date of entry into force of the Agreement.[7]

### B. The Consultations Request

10. On August 20, 2021, Mexico requested consultations with the United States pursuant to Article 31.4 of the Agreement.[8]

11. Canada notified its intention to participate in these consultations on August 26, 2021, pursuant to Article 31.4.4 of the Agreement.[9]

12. Consultations among the Parties were held on September 24, 2021, by videoconference.[10]

### C. Establishment of the Panel

13. On January 6, 2022, Mexico requested the establishment of a panel pursuant to Article 31.16.1 of the Agreement.[11]

14. Canada notified its intention to join the dispute as a complaining party on January 13, 2022.[12]

15. The United States Section of the Agreement Secretariat serves as the Secretariat in this dispute, consistent with Articles 2 and 3 of the Rules of Procedure for Chapter 31 (Dispute

[5] The Panel will refer to articles in chapters of the Agreement as "Article X.X", as the Agreement does, and to paragraphs in articles as "Article X.X.X". The Panel will refer to articles of the Autos Appendix as "Article X" and to paragraphs in articles as "Article X.X".

[6] Article 5.16.1.

[7] Decision No. 1 of the Agreement Free Trade Commission.

[8] Mexico IWS, para. 22; Canada IWS, para. 12.

[9] Mexico IWS, para. 22; Canada IWS, para. 12.

[10] Mexico IWS, para. 22; Canada IWS, para. 12.

[11] Mexico IWS, para. 23; Canada IWS, para. 13.

[12] Mexico IWS, para. 23; Canada IWS, para. 13.

Settlement), Annex III of the Agreement Free Trade Commission Decision No. 1, signed July 2, 2020 ("Rules of Procedure").

16. The Parties agreed on the selection of the panel members by March 22, 2022.[13]

17. The representatives of the Parties provided the Secretariat with their respective lists of persons authorized to have access to confidential information in this dispute and updated those lists as necessary over the course of the proceedings. Each authorized person completed a non-disclosure declaration regarding the protection of confidential information shared during the dispute.

18. The Panel held an initial meeting on March 28, 2022. Members of the Secretariat were also present. On the same day, and consistent with Article 18.2 of the Rules of Procedure, the Panel sought the views of the Parties on the dispute timetable, including whether the hearing would be held in person or via videoconference. The Parties submitted their views on March 28-30, 2022. With respect to the hearing, the United States indicated its preference to hold an in-person hearing.[14] Canada preferred an in-person hearing with a hybrid option in case of need.[15] Mexico did not indicate a final preference but stated that it might prefer a virtual hearing.[16]

19. On March 29, 2022, Chair Rosselli informed the Secretariat that he would be assisted by José Luis Heijo.

20. On April 1, 2022, the Panel issued a proposed timetable for comment by the Parties. Canada and Mexico offered comments on the proposed timetable on April 4, 2022.

21. On April 13, 2022, the Panel issued the timetable for the proceedings, including a hearing to be held on August 2-3, 2022, in person in Washington, DC. The timetable noted that the Secretariat would provide remote access for representatives of the Parties who so requested. The timetable also provided information to the Parties on the management of translation of written submissions and adjustments consistent with the terms of the Agreement and Rules of Procedure.

### D. Written Submissions

22. The Complainants filed their initial written submissions on March 29, 2022.

23. The Respondent filed its initial written submission on May 20, 2022.

[13] Mexico IWS, para. 24; Canada IWS, para. 14.

[14] United States Communication of March 30, 2022.

[15] Canada Communication of March 30, 2022.

[16] Mexico Communication of March 30, 2022.

24. The Complainants filed their rebuttal submissions on June 9, 2022. These submissions were docketed on June 23, 2022, following the translation of Mexico's rebuttal submission from Spanish into English.

25. The Respondent filed its rebuttal submission on July 25, 2022.

### E. Non-Governmental Entities

26. On April 6, 2022, the Asociación Mexicana de la Industria Automotriz, a non-governmental entity, sought leave to submit its views on the dispute pursuant to Articles 20.1 and 20.2 of the Rules of Procedure. On April 7, 2022, Global Automakers of Canada, also a non-governmental entity, likewise sought leave. Pursuant to Article 20.4 of the Rules of Procedure, on April 7, 2022, the Panel invited the Parties to submit their views on the applications of the non-governmental entities.

27. The Parties submitted their comments on the non-governmental entities' requests for leave on April 12, 2022.

28. On April 14, 2022, the Panel granted the requests of both non-governmental entities.

29. The Asociación Mexicana de la Industria Automotriz and the Global Automakers of Canada submitted their views on May 27, 2022.

### F. Hearing

30. Following consultations with the Parties, the Panel distributed the hearing agenda to the Parties on July 6, 2022.

31. On July 7, 2022, the Panel sought the views of the Parties on a revised timetable for the proceedings in light of the need for translation of Mexico's responses to the questions of the Panel following the hearing, as well as of Mexico's comments on the responses of the other Parties.

32. On July 14, 2022, Mexico proposed an amended revised timetable pursuant to Article 9.5 of the Rules of Procedure.

33. On July 21, 2022, the Panel adopted the proposed amended revised timetable.

34. On July 27, 2022, following an exchange among the Parties and the Secretariat in which the United States indicated it would participate in the hearing remotely, Mexico sought the Panel's guidance on a health protocol for the hearing "to have the full in-person participation of the Parties".[17]

[17] Mexico Communication of July 27, 2022.

35. On the same day, the Panel issued a communication to the Parties stating:

> As no public announcement has been forthcoming from US federal or DC authorities as to the nature and severity of the increase of COVID-19 cases, nor have restrictions been imposed on travel to the area, the Panel would welcome additional information, and in the meantime, as proposed by Mexico, invites the Parties to agree on a health protocol in order to mitigate the risks of contagion and have a full in-person participation of the Parties.[18]

36. On July 28, 2022, the Parties provided comments in response to the Panel's communication of the prior day. The Parties agreed to hold a hybrid hearing in which the principal members of the delegations of Mexico and Canada would participate in person while the delegation of the United States would participate remotely.[19]

37. The Panel proceeded to hold a hearing on August 2-3, 2022, in Washington, DC, with some participants joining via WebEx.

38. The following persons participated in the hearing (those who participated remotely are indicated with an asterisk)[20]:

**The Panel**
Elbio Rosselli (Chair)
Kathleen Claussen
Donald McRae*
Jorge Miranda
Ann Ryan Robertson

**Assistant to the Chair**
José Luis Heijo

**Mexico**
Orlando Pérez Gárate, Director General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía;
Antonio Nava Gómez, Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía;
Luis Fernando Muñoz Rodríguez, Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía;
Miroslava Pérez, Consejera en la Misión Permanente de México ante la Organización Mundial del Comercio;
Pamela Hernández Mendoza, Subdirectora de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía;

[18] Panel Communication of July 27, 2022.

[19] United States Communication of July 28, 2022.

[20] Also present at the hearing and rendering assistance were interpreters of Spanish and English, an audiovisual team, and a court reporter.

Alejandro Rebollo Ornelas, Jefe de Departamento en la Consultoría Jurídica de Comercio Internacional;
César Remis Santos, Titular de la Oficina para la Implementación del T-MEC en Estados Unidos; and,
Ignacio Alberto Sandoval Félix, Consejero en la Oficina para la Implementación del T-MEC en Estados Unidos

**Canada**
Dominic Gingras, General Counsel, Trade Law Bureau, Government of Canada;
David Yarwood, Counsel, Trade Law Bureau, Government of Canada;
Carrie Vanderveen, Counsel, Trade Law Bureau, Government of Canada;
Dena Givari, Counsel, Trade Law Bureau, Government of Canada;
Karen LaHay, Senior Economist, Finance Canada*;
Martin Thornell, Senior Advisor, Trade Policy and Negotiations, Global Affairs Canada;
Annie Ouellet, Counsellor Trade Policy; and,
Monalisa Chose, Trade Manager, Innovation and Industry Policy

**United States**
Annelies Brock Winborne, Deputy Assistant U.S. Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative*;
Kimberly Reynolds, Assistant General Counsel, Office of the U.S. Trade Representative*;
Nick Paster, Assistant General Counsel, Office of the U.S. Trade Representative*; and,
Justin Hoffmann, Director of Industrial Goods, Office of the U.S. Trade Representative*

**United States Section of the Secretariat**
Vidya Desai, United States Secretary, Trade Agreements Secretariat, International Trade Administration, U.S. Department of Commerce;
Jamie Merriman, International Trade Administration, U.S. Department of Commerce;
Garrett Peterson, International Trade Administration, U.S. Department of Commerce; and,
Julie Geiger, International Trade Administration, U.S. Department of Commerce

39. The hearing was held in English and Spanish with simultaneous interpretation. The hearing was also livestreamed in English to members of the public who had registered in advance.

40. All Parties were permitted the opportunity to make opening and closing statements and all Parties responded to questions from the Panel.

41. Following the hearing, the Panel issued written questions to the Parties on August 8, 2022.

42. The Parties' responses to the Panel's questions were docketed on August 22, 2022, following translation. The Parties' comments on each other's responses to the Panel's questions were docketed on September 6, 2022.

43. On September 9, 2022, the Secretariat communicated to the Panel that the Parties sought guidance from the Panel, pursuant to Article 21.14 of the Rules of Procedure, on their disagreement regarding their respective corrections to the hearing transcript.

44. On September 13, 2022, the Panel acknowledged the information provided by the Secretariat that "the only recording we have of the hearing is that of the virtual stream, which was set up to have only one language transmitted, English".[21] The Panel informed the Parties that it had taken note of the circumstances and that it would take into account the Parties' comments on the transcript.

