COURTESY TRANSLATION

Mexico City, January 6, 2022

Subject: Request for the establishment of a panel submitted pursuant to paragraph 1 of Article 31.6 (Establishment of a Panel) of the USMCA.

THE HONORABLE AMBASSADOR KATHERINE C. TAI
United States Trade Representative
Executive Office of the President
600 17th Street Northwest
Washington, D.C., 20508
United States of America

Dear Ambassador Tai:

1. On August 20th, 2021, the Government of the United Mexican States (Mexico) requested consultations with the Government of the United States of America (United States) pursuant to Article 31.4 (Consultations) of the Agreement between the United States of America, the United Mexican States and Canada (USMCA or Agreement) with respect to the prevention and settlement of a dispute concerning the interpretation and application by the United States of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B (Provisions Related To The Product-Specific Rules Of Origin For Automotive Goods), paragraph 4 of Article 4.5 (Regional Value Content), and the Uniform Regulations of the USMCA.

2. Mexico held consultations with the United States on September 24, 2021, with the intention of reaching a mutually satisfactory resolution of the matter. Canada, having notified its substantial interest in the matter on August 26, 2021, also participated in the consultations. Unfortunately, the consultations did not solve the dispute.

I. Identification of the measures and the subject matter of the claim

3. In light of the foregoing, Mexico requests the establishment of a panel pursuant to paragraph 1 of Article 31.6 (Establishment of a Panel) of the USMCA, with respect to:

(a) The incorrect interpretation by the United States of the relevant provisions of Chapter 4 (Rules of Origin) of the USMCA and the Uniform Regulations of the USMCA as reflected in the alternative staging regime (ASR) approval letters sent to auto manufacturers described in paragraph 8 of this request;

(b) The current and prospective application by the United States of the incorrect interpretation referred to in paragraph 3(a) of this request, 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 described in paragraph 8 of this request;

(ii) a requirement that a vehicle producer calculate RVC based on the incorrect interpretation indicated above "for all vehicles (not just those covered by [its] alternative staging request)" as provided in the ASR approval letters described in paragraph 8 of this request;

(iii) a requirement to submit an annual report based on the incorrect calculation methodology as provided in the ASR approval letters described in paragraph 8 below of this request;

(iv) a requirement to apply the United States' incorrect interpretation indicated above as a condition of continued approval of an ASR as provided in the ASR approval letters described in paragraph 8 of this request;

(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.

4. Mexico also requests that the panel examine the matter referred to herein, in light of the relevant provisions of the USMCA, in accordance with the terms of reference defined under paragraphs 1 and 2 of Article 31.7 (Terms of Reference) of the USMCA.

5. The USMCA establishes that, if a good that contains non-originating materials qualifies as originating under the Agreement, the value of those non-originating materials shall not be considered in the calculation of the RVC of the subsequent good in which they are incorporated. The Uniform Regulations, adopted by the Decision No. 2 of the USMCA's Free Trade Commission, develop and reiterate this principle, particularly in sections 14(1) and 14(4).

6. However, according to the United States' interpretation, the calculation of the RVC of a vehicle and the RVC calculation for "core parts" of a passenger vehicle or light truck must be made separately and independently of one another.

7. As described in paragraph 3(b) of this request, the incorrect interpretation of the United States is currently reflected in various ASR approval letters issued by the United States to producers in the automotive sector. The producers submitted their ASR petitions

to the United States in accordance with the United States Federal Register Vol. 85, No. 77, Notices dated Tuesday, April 21, 2020 at page 22238 under the heading "Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks to Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods".

8. The wording commonly used in such ASR approval letters is the following:

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

9. Based on this wording, the United States requires producers who seek preferential tariff treatment to adjust their production process, including the actions described in paragraph 3(b) of this request, to satisfy the unilateral — and incorrect — interpretation of the United States concerning the application of the rules of origin for automotive goods of the USMCA. The United States' interpretation is inconsistent with multiple provisions of the Agreement.

10. On the contrary, Mexico considers that any calculation methodology applicable to "core parts" set forth in paragraphs 8 and 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B of the

USMCA can be used to establish the originating status of a “core part” for purposes of calculating the general RVC of a passenger vehicle or light truck.

11. More specifically, paragraphs 3 and 7 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B provide that a “core part” that is to be used for the production of a passenger vehicle or light truck is originating if it satisfies the RVC requirements set in paragraph 2 of Article 3 of the Appendix to Annex 4-B.

12. Paragraphs 8 and 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B provide that the vehicle producer can choose any of the RVC calculation methodologies for “core parts” provided for in subparagraphs (a) and (b) of paragraph 8, and subparagraphs (a) and (b) of paragraph 9.[1]

13. It is clear that under the USMCA, once “core parts” satisfy the RVC requirement, under the calculation methodologies described above, the “core parts” must be considered "originating".

14. The regulations through which the United States implements the relevant provisions of the USMCA for this dispute include: i) 19 United States Code Chapter 29: United States-Mexico-Canada Agreement; ii) Code of Federal Regulations Title 19, Chapter I, Part 182, Appendix A - Rules of Origin Regulations; and iii) United States Custom and Border Protection (CBP) Implementing Instructions dated June 30, 2020, CBP Publication Number 1118-0620.

15. Mexico understands that the United States’ interpretation, as reflected in the ASR approval letters in force, would also be applicable to any future or subsequent application of the USMCA rules of origin for automotive goods. This includes, but is not limited to, any

[1] Particularly, the vehicle producer may decide to calculate the RVC of “core parts” as seven individual parts according to paragraph 8 of Article 3 of the Appendix to Annex 4-B, or as a single part (“super core part”) according to paragraph 9 of Article 3 of the Appendix to Annex 4-B.

future letters with regard to ASR plans, future guidance to all automakers regarding the incorrect interpretation, determinations of future origin verifications applying the incorrect interpretation, or any other related, future or subsequent measures that implements the incorrect interpretation.

II. Legal Basis for the Complaint

16. Mexico considers that the United States' measures, as reflected in the requirements contained within the ASR approval letters in force, as well as their interpretation and application on rules of origin relating to automotive goods, are inconsistent with, and the United States has not otherwise complied with its obligations under, the following provisions of the USMCA:

(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 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;[2]

(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;[3]

[2] Subparagraph (b) of paragraph 8 of Article 3 of the Appendix to Annex 4-B provides that a vehicle producer may choose to use only the value of non-originating materials (VNM) of components listed in Column 2 of Table A.2 of the Appendix to Annex 4-B.

[3] Paragraph 9 of Article 3 of the Appendix to Annex 4-B provides that a vehicle producer has the option to calculate the RVC of "core parts" as a single part (known as "super-core part").

(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.

17. The interpretation and application of the above mentioned provisions by the United States through the measures identified in this request are inconsistent with its obligations under the USMCA. If the Panel finds that there is no violation of an obligation of the United States under the USMCA, Mexico considers that the application of the aforementioned provisions, in the terms described above, nullify and impair the benefits that Mexico could reasonably have expected to accrue to it under Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures) and the Uniform Regulations of the USMCA, within the meaning of Article 31.2 (Scope) of the USMCA.

Sincerely,

The Secretary

MTRA. TATIANA CLOUTHIER CARRILLO

c.c. The Honorable Mary Ng, Minister of Small Business, Export Promotion and International Trade, Canada.
Álvaro Castro Espinosa, Mexican Secretary, Mexican Section of the T-MEC Secretariat.
Vidya Desai, Acting United States Secretary, United States Section of the USCMA Secretariat.
Sean Clark, Canadian Secretary, Canadian Section of the CUSMA Secretariat.