### G. Initial Report

45. On October 6, 2022, the Panel informed the Parties, consistent with Article 31.17 of the Agreement, that it would not be in a position to release the Initial Report to the Parties by October 12, 2022, the date previously announced, due to the complexities of the case, the need to perform a detailed and comprehensive analysis of the different issues raised in the dispute, as well as to present clear and detailed findings.[22] The Panel indicated that it would present its Initial Report by no later than November 12, 2022.

46. The Panel issued its Initial Report on November 10, 2022. The Initial Report was distributed by the Secretariat to the Parties on November 14, 2022.

47. The Parties provided comments on the Panel's Initial Report on November 29, 2022.

48. The Panel issued its Final Report on December 14, 2022.

## III. FACTUAL BACKGROUND

### A. Rules of Origin on Passenger Vehicles, Light Trucks, and their Component Parts

49. Revisions to the rules of origin—rules that dictate how parties to a trade agreement determine the country of origin of a particular good—were a contested topic in the negotiations of the Agreement.[23] Chapter 4 of the Agreement deals with many of these rules as its title suggests.

50. Chapter 4 demands that the parties to the Agreement provide rules that guide producers of many types of goods on the determination of whether their goods qualify as "originating" and therefore are eligible for preferential tariff treatment. These rules are highly complex and involve many layers of calculations.

51. Article 4.5 is central to these proceedings. It deals with the ways producers can determine the RVC of goods that are traded between the parties to the Agreement. The Parties refer to Article 4.5.4 as the "roll-up" provision.[24] Roll-up applies when a good that qualifies as originating under the terms of the Agreement is used as an input in the production of a

[21] Panel Communication of September 13, 2022.

[22] Panel Communication of October 6, 2022.

[23] Mexico IWS, paras. 3-7; United States IWS, para. 2.

[24] Mexico IWS, para. 61; Canada IWS, para. 23; United States IWS, para. 9.

subsequent good.[25] It allows the producer to disregard the value of any non-originating inputs used to produce that good when calculating whether the subsequent good meets its required RVC threshold. Put differently, if a good is produced in a party and that good qualifies as originating, then that good is considered 100 percent originating when used in the production of another good.

52. Automotive goods receive extra attention in the Agreement. The Autos Appendix to Chapter 4 lays out many of these additional provisions. Those provisions include requirements that vehicles must meet to qualify for preferential tariff treatment that may not apply to other goods. In addition to the RVC requirements, these other requirements include a steel and aluminum requirement as well as a labor value content requirement.[26] In this dispute, only the vehicle RVC requirement is at issue, but understanding that vehicles are subject to several requirements to receive preferential tariff treatment provides useful context.

53. The RVC requirements are explained and elaborated in several articles in Chapter 4 and the Autos Appendix. As described in greater detail below, the Agreement lays out different required minimum RVCs for the different parts of the vehicle as well as for the finished vehicle, and those minimum thresholds are phased in over time. The manner through which the parties to the Agreement require producers to determine the RVC of the various parts or the vehicle varies depending on the circumstances, including on the nature of the part. In general terms, this dispute concerns how those determinations are made and how they interact with one another.

### B. Approvals of the Alternative Staging Regimes

54. Article 8 of the Autos Appendix requires parties to the Agreement to permit what are referred to as "alternative staging regimes" ("ASRs"). ASRs are transitional instruments. Proposed by auto producers and approved by an Agreement party, an ASR permits a producer to import passenger vehicles or light trucks under a different set of requirements from the general terms of the Agreement in the early years of implementation of the Agreement, until January 1, 2025.

55. Article 8.1 obliges each party to the Agreement to "provide that, for a period ending no later than January 1, 2025, or five years after entry into force of this Agreement, whichever is later, a passenger vehicle or light truck may be originating pursuant to an alternative staging regime to the regime set out in Articles 2 through 7, subject to paragraphs 2 and 3 [of Article 8]".[27] A producer can seek approval for an ASR for not more than 10 percent of its passenger vehicles and light trucks.[28] Its other vehicles and trucks are subject to the general terms of the Agreement.

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[25] Canada IWS, para. 37.

[26] See, e.g., Articles 6 & 7 of the Autos Appendix.

[27] Article 8.1.

[28] Article 8.3.

56. Article 8.2 provides that an ASR "must meet the following requirements":

> the regional value content for such vehicles must not be lower than 62.5 percent, under the net cost method, and must be 75 percent by no later than January 1, 2025 or five years after entry into force of this Agreement, whichever is later;
>
> the regional value content for a good listed in Table A.1 of this Appendix, except for a battery of subheading 8507.60,83 that is for use in a passenger vehicle or light truck must not be lower than 62.5 percent under the net cost method or 72.5 percent under the transaction value method, if the corresponding rule includes a transaction value method, and must be 75 percent under the net cost method or 85 percent under the transaction value method, if the corresponding rule includes a transaction value method by no later than January 1, 2025 or five years after entry into force of this Agreement, whichever is later;
>
> the steel and aluminum requirement under Article 6 (Steel and Aluminum) must be met, unless the Parties agree to change that requirement for vehicles subject to this alternative regime; and
>
> The LVC requirements under Articles 7.1 or 7.2 (Labor Value Content) must not be reduced by more than 5 percentage points for high wage material and manufacturing expenditures unless the Parties agree to change that requirement for vehicles subject to this alternative staging regime.[29]

57. On April 21, 2020, the United States published in the United States Federal Register "Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks to Use Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods".[30] The notice invited producers to submit petitions requesting ASRs by July 1, 2020.

58. Between December 28, 2020, and February 24, 2021, the United States approved every ASR application that it received.[31] The United States' approval was memorialized in a letter sent to the producer-applicants which included the following language:

> Second, your plan is approved based on USTR's understanding that [producer name] will calculate its vehicle RVC 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

[29] Article 8.2 (footnotes omitted).

[30] 85 Fed. Reg. 22,238 (Apr. 21, 2020).

[31] United States Responses to Panel Questions, para. 6.

> 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 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.[32]

59. None of the Parties has complete information as to the importation into the United States of passenger vehicles and light trucks subject to the United States' ASR letters. The United States believes with a "high degree of certainty" that passenger vehicles and light trucks approved for importation under the terms of its ASR letters are being imported into the United States.[33]

60. Similarly, none of the Parties can say with certainty whether the producers that were granted ASR approval by the United States are or have been also importing into the United States passenger vehicles and light trucks that are not or were not subject to the ASR terms. According to the United States, several auto producers that did not apply for ASRs "have shipped passenger vehicles and light trucks into the United States".[34]

61. There is no dispute among the Parties as to any differential treatment by the United States between the vehicles and trucks that are imported subject to an ASR and those that are imported outside the terms of an ASR. Where the Parties differ is with respect to the United States' interpretation of Article 3.7 of the Autos Appendix and its relationship with Article 4.5 of the Agreement as articulated in the United States' ASR approval letters and as applied by the United States.

## IV. PRELIMINARY CONSIDERATIONS

62. The Panel begins its analysis by reviewing the measures at issue, the Complainants' claims, the Panel's terms of reference, the principles governing the burden of proof in the dispute, and the Panel's approach to interpretation.

### A. The Measures and the Claims

63. The Complainants differ somewhat on their articulation of the measures at issue. Canada maintains that the "U.S. interpretation regarding core parts and its application to vehicle producers through various legal instruments, including the ASR letters, are the measures at issue in this dispute".[35]

[32] Canada Exhibit 04 (alteration made by the Panel).

[33] United States Responses to Panel Questions, para. 11.

[34] *Id.*, para. 5.

[35] Canada Responses to Panel Questions, para. 1; Canada IWS, para. 27 (listing legal instruments).

64. Mexico argues that the measure in dispute is the "interpretation of the United States and the application of the United States" of the rules of origin provisions to autos and auto parts.[36] Mexico requested establishment of the panel with respect to:

> 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;
>
> 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.[37]

65. Mexico and Canada share the view that the United States acts inconsistently with the Agreement by way of the interpretation set out in the United States' ASR letters and the United States' application thereof.

66. Together, Mexico and Canada argue that the United States has breached the following provisions of the Agreement:

> (a) Article 4.2(b) (Originating Goods), because the United States does not provide that passenger vehicles, light trucks or parts thereof, produced in the territory of

[36] Hearing Transcript, Day 1, p. 195.

[37] Mexico IWS, para. 25 (footnotes omitted).

one or more of the USMCA Parties using non-originating materials that satisfy all applicable requirements of Annex 4-B (Product-Specific Rules of Origin), are originating;

(b) Paragraph 4 of Article 4.5 (Regional Value Content), because the United States considers that the value of the non-originating components or parts used in the production of a passenger vehicle or light truck include, for the purposes of calculating the general RVC of the vehicle or light truck, the value of the non-originating materials used to produce an originating "core part" and/or the "super core part" that is subsequently used in the production of a passenger vehicle or light truck;

(c) Paragraphs 1 and 2 of Article 4.11 (Accumulation), because the United States denies originating status to passenger vehicles and light trucks produced in the territory of a USMCA Party that satisfy the requirements of Article 4.2 (Originating Goods) and all other applicable requirements of Chapter 4 (Rules of Origin), and also disqualifies from originating status a "core part" and/or the "super core part" that has satisfied the RVC requirements using the calculation methodologies provided in the USMCA, when used as a material in the production of a passenger vehicle or light truck;

(d) Paragraphs 7, 8 and 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B, because the United States fails to treat, the "core parts" satisfying the RVC requirement in paragraph 2 of Article 3 of the Appendix to Annex 4-B as originating, for the purposes of calculating the RVC for a passenger vehicle or light truck;

(e) Paragraph 8 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B, because the United States fails to permit a vehicle producer, when calculating the regional value content of a vehicle, to use the calculation methodology described in subparagraph (b) of paragraph 8 of Article 3 of the Appendix to Annex 4-B to the "core parts" used in the vehicle;

(f) Paragraph 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B, due to the fact that the United States fails to permit a vehicle producer, when calculating the regional value content of a vehicle, to use one of the calculation methodologies applicable to "core parts" provided for in subparagraphs (a) and (b) of paragraph 9 of Article 3 of the Appendix to Annex 4-B to the "core parts" used in the vehicle;

(g) Paragraph 6 of Article 5.16 (Uniform Regulations), given that the United States does not apply the principle of roll-up to originating "core parts" provided for in Section 14 of the Uniform Regulations when calculating the RVC of passenger vehicles and light trucks; and

(h) Paragraphs 1, 2 and 3 of Article 8 (Transitions) of the Appendix to Annex 4-B and sections 19(2) and 19(4) of the Uniform Regulations, because the United States has conditioned the approval of an alternative staging regime, and thus the

> originating status of the vehicles subject to that regime, on the application of the United States' incorrect interpretation referred to in paragraph 3 of this request.[38]

67. In its responses to the questions posed by the Panel following the hearing, the United States raised an objection to part of Mexico and Canada's articulation of their claims in this dispute. The Panel will take up this objection in its treatment of Mexico and Canada's Article 8 claims below.

68. Mexico and Canada argue in the alternative that the United States' interpretation and application of the Agreement nullify or impair benefits that the Complainants "reasonably expected to receive as a result of the U.S. tariff concessions on automobiles" under Chapters 2, 4, and 5 of the Agreement.[39] The Complainants raise this claim under Article 31.2(c) of the Agreement.

### B. Terms of Reference

69. Given that the Parties did not decide on terms of reference other than those provided in Article 31.7 of the Agreement, the Panel's terms of reference are to:

> Examine, in light of the relevant provisions of [the Agreement], the matter referred to in the request for the establishment of the panel under Article 31.6 (Establishment of a Panel); and,
>
> Make findings and determinations and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 31.17 (Panel Report).[40]

### C. Burden of Proof

70. The Panel is further guided by the Rules of Procedure which provide that:

> A complaining Party asserting that a measure of another Party is inconsistent with this Agreement, that another Party has failed to carry out its obligations under this Agreement, that a benefit the complaining Party could reasonably have expected to accrue to it is being nullified or impaired in the sense of Article 31.2(b) (Scope), or that there has been a denial of rights under Article 31-A.2 (Denial of Rights) or Article 31-B.2 (Denial of Rights), has the burden of establishing that inconsistency, failure, nullification or impairment, or denial of rights.[41]

71. Mexico and Canada have the burden of establishing the inconsistencies they claim with respect to the United States' interpretation and application of the Agreement.

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[38] Mexico's Request for Establishment of a Panel (references omitted).

[39] Mexico IWS, para. 192.

[40] Article 31.7.

[41] Article 14.1 of the Agreement Rules of Procedure.

### D. Approach to Interpretation

72. All Parties ground their interpretation in the text of the Agreement, including the Autos Appendix, and refer to the customary rules of interpretation of public international law as embodied in Article 31 of the Vienna Convention on the Law of Treaties ("VCLT"). Article 31 provides, in primary part: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose".[42]

73. Mexico and Canada make additional arguments on the basis of supplementary means of interpretation as set out in Article 32 of the VCLT. The United States argues that only some of the evidence submitted by Mexico and Canada may be considered by the Panel as "supplementary means", and that these materials support the interpretation of the United States. The relevant provisions of Article 32 are:

> 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.[43]

74. The Panel notes that as agreed by the parties in Article 31.13.4 of the Agreement, Articles 31 and 32 of the VCLT reflect the customary rules of interpretation of public international law and are applicable to this dispute. Accordingly, those provisions govern the Panel's interpretation of the Agreement.

## V. THE CLAIMS CONCERNING ARTICLE 8 OF THE AUTOS APPENDIX

75. The Panel begins its review of the issues in dispute by turning to the Complainants' Article 8 claims.

76. Mexico and Canada maintain that the United States violates Articles 8.1 and 8.2 of the Autos Appendix through the requirements the United States has imposed on auto producers in the ASR-approval letters issued by the Office of the United States Trade Representative. As set out above, the letters provide, in part:

> [Y]our 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.[44]

[42] VCLT, Article 31.

[43] VCLT, Article 32.

[44] Canada Exhibit 04.

## A. Jurisdictional Objection

### 1. Arguments of the Parties

77. In its responses to Panel questions following the hearing, the United States raises the argument that the Complainants' Article 8 claims fall outside the terms of reference of the Panel, as those claims were not articulated in Mexico's request for consultations. The United States argues:

> Mexico's consultation request identified only the application and interpretation of Article 3 of the Autos Appendix and Article 4.5.4 of the Agreement as the matter at issue in this dispute. Complainants' new claim of breach under Article 8 of the Autos Appendix related to an alleged "condition" under an ASR, therefore falls outside the scope of this dispute because it pertains to an alleged measure not identified in the consultation request, alleges a breach when the consultation request only raised issues of interpretation, and alleges a breach for a provision not identified in the consultation request. Each of these provides an independent basis to find this issue outside the matter to be reviewed by the Panel under its terms of reference. Therefore, the Panel should decline to make findings on Complainants' claim challenging a "condition" set out in the ASR letters under Article 8 of the Autos Appendix.[45]

78. Both Mexico and Canada take issue with the belatedness of the United States' objection.[46] Mexico also maintains that its position on the measure at issue "has been consistent since Mexico's request for consultations" which it views as encompassing its Article 8 claims.[47]

79. The Complainants further argue that because their Article 8 claims were set out in Mexico's request for establishment of a panel, the Panel may examine the Complainants' Article 8 claims.[48]

### 2. The Panel's Analysis

80. The Panel considers that its terms of reference outline the four corners of its task in this dispute. The terms of reference charge the Panel with examining the matters referred to in the request for establishment of the panel. Mexico's request for establishment of the panel refers to an alleged breach by the United States of

> (h) Paragraphs 1, 2 and 3 of Article 8 (Transitions) of the Appendix to Annex 4-B and sections 19(2) and 19(4) of the Uniform Regulations, because the United States

[45] United States Responses to Panel Questions, para. 2 (footnote omitted).

[46] Mexico Comments on Responses to Panel Questions, para. 6; Canada Comments on Responses to Panel Questions, para. 1.

[47] Mexico Comments on Responses to Panel Questions, para. 2. The Panel quotes the English translation of Mexico's Responses. Likewise, any quotations of Mexico's submissions that were originally in Spanish are quotations to the translations provided through the Secretariat.

[48] Mexico Comments on Responses to Panel Questions, paras. 3 and 9; Canada Comments on Responses to Panel Questions, paras. 1-3.

> has conditioned the approval of an alternative staging regime, and thus the originating status of the vehicles subject to that regime, on the application of the United States' incorrect interpretation referred to in paragraph 3 of this request.[49]

This paragraph clearly enables the Panel to examine the Article 8 claims as articulated by Mexico and Canada.

81. In any event, in the view of the Panel, the reference in Mexico's request for consultations to the imposition by the United States of "certain requirements on motor vehicle producers"[50] is broad enough to encompass the Article 8 claims expressly articulated in the panel request.

82. Accordingly, the Panel concludes it may examine and make findings on the Complainants' Article 8 claims.

### B. Merits of the Article 8 Claims

#### 1. Arguments of the Parties

83. Canada and Mexico maintain that the requirement set out in the United States' ASR letters "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" is inconsistent with the Agreement.[51]

84. The United States does not dispute that its ASR letters require the recipient-producers to calculate their vehicle RVC in the manner understood by Canada and Mexico. Further, the Parties agree that this requirement extends not only to the vehicles and trucks covered by each ASR letter but also to all vehicles and trucks imported into the United States by each producer-applicant. However, the United States argues that the ASR letters "do not require the auto producer to do anything other than what is required in the Agreement".[52]

85. Whether the United States' interpretation breaches the agreement is the primary interpretative difference between the Complainants and the Respondent to which the Panel will turn in Part VI.

86. Canada and Mexico raise an additional claim specific to Article 8 alone. They claim that the United States breaches Articles 8.1 and 8.2 by "conditioning" the approval of producers' proposed ASRs, and thus the originating status of the vehicles subject to that regime, on a direction applicable to other vehicles.[53] Canada and Mexico point to the following language in the United States' ASR letters in which the United States explains

[49] Mexico's Request for Establishment of a Panel (references omitted).

[50] Mexico Exhibit 65.

[51] Mexico IWS, paras. 179-181; Canada IWS, paras. 164-173.

[52] United States Rebuttal Submission, para. 93.

[53] Mexico IWS, para. 188; Canada IWS, paras. 147-150.

that ASR approval may be rescinded if the producer does not comply with the United States' interpretation of the language in contexts outside the ASR:

> 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 approval of your alternative staging plan . . . .[54]

87. According to Mexico and Canada, this language in the ASR letters, effectively making the ASRs' approval contingent on the manner through which producers calculate the vehicle RVC for a vehicle not covered by the ASR, violates Article 8 because it requires producers to comply with terms not mentioned in Article 8. Mexico and Canada argue that the United States' ASR letters "establish[] an additional requirement beyond those provided for in paragraphs 2 and 3" of Article 8, which, the Complainants maintain, set out an exclusive list of requirements for ASR approval.[55] In their view, this extra requirement on eligible vehicles breaches Articles 8.1 and 8.2 read together.

88. The Complainants contend that the United States' ASR letters are also inconsistent with the Uniform Regulations. Section 19(4) of the Uniform Regulations provides that "[e]ligible vehicles are considered originating if they meet the following requirements", and then sets out the same four requirements as found in Article 8.2.[56] Mexico and Canada argue that this language further supports their interpretation that Article 8.2 provides a closed set.

89. The United States takes the position that Article 8.2 does not provide a closed set of requirements that can be imposed in the approval of an ASR.[57] The United States argues that the Complainants "have not identified any textual support" that prohibit a party from imposing additional requirements.[58]

90. The Parties agree that, based on the text of the ASR letters, if the United States were to conduct a verification process under Article 5.9 of the Agreement, and if the United States were to find that a vehicle producer is not complying with the terms of the producer's ASR letter with respect to a vehicle or truck imported into the United States not covered by the ASR letter, then the United States may rescind the ASR.

### 2. The Panel's Analysis

91. The Panel faces two questions. First, as a factual matter, did the United States impose in the ASR letters an obligation on producer-applicants beyond those enumerated in Article

[54] Canada Exhibit 04.

[55] Mexico IWS, para. 188.

[56] Uniform Regulations, Section 19(4).

[57] United States Responses to Panel Questions, para. 9.

[58] *Id.*, para. 9.

8 of the Agreement? Second, if so, as a legal matter, is this obligation inconsistent with the Agreement?

92. The Panel considers that the language in the United States' ASR letters entails a requirement beyond those stated in Article 8 that producer-applicants must meet for their eligible vehicles to be considered originating. The United States acknowledges that the letters stated that the United States maintained "discretion" to rescind the ASRs if the producer-applicant did not adhere to the United States' direction with respect to all the producer-applicant's vehicles imported into the United States.[59] In effect, the letter imposes an obligation on the producer-applicant that does not appear in the Agreement or in the Uniform Regulations.

93. To answer the legal question, the Panel turns to the text of Article 8.2 and the list of producer requirements stated therein. The Panel observes that the Article states that an ASR "must meet the following requirements". The Article does not make any statement as to its exclusiveness or its comprehensiveness. Thus, an examination of the ordinary meaning of that phrase, as required by the customary rule of interpretation embodied in Article 31(1) of the VCLT, does not provide meaningful guidance on the legal matter in dispute.

94. Examining Article 8.2 as a whole, and in view of the Agreement, however, does provide some guidance. The list of requirements in Article 8.2 largely tracks the four major rules-of-origin issues surrounding vehicles and trucks as identified by all three Parties: the RVC of the vehicle or truck, the RVC of a good, the steel and aluminum requirement, and the labor value content requirement. This broader context leads the Panel to conclude that the list in Article 8.2 is more comprehensive than not.

95. Similarly, all three Parties agree that the Uniform Regulations are relevant context for the Agreement.[60] The Panel considers that it may review the Regulations consistent with Article 31(2)(a) of the VCLT, as the Uniform Regulations constitute an agreement relating to the Agreement which was made in connection with the conclusion of the Agreement. Further, Article 5.16.1 of the Agreement requires the Parties to adopt and maintain the Uniform Regulations "regarding the interpretation, application, and administration" of Chapters 4 through 7.

96. Section 19(4) of the Uniform Regulations merges the language of Articles 8.1 and 8.2 by stating that ASR-eligible vehicles are originating if they meet the four requirements set out in Article 8.2. In light of this context, the Panel finds that Section 19(4) further confirms that the list in Article 8.2 was intended by the parties to the Agreement to be the complete list of terms that could be required by a party vis-à-vis a producer-applicant.

97. The Panel concludes that the United States has breached Article 8 by conditioning the ASR approvals on a requirement apart from those listed in Article 8.2 and in Section 19(4) of

[59] Hearing Transcript, Day 2, p. 54.

[60] Mexico Responses to Panel Questions, para. 14; Canada Responses to Panel Questions, para. 93; United States Responses to Panel Questions, para. 143.

the Uniform Regulations, one that falls outside the scope of what was intended by the Agreement.

## VI. THE CLAIMS CONCERNING ARTICLE 4.5 OF THE AGREEMENT

98. The principal dispute between the Parties is focused on the interpretation of the rules of origin for passenger vehicles and light trucks set out in Article 4.5 of the Agreement and in Article 3 of the Autos Appendix.

99. All the Parties agree that the Agreement requires each party to provide in its domestic law certain terms, as set out in the Agreement, for vehicle producers to calculate the RVC of a vehicle and the RVC of the vehicle's core parts. The Parties further agree that those terms, as applied, require a vehicle producer to determine the RVC of the core parts of the vehicle as well as the RVC of the finished vehicle because certain thresholds must be met for each of those RVCs for the vehicle to receive preferential tariff treatment under the Agreement. The differences among the Parties concern the relationship between the calculation of the RVC for the vehicle's core parts and the calculation of the RVC for the finished vehicle.

100. Mexico and Canada argue that Article 4.5 of the Agreement and Article 3 of the Autos Appendix require each party to permit a vehicle producer to calculate the RVC of the core parts in accordance with Articles 3.7 to 3.9 of the Autos Appendix, and, if, following the methodologies set out in those provisions, the producer determines that the core parts are originating, the producer may treat each of those core parts as having an RVC of 100 percent when calculating the vehicle RVC.

101. The United States argues the Agreement contains no such requirement. In the view of the United States, the calculation of the vehicle RVC and the calculation of the core parts RVC under Articles 3.7 to 3.9 are unrelated. While all the Parties agree that Article 3.7 comprises a requirement according to which the core parts of the vehicle must qualify as originating using one of the calculation methodologies set out in Articles 3.8 and 3.9, the United States maintains that the producer may not treat those core parts as having an RVC of 100 percent when calculating the vehicle RVC.

102. Consistent with Article 31 of the VCLT, the Panel will commence its analysis by examining the Parties' arguments on the meaning to be ascertained from the text of the Agreement.

### A. Arguments of the Parties

#### 1. Summary of the Complainants' Arguments

103. Although Mexico and Canada express their positions in slightly different terms, they have a common understanding of the interpretation of the relevant provisions of the Agreement.

104. According to Mexico, the Agreement created "three categories of auto parts required to achieve an RVC of 75% (core parts), 70% (principal parts), and 65% (complementary

parts)".[61] The Agreement provides for "a single, unified methodology for the calculation of the RVC of core parts and finished motor vehicles".[62]

105. Mexico contends the options afforded producers for computing the RVC of a core part provided in Articles 3.8 and 3.9, which set out methodologies for calculating the value of non-originating materials ("VNM") used in the production of a part or parts, may be used to compute the core parts RVC needed for determining the RVC of the finished vehicle.[63]

106. Mexico argues if a producer calculates the RVC of core parts using the VNM methodologies under Article 3.8 or Article 3.9 and that RVC meets the threshold RVC for core parts in Article 3.2, then, in accordance with Article 3.7, the core parts are now originating.[64] Since the core parts are used in the production of the vehicle, then, applying Article 4.5.4 of the Agreement, the VNM used in the production of the core parts is not included in the calculation of the vehicle RVC.[65] The RVC of the core parts is thus "rolled up" to 100 percent.[66]

107. Canada's approach is to start with the principle of roll-up in Article 4.5.4. Canada then says:

> In the context of vehicles, this means that when a good, such as an engine, qualifies as originating, and is then assembled into another good (i.e., the vehicle) the VNM of the engine should not be taken into consideration in the calculation of the vehicle's RVC. Rather, the originating engine is considered to be 100% originating, and its value is "rolled-up" for purposes of calculating the RVC of the vehicle.[67]

108. In Canada's view, Article 4.5.4 is "of general application" and there is no language carving out core parts or vehicles from Article 4.5.4.[68] Article 3.6 specifically applies Article 4.5 to the calculation of the RVC of core parts and vehicles. Further, Article 3.8 states "for the purpose of calculating the regional value content under Article 4.5" and Article 3.9 in turn refers to Article 3.8.[69]

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[61] Mexico IWS, para. 7. These numerical thresholds increase over time. Mexico refers here to the percentages required beginning January 1, 2023.

[62] *Id.*, para. 55.

[63] See, e.g., Mexico Responses to Panel Questions, paras. 68 and 69.

[64] *Id.*, paras. 82 and 83.

[65] *Id.*, para. 83.

[66] *Id.*, para. 83.

[67] Canada IWS, para. 95. Canada also refers to Section 14(1) of the Uniform Regulations which reiterates the roll-up principle in the context of "the production of a passenger vehicle, light truck and parts thereof".

[68] Canada IWS, para. 99.

[69] *Id.*, para. 99.

109. Canada emphasizes that Article 3.7 "specifically sets out that a core part that meets the applicable RVC threshold is 'originating'".[70] An originating part assembled into a vehicle constitutes "originating materials that are subsequently used in the production of [a] good" within the meaning of Article 4.5.4.[71] Hence, roll-up applies when calculating the vehicle's RVC.[72] In essence, for Canada, the use of the term "originating" in Article 3.7 is conclusive. There is no basis for determining that the term "originating" in Article 3.7 has a different meaning from "originating" in the reference to "originating materials" in Article 4.5.4.[73]

110. Accordingly, Canada's approach to the determination of the vehicle RVC is that a producer calculates the VNM of core parts under Articles 3.8 and 3.9, uses that VNM in calculating the RVC of the core parts, and then has the option of determining the finished vehicle RVC relying on those prior calculations. In accordance with Article 4.5.4, the RVC of the finished vehicle does not include the VNM of the core parts since the core parts are now considered originating. In other words, the RVC of the core parts is rolled up to 100 percent.[74]

### 2. Summary of the Respondent's Arguments

111. The United States argues one of the novel results of the negotiation of the Agreement was the inclusion of Article 3.7 in the Autos Appendix. Article 3.7 is a requirement "that certain 'core parts' of the vehicle must themselves be originating".[75] The consequence is that "Article 3 of the Autos Appendix sets forth two distinct requirements that a vehicle must meet: the overall vehicle RVC requirement and the core parts 'origination requirement'".[76] In the view of the United States, "the core parts 'origination requirement' is a separate obligation that applies independent of the vehicle RVC requirement".[77] Treating the core parts "origination requirement" as a separate obligation means that there is a bifurcation in Article 3 of the Autos Appendix between the provisions relating to the vehicle RVC (Articles 3.1 to 3.6) and the provisions involving the separate core parts "origination requirement" (Articles 3.7 to 3.10).[78]

112. Since, under the United States' view, the vehicle RVC is calculated in accordance with Articles 3.1 to 3.6, the core parts RVC used for calculation of the vehicle RVC should be determined on the basis of Article 3.2, not Articles 3.8 or 3.9. Consistent with Article 3.6, a producer calculating the vehicle RVC would apply what the United States considers to

[70] *Id.*, para. 103.

[71] *Id.*, para. 103.

[72] *Id.*, para. 103.

[73] *Id.*, para. 112.

[74] *Id.*, para. 138.

[75] United States IWS, para. 7.

[76] *Id.*, para. 38.

[77] *Id.*, para. 38.

[78] *Id.*, para. 71.

be "the standard rules in Article 4.5 for purposes of calculating . . . RVC".[79] Thus, for the United States, Article 3.6 and its location, among other features of Article 3, "differentiate the standard methods used for passenger vehicle RVC calculations in Articles 3(1)-(5) from the separate core parts 'origination requirement' and its calculations contained in the subsequent paragraphs".[80]

113. As a result, the United States maintains that there is no basis in the Agreement for the Complainants' reliance on the VNM calculation methodologies in Articles 3.8 and 3.9 for the determination of the core parts RVC when calculating the finished vehicle RVC. Those methodologies are limited to the calculation of the core parts RVC for a separate core parts "origination requirement".

## B. The Panel's Analysis

### 1. Discussion of the Principal Arguments by the Complainants

114. Article 3 of the Autos Appendix contains the rules for the "regional value content for passenger vehicles, light trucks and parts thereof".[81] As set out above, these are the rules that the parties have agreed and that a producer must meet for a vehicle or related part to satisfy one criterion for preferential tariff treatment: whether the vehicle or part contains sufficient "regional value content" – content that the parties consider to be from North America.

115. Article 3.1 sets out the minimum RVC percentages for finished passenger vehicles and light trucks.[82] For example, each party to the Agreement is obligated to provide that the RVC requirement for a passenger vehicle or light truck is "66 percent under the net cost method, beginning on January 1, 2020, or the date of entry into force of this Agreement, whichever is later".[83] That threshold percentage increases each year through "January 1, 2023 or three years after the entry into force of this Agreement, whichever is later . . .".

116. Article 3.2 sets out the minimum RVC percentages for a "part listed in Table A.1 of this Appendix for use in a passenger vehicle or light truck". The Parties interpret Article 3.2 to apply to RVC determinations of the parts traded on their own as well as to the parts when they are incorporated into a finished vehicle.[84] Table A.1 contains a list of automotive parts and their corresponding Harmonized System (HS) tariff classifications. It is titled "Core

[79] *Id.*, para. 69.

[80] *Id.*, para. 69.

[81] Title of Article 3.

[82] The Parties agree that meeting an RVC threshold is a requirement for a vehicle to be originating and receive preferential tariff treatment on the basis of Article 4.2(b) of the Agreement and Article 3.1 of the Autos Appendix. See Mexico Responses to Panel Questions, paras. 30-35; Canada Responses to Panel Questions, paras. 15 and 16; United States Responses to Panel Questions, paras. 25-30.

[83] Article 3.1.

[84] Mexico Responses to Panel Questions, para. 103; Canada Responses to Panel Questions, para. 74; United States Responses to Panel Questions, para. 116.

Parts for Passenger Vehicles and Light Trucks". Putting Article 3.2 and Table A.1 together, the Parties agree that Article 3.2 provides the minimum RVC percentages for "core parts".

117. Articles 3.4 and 3.5, which are not in dispute, set out the minimum RVC percentages for additional parts listed in Table B (paragraph 4 – "Principal Parts") and Table C (paragraph 5 – "Complementary Parts").

118. In sum, Articles 3.1, 3.2, 3.4, and 3.5 set out the minimum RVC percentages that a producer must meet for vehicles, core parts, principal parts, and complementary parts.

119. By contrast with the aforementioned articles, Article 3.3 concerns the originating status of the parts listed in Table A.1 – again, all of which the Parties consider to be "core parts". Article 3.3 provides that a core part listed in Table A.1 for use in a passenger vehicle or light truck is originating only if it meets or exceeds the RVC threshold set out in Article 3.2.

120. Similarly, Article 3.6 does not set out RVC thresholds but rather furnishes information as to what articles from the Agreement apply in the calculation of RVCs. It states:

> For the purposes of calculating the regional value content under paragraphs 1 through 5, Article 4.5 (Regional Value Content), Article 4.6 (Value of Materials Used in Production), Article 4.7 (Further Adjustments to the Value of Materials), and Article 4.8 (Intermediate Materials) and Article 5 (Averaging) apply.

121. The article of greatest relevance among the list in Article 3.6 is Article 4.5. As noted above, paragraph 4 of Article 4.5 (Article 4.5.4) of the Agreement is what the Parties refer to as the "roll-up provision".[85] It states:

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

122. Thus, it is clear, in the view of the Panel, that roll-up applies for the calculation of the vehicle RVC and the calculations of the RVC of the parts of the vehicle in Table A.1, Table B and Table C when calculating the vehicle RVC. This does not appear to be disputed by the Parties.

123. Taken together, Articles 3.1 through 3.6 set out the thresholds for the RVC of a vehicle, the thresholds for the RVC of the parts of the vehicle, and how a producer may determine those RVCs, including through their reference to Article 4.5 of the Agreement. They cover all elements that are needed to calculate the RVC of a vehicle either expressly or by reference to calculation techniques provided in Chapter 4 of the Agreement. To put it another way, if Article 3 had stopped at paragraph 6, producers would have been able to calculate the RVC of passenger vehicles and light trucks (and, as an intervening step, the

[85] Mexico IWS, paras. 59 and 60; Canada IWS, para. 37 and footnote 22; United States IWS, para. 14.

RVC of the core parts in Table A-1) without needing anything further. Indeed, again, this does not appear to be disputed by the Parties.

124. The difficulty in this case starts with Article 3.7, which, like Article 3.3, deals with major parts of a vehicle or truck. Article 3.7 refers to Table A.2, titled "Parts and Components for Determining the Origin of Passenger Vehicles and Light Trucks under Article 3 of this Appendix". The Panel reproduces Table A.2 here for ease of reference:

**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 |

125. As can be seen, the parts in Column 1 of Table A.2 are major composite parts of a vehicle, while the components in Column 2 are some of the individual pieces that make up the large composite parts.

126. The Panel observes that while the title to Table A.2 does not include the term "core parts", it is common ground among the Parties that Column 1 of Table A.2 is, like Table A.1, also a list of "core parts".[86] Thus, Article 3.3 and Article 3.7 both deal with core parts, only in different tables.

127. Specifically, Article 3.7 provides:

> Each Party shall provide that a passenger vehicle or light truck is originating only if the parts under Column 1 of Table A.2 of the Appendix used in the production of a passenger car or light truck are originating. Such a part is originating only if it satisfies the regional value content requirement in paragraph 2 . . .".

[86] Mexico IWS, para. 72; Canada IWS, para. 48; United States IWS, para. 12.

128. Article 3.7 establishes that a passenger vehicle or light truck is originating only if the core parts, those listed in Column 1 of Table A.2, are originating. It also provides that those parts in Column 1 are only originating if they meet or surpass the RVC threshold for core parts under Article 3.2. Thus, Article 3.7 makes the originating status of a passenger vehicle or light truck contingent on the originating status of the core parts. The meaning of "originating" in this context is a matter of dispute between the Parties. The Panel will return to the interpretation of this term below.

129. Articles 3.8 and 3.9 then provide guidance to a producer on the ways the producer may determine the VNM of the core parts in Column 1 of Table A.2 for purposes of calculating the RVC of such parts.

130. Under Article 3.8, a producer may calculate the VNM of core parts one of two ways: (1) on the basis of "the value of all non-originating materials used in the production of the part"[87] (which the Parties agree tracks the method provided in Article 4.5.2 of the Agreement)[88]; or, (2) on the basis of "the value of any non-originating components used in the production of the part that are listed in Column 2 of Table A.2".[89] The Panel notes the Parties interpret "the value of any non-originating components" in Article 3.8(b) to mean the VNM of non-originating components.[90]

131. Article 3.9 provides still another alternative methodology for a producer to calculate the VNM of core parts. Under Article 3.9, a producer may calculate the RVC of the core parts in Column 1 of Table A.2 by treating those parts as a single part. The Parties refer to this single part as the "super-core".

132. Like Article 3.8, Article 3.9 allows a producer to calculate the VNM of the core parts listed in Column 1 of Table A.2 in one of two ways: (1) on the basis of "the sum of the value of all non-originating materials used in the production of the parts listed under Column 1;"[91] or, (2) on the basis of "the sum of the value of only those non-originating components under Column 2 of Table A.2 . . . used in the production of the parts listed under Column 1".[92]

133. The Parties have sought to provide various explanations to the Panel of how these options work. However, the way in which these provisions operate in practice is not at issue in this dispute. What is clear to the Panel is that the options provided in Article 3.8(b) and Articles 3.9(a) and 3.9(b) can be more advantageous to a producer when calculating the VNM of the core parts than the methodologies in Articles 4.5.2 and 4.5.3.

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[87] Article 3.8(a).

[88] Mexico IWS, para. 75; Canada IWS, para. 50; United States IWS, para. 63.

[89] Article 3.8(b).

[90] Mexico IWS, para. 157; Canada IWS, para. 121; United States IWS, para. 63.

[91] Article 3.9(a).

[92] Article 3.9(b).

134. What is at stake in this dispute is whether the text permits a producer to use the core parts RVC calculations conducted for purposes of satisfying Article 3.7 in the producer's calculation of the finished vehicle RVC. Mexico and Canada claim that producers are entitled to take advantage of these alternative VNM methodologies when calculating the core parts RVC and then use those calculations for the purpose of calculating the RVC of a vehicle. The United States sees these alternative methodologies as confined to a separate core parts "origination requirement" and not available when calculating the core parts RVC for purposes of calculating the vehicle RVC.

135. No Party challenges that there is an RVC requirement for core parts under Article 3.7 which draws on Articles 3.8 and 3.9. Instead, the dispute hinges on whether the results of the methodologies set forth in Articles 3.8 and 3.9 can be relied upon to calculate the core parts RVC used as an input for calculating the vehicle RVC.

136. This difference between the Complainants' and Respondent's arguments is substantial because it affects, and possibly to a significant extent, the amount of "regional" content that a vehicle contains and, therefore, whether that vehicle can receive preferential tariff treatment.

137. If, as the Complainants suggest, producers can use the core parts RVC calculations reached in applying Articles 3.8 and 3.9 for the purpose of calculating the vehicle RVC, then all the core parts would qualify as 100 percent regional content because all the core parts would have met the threshold to be considered originating, and, as the Complainants maintain, Article 4.5.4 roll-up applies.

138. If, as the Respondent suggests, the Article 3.8 and 3.9 calculations may not be used, then each core part RVC would be evaluated under the "standard" methodology. Applying the "standard" methodology may mean that not all the core parts would qualify as originating in the course of determining the finished vehicle RVC, and, as a result, the same vehicle may not reach the necessary RVC threshold. In short, the Complainants' interpretation makes it easier for vehicles to qualify for preferential tariff treatment.

139. The Panel will approach this question of interpretation in accordance with the customary rules of interpretation in VCLT Article 31(1) according to which, "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".

140. The Panel starts with the ordinary meaning of the terms of Article 3.7. Article 3.7 does two things. First, it adds a requirement for producers wishing to import a qualifying originating vehicle. The vehicle will only qualify as originating if the producer demonstrates that the core parts in Column 1 of Table A.2 are originating.[93] Second, Article 3.7 provides that those core parts are originating if they satisfy the RVC requirement in Article 3.2.[94]

[93] The Panel takes and the Parties appear to take the language of Article 3.7 as intending to refer to "all" core parts. See Mexico IWS, para. 154; Canada IWS, para. 109; United States IWS, para. 58.

[94] Article 3.7.

141. Article 3.7 is silent on whether the results of the core part RVC calculations undertaken pursuant to this provision can be used, or not, for calculating the RVC of vehicles under Article 3.1. Articles 3.8 and 3.9 are likewise silent.

142. That silence must be considered, however, in light of Article 4.5.4. The Panel considers there is no limitation in the Agreement on the scope of Article 4.5.4. Article 4.5.4 does not need to be repeated in Article 3 to be applicable to the goods discussed therein, nor is there any carve-out to except the core parts provisions in Articles 3.7 through 3.9. It is undeniable that core parts, whether denoted in the terms used in Table A.1 or the terms used in Table A.2, are included in the final vehicle.

143. This view is consistent with the arguments advanced by Mexico and Canada. The Complainants' view that Article 4.5.4 is a provision of general application leads them to the conclusion that when core parts meet the requirements of Article 3.7, and thus are originating, they are eligible to benefit from the roll-up opportunity in Article 4.5.4. According to the Complainants, a determination under Article 3.7 that core parts are originating means that, when those parts are used in the production of a vehicle, they may be rolled up in accordance with Article 4.5.4.[95]

144. The United States argues the Complainants misread the Agreement. For the United States, Article 3.7 does not speak to the calculation of the vehicle RVC. The United States also maintains that the results of the calculations under Articles 3.8 and 3.9 are not applicable in calculating the vehicle RVC because "[n]either the text of Article 3(7), nor the text at Articles 3(8) and (9), includes language making these special core parts calculation methodologies applicable for purposes of calculating the vehicle RVC".[96]

145. The Panel is not persuaded by the United States' reading of the text. Nothing about the text or its context indicates that an explicit statement of application is required. The VNM calculation methodologies set out in Articles 3.7 through 3.9 provide a means for determining the core parts RVC. The core parts RVC is an input into the vehicle RVC. The Agreement requires nothing more.

146. The key term that supports this reading of the text is "originating". The Panel observes that under Article 1.5 of the Agreement, "originating" means "qualifying as originating under the rules of origin set out in Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods)." In Article 4.1 of the Agreement, "originating good" and "originating material" are defined as "a good or material that qualifies as originating under this Chapter".

[95] Mexico IWS, para. 151; Canada IWS, para. 138.

[96] United States IWS, para. 77.

147. Mexico and Canada likewise emphasize the consistent application of the word "originating", and its status as a defined term in the Agreement.[97] They argue there is no second or alternative meanings for "originating" when used in Article 3.7.[98]

148. The United States' position is that the meaning of "originating" depends upon the context in which it is used.[99] According to the United States, the context here is a separate, standalone core parts "origination requirement".[100]

149. The Panel sees no reason to attribute different meanings to the term "originating" which is used throughout Article 3. Nothing about the context of the term's deployment in different parts of the Article suggests otherwise.

150. Article 3.7 gives producers a means by which to determine that their core parts are originating, and indeed requires them to do so. Once the core parts are found to be originating, Article 4.5.4 permits the producer to roll-up the RVC of the core parts when calculating the vehicle RVC. To conclude otherwise would require an express exemption or the use of different language entirely.

151. The Panel now comes to the additional arguments made by the United States.

### 2. Discussion of the Additional Arguments by the Respondent

152. In addition to its points raised in response to Mexico and Canada's primary contentions, the United States principally argues Articles 3.7, 3.8, and 3.9 constitute what the United States calls a core parts "origination requirement".[101] The Agreement does not refer to Articles 3.7 to 3.9 in these terms. Nevertheless, the United States maintains that Article 3 makes a clear distinction between the calculation, on the one hand, of the finished vehicle RVC and the RVC of the parts that make up that vehicle, and, on the other hand, the calculation of the RVC of the parts for purposes of determining whether the producer has satisfied the separate core parts "origination requirement".

153. The United States relies on three principal points to support its position. First, it argues Article 3 is "bifurcated" in the sense that Articles 3.1 through 3.6 refer to RVC requirements in respect of vehicles and parts (in Articles 3.1 through 3.5), and to the corresponding calculation principles (in Article 3.6), whereas Articles 3.7 through 3.9 concern a separate core parts "origination requirement".[102] Second, the United States maintains that the last sentence of Article 3.9 indicates that the methodologies in Articles 3.8 and 3.9 "apply only for purposes of meeting the core parts origination requirement" set

[97] Mexico Responses to Panel Questions, para. 66; Canada Rebuttal Submission, para. 32.

[98] Mexico Responses to Panel Questions, para. 66; Canada Responses to Panel Questions, para. 48.

[99] United States Rebuttal Submission, para. 35.

[100] United States IWS, para. 7.

[101] *Id.*, paras. 40 and 55.

[102] *Id.*, paras. 11 and 69.

out in Article 3.7.[103] Third, in the view of the United States, the existence of two tables for core parts (Tables A.1 and A.2) evidences that each table has a different purpose: Table A.1 is to be used for calculating core part RVCs for Article 3.3 and Table A.2 is to be used for Article 3.7.[104] The two separate tables therefore support the concept that Article 3.7 stands apart from the Articles 3.1 through 3.6.

154. The Panel will take up each of these arguments in turn.

### (a) The Bifurcation Argument

155. The United States contends Article 3 is bifurcated by Article 3.6. As the Panel discussed above, Article 3.6 identifies certain articles of Chapter 4 and makes them expressly applicable to the calculation of the vehicle RVC and the RVC of core parts but makes no reference to Articles 3.7 through 3.9.

156. The United States sees Article 3.6 as splitting the whole of Article 3 of the Autos Appendix into two parts. Article 3.6 provides a dividing line with guidance for producers on the vehicle and parts RVC calculation on one side and guidance on the separate core parts RVC calculation on the other.[105]

157. Both Mexico and Canada reject the bifurcation argument. Mexico argues "Article 3 of the Automotive Appendix integrates RVC calculations for vehicles and their core parts into a unified calculation methodology".[106] Mexico emphasizes that Article 4.5 applies to the entire Article 3.[107]

158. Canada notes the parties to the Agreement "put all obligations relating to the RVC of a vehicle and its parts into the same article" and cross-referenced other provisions throughout Article 3 such that it is in no way bifurcated.[108] Canada also maintains that the Uniform Regulations also provide additional context, and that Section 14 of the Uniform Regulations re-emphasizes the application of Article 4.5.4 to all of Article 3.[109]

159. Both Complainants refer to the fact that the first sentence of Article 3.8 refers to Article 4.5. They contend that Article 3.8 therefore incorporates the Article 4.5.4 roll-up principle and supports their conclusion that the calculations carried out under Articles 3.8 and 3.9 may be used in the calculation of the vehicle RVC.

160. The United States rejects Mexico and Canada's rebuttal, arguing that the "reference to Article 3(2) in Article 3(7) of the Autos Appendix, or Article 4.5 of the Agreement in

[103] *Id.*, para. 78.

[104] United States Rebuttal Submission, paras. 88 and 89.

[105] United States IWS, para. 69; United States Rebuttal Submission, para. 32.

[106] Mexico Rebuttal Submission, para. 23.

[107] *Id.*, para. 24.

[108] Canada Rebuttal Submission, para. 17.

[109] *Id.*, para. 12.

Article 3(8) of the Autos Appendix does not establish that a special calculation for the core parts origination requirement must be subsumed in the vehicle RVC calculation."[110]

161. The Panel recognizes that Article 3.6 states that Article 4.5, among other articles, applies "for the purposes of calculating the regional value content under" Articles 3.1 to 3.5 and that it does not state that Article 4.5 applies in the calculations carried out under Articles 3.7 through 3.9. However, as the Panel concluded above, the Panel is not convinced that this means that the determination of the core parts RVC under Articles 3.7 through 3.9 does not then benefit from Article 4.5.4 when establishing whether the vehicle RVC meets the threshold in Article 3.1, particularly as Article 3.8, to which Article 3.9 is linked, refers to "calculating the regional value content under Article 4.5".

162. Thus, the Panel finds inadequate support for the United States' position[111] that the language of Article 3.6 lends itself to an interpretation such that the core parts RVC as determined under Articles 3.7 to 3.9 would not be rolled up in the vehicle RVC calculation where the core parts are found to be originating.

163. The Panel is also unpersuaded by the United States' structural argument that Article 3.6 serves as a dividing line within Article 3. That argument rests uncomfortably with the fact that Articles 3.7 through 3.9 rely on and refer to others in Article 3 and elsewhere, including Article 4.5.4. Article 3.7 does not set out comprehensive instructions for determining RVC, nor does Article 3.8 or Article 3.9. For a producer to use Articles 3.8 and 3.9, the producer must necessarily look to Article 4.5.

164. Put differently, Articles 3.7 through 3.9 cannot stand alone. Without the definitions and instructions set out in Articles 4.5.2 and 4.5.3 in respect of the RVC, the calculations of VNM provided in Articles 3.8 and 3.9 would be of no use. If Articles 3.8 and 3.9 rely on Articles 4.5.2 and 4.5.3, there is little to suggest that the producer's RVC determination reached under Articles 3.8 and 3.9 would not also benefit from Article 4.5.4 when calculating the RVC of the vehicle.

165. Finally, the United States concedes the calculation methodology articulated in Article 3.8(a) is the same as what it calls the "standard" calculation methodology that a producer would apply to core parts under Articles 4.5.2 and 4.5.3.[112] The United States is of the view that the methodology of Article 3.8(a) repeats what is found in Articles 4.5.2 and 4.5.3, but it does so in Article 3.8 to verify compliance with the Article 3.7 requirement.[113] This repetition belies reading Article 3 as splitting off Articles 3.7 through 3.9 from the other provisions. The Panel concludes that this piercing of the United States' bifurcation line further detracts from the United States' contention.

[110] United States Rebuttal Submission, para. 12.

[111] United States IWS, para. 9.

[112] United States Rebuttal Submission, para. 20.

[113] *Id*., para. 20.

166. In sum, while the Panel sees Article 3.6 as providing some validation for the United States' view, it does not see this provision as bifurcating Article 3 such that Articles 3.7 to 3.9 constitute a self-standing "origination requirement".

### (b) The Article 3.9 Argument

167. The United States also supports its position by referring to Article 3.9 which provides producers with the "super-core" option for calculating the core parts RVC. The last sentence of Article 3.9 provides:

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

168. For the United States, the word "this" in "this regional value content" in the last sentence of Article 3.9 refers to the RVC of the "single part".[114] The phrase "have met the requirement under paragraph 7" limits the scope of the provision to a core parts calculation under Article 3.7.[115] The United States argues this sentence provides no basis for the use of the Article 3.9 methodologies in the calculation of the vehicle RVC.[116]

169. Mexico[117] and Canada[118] both reject this argument, focusing instead on the fact that Article 3.9 provides that if the core parts in Table A.2 meet the requirements of paragraph 2, they are originating. In their view, if a producer determines, using the VNM calculation methodology set out in Article 3.9, that the core parts are originating, then, as parts that are incorporated into another good – a vehicle – they benefit from roll-up per Article 4.5.4.

170. Mexico and Canada point out that the United States' argument requires a producer to calculate the RVC of the core parts of a vehicle twice – once under Article 3.7 using Table A.2 and then again under Article 3.3 and Article 4.5 using Table A.1.[119] Canada argues that requiring producers to conduct multiple calculations negates the options available to producers for calculating VNM under Articles 3.8 and 3.9.[120]

171. In short, there is no dispute between the Parties, and the Panel likewise agrees, that the final sentence of Article 3.9 indicates how the core parts can satisfy the "requirement under

[114] United States IWS, para. 79.

[115] United States Rebuttal Submission, para. 45.

[116] United States IWS, para. 79.

[117] Mexico Rebuttal Submission, para. 39.

[118] Canada Rebuttal Submission, para. 25.

[119] Canada IWS, para. 82.

[120] Canada Comments on Responses to Panel Questions, para. 41.

paragraph 7".[121] The question is whether that sentence *limits* the preceding calculation to the paragraph 7 (Article 3.7) requirement.

172. The Panel accepts that the phrase "this regional value content" in the last sentence of Article 3.9 refers to the RVC of core parts under Article 3.7. And, like Article 3.7, Article 3.9 is silent as to whether the resulting RVC of the super-core can be used in calculating the vehicle RVC.

173. The last sentence of Article 3.9 provides some support to the United States' contention that Article 3.7 constitutes a self-standing core parts "origination requirement". But that support is limited because the sentence applies only to Article 3.9 and does not address the methodologies in Article 3.8.

174. Moreover, the United States does not address the points raised by Mexico and Canada regarding the significance of the word "originating". The United States does not effectively rebut the Complainants' reading that, if the result of the application of the methodology in Article 3.9 is that the core parts in Column 1 of Table A.2 are originating, then, in accordance with Article 4.5.4, the RVC of originating core parts incorporated into a vehicle can be rolled up for the purposes of the vehicle RVC calculation.

175. The Panel's conclusion is that the last sentence in Article 3.9 has no bearing on whether the results of the calculations under this provision can be used in calculating the vehicle RVC. Further, there is no similar last sentence in Article 3.8. If the last sentence in Article 3.9 prevented using the results of the calculations under this provision in calculating the vehicle RVC, then the absence of an analogous last sentence in Article 3.8 would imply that the results of the calculations under this latter provision *can* be used in calculating the vehicle RVC, an inference that the United States does not address.

176. For these reasons, the Panel is of the view that the text of the last sentence of Article 3.9 does not support the United States' interpretation.

### (c) The Separate Tables A.1 and A.2 Argument

177. The United States argues the fact that there are two separate tables, Table A.1 and Table A.2, containing the same core parts "albeit organized differently",[122] demonstrates that the parties had developed two separate RVC requirements for core parts with separate calculation methodologies.[123] Table A.1 is referred to in Articles 3.2 and 3.3, which, in the view of the United States, relate to the core parts RVC calculation for determining the vehicle RVC, and to core parts traded on their own, and Table A.2 is referred to only in Articles 3.7, 3.8, and 3.9 dealing with the separate core parts RVC calculation.[124] That each provision refers to a different table, the United States argues, lends credence to the view

[121] Article 3.9.

[122] United States IWS, para. 85.

[123] *Id.*, para. 91.

[124] United States Responses to Panel Questions, paras. 52 and 53.

that Articles 3.7 to 3.9 are separate and self-contained and relate to a core parts "origination requirement".[125]

178. Mexico maintains that the United States' position is "illogical".[126] Mexico highlights how both tables mention Article 3: the title of Table A.2 refers to the determination of the origin of passenger vehicles and light trucks "under Article 3 of this Appendix" and the Note following the heading of Table A.1 also refers to Article 3.[127] Further, Mexico points out that Article 3.7, which relies upon Table A.2, also refers to Article 3.2.[128] Finally, Table A.1 uses the term "core parts" in the title just as Articles 3.7 through 3.9 also deal with core parts.[129] In short, both tables, Mexico argues, apply to the whole of Article 3.

179. Canada agrees with Mexico that the language used in Tables A.1 and A.2 indicates that the tables are complementary and supports the view that core parts can be treated as originating regardless of how their RVC is calculated.[130] Canada also sees Table A.1 as primarily concerned with core parts traded on their own and with clarifying when the tariff shift rule applies.[131] Canada further argues the similar wording of Articles 3.3 and 3.7 in respect of Tables A.1 and A.2 also confirms that core parts should be treated the same under either provision.[132] Both deal with originating core parts and as such both are eligible for roll-up.

180. The Panel considers that the existence of two tables concerning core parts, Table A.1 and Table A.2, raises questions about the purposes of these two tables. At the very least, having two tables each describing core parts suggests each table has its own specific purpose.

181. The Panel observes that each table provides different information to producers. Table A.1 lists core parts in terms of their HS headings, and Table A.2 lists the core parts in relation to their component parts. The Parties do not dispute that the information in both tables is needed for producers to know which parts are subject to the requirements of Article 3 and how to carry out the calculations available to those producers.

182. Given the different utilities of the tables, the Panel is not convinced that the mere presence of two separate tables containing core parts "albeit organized differently" lends credence to the United States' interpretation.

183. Likewise, that Articles 3.2 and 3.3 refer to Table A.1, and that Article 3.7 refers to Table A.2, do not indicate conclusively that the United States' interpretation holds greater water

[125] United States Rebuttal Submission, paras. 48 and 49.

[126] Mexico Rebuttal Submission, para. 42.

[127] *Id.*, para. 45.

[128] *Id.*, para. 44.

[129] *Id.*, para. 44.

[130] Canada Rebuttal Submission, para. 47.

[131] *Id.*, para. 42. Tariff shifting (a change in tariff classification at least at the sub-heading level) could be an alternative criterion for conferring originating status pursuant to Annex 4-B.

[132] *Id.*, para. 45.

than that offered by Canada and Mexico. The Parties do not dispute that Article 3.7 sets out a requirement that producers must meet and that making the determination required by Article 3.7 demands reliance on Table A.2. It is thus unpersuasive that the choice of the parties to the Agreement to lay out and restructure this information in a table apart from Table A.1 could mean that the parties intended that there be a self-standing core parts RVC calculation solely for the purpose of satisfying Article 3.7.

184. Finally, the Panel agrees with the Complainants that the fact that Table A.2 is titled, "Parts and components for determining the origin of passenger vehicles and light trucks under Article 3", suggests Table A.2 is relevant to the whole of that Article and not just to Articles 3.7 through 3.9.

185. Thus, the Panel is of the view that the existence of two tables of core parts does not substantiate the United States' reading.

186. While the Panel considers there are unanswered questions about the inclusion and location of Article 3.6, the text of Article 3.9, and the fact that there are two separate tables dealing with core parts, the Panel concludes that these lingering questions are not sufficient to rebut the arguments made by Canada and Mexico.

#### 3. Other Arguments

187. The Parties have also asserted that each of their interpretations best reflects the object and purpose of the Agreement. Each refers to the objectives set out in the Agreement preamble and discusses how its interpretation gives effect to those objectives, which include incentivizing the production and sourcing of goods and materials within the North American market, enhancing the competitiveness of regional businesses, and establishing a clear, transparent and predictable legal framework for businesses. However, the Panel is unable to find in these arguments anything that provides interpretive guidance on the essential question at issue: whether the methodologies in Articles 3.8 and 3.9 are available when calculating the vehicle RVC.

### C. Supplementary Means of Interpretation

188. Finally, the Panel considers it appropriate to look at the additional arguments of the Parties on the supplementary means of interpretation, as reflected in Article 32(a) of the VCLT which stipulates that recourse can be had to such supplementary means of interpretation to "confirm the meaning resulting from the application of Article 31".

189. The Complainants invoke, in support of their position, statements made by United States negotiators to officials of Canada and to representatives of the auto industry which indicate that the United States, at the time those statements were made, took the view that the methodologies in Article 3.8 and Article 3.9 could be applied when calculating the RVC of core parts for the vehicle RVC.

190. One of these communications is an email sent by the lead United States negotiator on rules of origin to the lead Canada negotiator on rules of origin on June 12, 2020, which stated:

> Our understanding is that there are two ways to do the core parts calculation, one way is for each part (i.e. each parts category) listed in the left hand column of Table A.2. If each part was originating (based on the flexibility for the VNM provided under the right hand column on A.2), than [sic] the core parts requirement would be met and a producer could 'roll-up' the entire net cost for each part when calculating the RVC for a passenger vehicle or light truck.
>
> The second way is instead of calculating the RVC of each part, to have one RVC calculation for all the parts in the left hand column of Table A.2, treated as a super-core. This is like the first way except that the NC and VNM are the not the NC or VNM of just one part but of all the parts in the left hand column (based on the flexibility for the VNM provided under the right hand column on A.2). If the super-core is originating, then the producer could 'roll-up' the net cost of all the parts in the left hand column of Table A.2. when calculating the RVC for a passenger vehicle or light truck.[133]

191. Similar advice had been given in 2018 and 2019 by officials of the United States in communications with representatives of an auto company in the United States and an auto company in Mexico.[134] Mexico points out that, throughout the negotiations, the rules of origin negotiators held meetings with industry representatives during which similar statements were made either in presentations or through correspondence and provides examples of such correspondence.[135] Although this correspondence is at times equivocal, running consistently through it are statements that indicate that the VNM methodologies in Articles 3.8 and 3.9 can be used to calculate the RVC of the core parts as part of the vehicle RVC calculation and rolled up accordingly.

192. The United States does not deny that such statements were made, nor does it deny that they were made by officials with authority to speak on behalf of the United States.[136] Rather, the United States argues that the statements are not relevant to the Panel's Article 32 analysis and further contends the statements are not in conformity with the text of the Agreement.[137]

193. In short, the United States' view is that its prior statements "are not supported by the text of the Agreement", and, in any event, they cannot be given any weight because they do not constitute supplementary means that can properly be considered by the Panel within the meaning of VCLT Article 32.[138]

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[133] Canada Exhibit 14 (footnotes omitted).

[134] Canada Exhibit 16; Canada Exhibit 17.

[135] Mexico Exhibit 28.

[136] United States Responses to Panel Questions, para. 136.

[137] United States Rebuttal Submission, paras. 80-91; United States Responses to Panel Questions, paras. 136 and 137.

[138] United States Rebuttal Submission, para. 82.

194. Mexico and Canada have a broader understanding of the meaning of supplementary means of interpretation under VCLT Article 32. As Canada puts it in its Rebuttal Submission, a panel has to decide, "whether the material in question can reasonably be thought to assist in either establishing or confirming the meaning of the treaty under consideration. If it does, there are hardly any clear limits to considering material under Article 32".[139]

195. The Panel recognizes the limitations of the material submitted by the Complainants. First, there is only one communication between parties to the Agreement: the email of June 12, 2020, from the lead United States negotiator sent to his counterpart in Canada, and not to both Canada and Mexico. This email was sent after the Agreement had been signed but before it entered into force. Second, although some of the communications of United States officials with the auto industry occurred before the Agreement was signed, they were not communications among the parties to the Agreement.

196. The Panel is reluctant to endorse the expansive discretion implicit in the position of Mexico and Canada regarding the Panel's task under Article 32 of the VCLT. Nor does it agree with the United States that there is a complete barrier to considering communications between parties to the Agreement that are relevant to the Agreement's interpretation because they occurred after the signing of the Agreement or, in the case of the communications to the auto industry actors, were not sent to the parties. The list of supplementary means in Article 32 is open-ended and illustrative. Accordingly, the Panel focuses on the particular circumstances of this dispute and the documents presented to the Panel here.

197. In their pleadings, the Parties referred to documents that had been prepared in the process of the negotiation of the text.[140] Each of the Parties interpreted these documents as supporting its own position. The Parties also referred to the Uniform Regulations as providing context for the interpretation of the Agreement.[141] However, none of the Parties placed before the Panel any other document shared among the Parties during the negotiations that would either confirm or detract from the meaning resulting from the Panel's application of Article 31 or that would evidence that the Party held the views regarding the meaning of the text that it now asserts.

198. The only evidence placed before the Panel that throws light on the meaning of the text in dispute is the communication from the lead United States negotiator to the lead Canada negotiator indicating that the approach taken by the Complainants in this case to the interpretation of Article 3.7 was shared by the United States. It is true that this is a single instance of a statement on the matter by the United States to only one of the parties and that it was made after the Agreement had been signed. But, given the interlocutors, and given the email's context and timing just after the June 3, 2020 finalization of negotiation

[139] Canada Rebuttal Submission, para. 74.

[140] Mexico IWS, paras. 46 and 47; Canada IWS, paras. 63 and 64; United States IWS, paras. 121, 129, and 134.

[141] Mexico IWS, para. 84; Canada IWS, para. 55; United States IWS, para. 73.

on the Uniform Regulations, the Panel considers that this communication constitutes valid supplementary means which the Panel may take into account.

199. Nothing in the record before the Panel contradicts the interpretation articulated by the lead United States negotiator in this June 12, 2020 communication until the United States took a contrary view after the Agreement entered into force, in an email exchange that led to these proceedings. Further, the Panel cannot ignore the fact that the position taken by the lead United States negotiator in the June 12, 2020 email had been repeated by United States officials to representatives of the auto industry in 2018 and 2019, during the negotiations of the Agreement. These communications indicate that, prior to the entry into force of the Agreement, the United States held itself out as sharing the interpretation of the Agreement that Mexico and Canada have maintained in this dispute.

200. For the reasons set out above, the Panel finds that recourse to these supplementary means of interpretation confirms the meaning resulting from the Panel's application of VCLT Article 31.

## VII. THE PARTIES' REMAINING ARGUMENTS

201. Mexico and Canada raise additional arguments and claims of breach, including whether, in the alternative, the United States' interpretation of the Agreement and application of its interpretation in the ASR letters nullify and impair a benefit Mexico and Canada reasonably expected to receive within the meaning of Article 31.2(c) of the Agreement.

202. For reasons of judicial economy, the Panel need not answer those questions. For purposes of this proceeding, it is enough that the United States has breached Article 8 of the Autos Appendix, Article 4.5 of the Agreement, and Article 3 of the Autos Appendix.

## VIII. CONCLUSION

203. The Panel has considered the arguments of the Parties based on the text of the Agreement and has interpreted the Agreement in accordance with Article 31 of the VCLT: based on the ordinary meaning of the terms of the Agreement in their context and in light of the Agreement's object and purpose.

204. The Panel has concluded that the United States has breached Article 8 by conditioning the ASR approvals on a requirement apart from those listed in Article 8.2 and in Section 19(4) of the Uniform Regulations, one that falls outside the scope of what was intended by the Agreement.

205. In the case of Article 4.5 of the Agreement and Article 3 of the Autos Appendix, the Panel concludes that the reading applied by the Complainants accords with the parameters set out in Article 31 of the VCLT.

206. The structure of the Agreement with two tables of core parts and the treatment of core parts in two separate provisions lends limited support to the position of the United States that there was a separate self-standing core parts "origination requirement" in Article 3.7. The lack of any articulation of this view in the Agreement, the specific designation of core parts

under Article 3.7 as originating, which can be seen as relating directly to the roll-up requirement in Article 4.5.4, and the practical reality that core parts whether described in the more granular form of Table A.1 or the more composite form of Table A.2 are included in the final vehicle lend greater support to the view of Mexico and Canada.

207. To confirm its application of VCLT Article 31, the Panel considered it appropriate to look to supplementary means. In this regard, the only evidence provided to the Panel was the position of the United States negotiators expressed both to representatives of Canada and consistently to representatives of the auto industry, during the negotiations and before and after the signature of the Agreement. This evidence indicates that the interpretation advanced by Mexico and Canada was shared by the United States at that time as the proper interpretation of the Agreement.

208. The Panel concludes the Agreement does not include a separate, self-standing core parts "origination requirement", and thus core parts in Column 1 of Table A.2 that are originating under Article 3.7 through the application of the methodologies in Articles 3.8 and 3.9 can be included as originating material in the calculation of the RVC of a vehicle.

209. The United States' interpretation and application are inconsistent with Article 3 of the Autos Appendix and Article 4.5 of the Agreement.