



January 17, 2024

Mr. Justin Hoffman
Deputy Assistant U.S. Trade Representative for Market Access
United States Trade Representative
600 17th St. NW
Washington, D.C. 20006

Via Electronic Submission

RE: Comments Concerning the Operation of the United States-Mexico-Canada Agreement With Respect to Trade in Automotive Goods

Dear Mr. Hoffman:

On behalf of Autos Drive America’s members, we appreciate the opportunity to submit the following comments regarding the “*Operation of the United States-Mexico-Canada Agreement (USMCA) With Respect to Trade in Automotive Goods.*” Autos Drive America represents 13 international automakers and suppliers operating in the United States. Our mission is to promote and protect a strong and successful U.S. automotive industry. We work to advance policies that foster and support American jobs, trade, and investment and to provide consumers with the vehicle options they desire both now and in the future. The remainder of this comment addresses certain questions and topics USTR posed to the public for input.

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USTR Request 1: The overall operation of the USMCA with respect to automotive goods.

The automotive provisions of USMCA offered the potential to create growth and increase the competitiveness of the North American automotive industry by providing a stable and predictable trade and investment climate. Based on that potential, automakers planned and began implementing significant job-creating investments in North America.

Regrettably, the previous administration’s unilateral reinterpretation of the agreement’s roll-up provisions has undermined that potential by creating far more stringent rules than were originally agreed to. This disrupted investment plans and imposed costs that will stymie the industry’s efforts to transform towards a greener future -- all at a time when automakers are in a race with their global competitors to lead in these important cutting edge automotive technologies. Following the unanimous decision of the USMCA dispute panel supporting the views of Mexico, Canada, and the automotive industry, this Administration’s decision to delay implementation has only prolonged those same costs and uncertainties, further undercutting jobs and investments and undermining the rule of law.

As we have conveyed on several occasions in the past, automakers worked with the previous administration on the negotiation of those rules, along with Canada and Mexico. During the negotiations, the previous administration shared an understanding of how these rules would operate, an understanding reflected in the language of the agreement. That understanding

formed the basis for how the industry approached the agreement and made its future compliance plans. Only after the agreement was approved – indeed, only as the agreement was about to enter into force – did the previous administration present its unilateral reinterpretation of the roll-up provisions, one at odds with the language and common understanding of those provisions.

By that point, automakers had already developed and begun to implement extensive plans to alter their operations, shift their supply chains, and identify new suppliers in order to meet the new rules. This included committing billions of dollars in new investments in the United States and the rest of the region, investments that will lead to billions of dollars in new parts sourced in the region annually, thousands of new American jobs, and expanded research and development. Those investments would ensure that the most advanced vehicles in the world, including electric vehicles and autonomous vehicles, are manufactured here with the highest level of regional value content of vehicles built anywhere in the world.

The previous administration's unilateral reinterpretation seriously disrupted those plans. It presented companies with the choice of reallocating limited resources to meet the unilateral reinterpretation or abandoning the effort for some vehicles. This has provided consumers with fewer choices or at greater cost and has created incentives for automakers to move some production lines outside of the United States due to costs. The more stringent rule adopted by the previous administration fails to reflect the new technologies and changes being adopted by the industry and will delay those changes and adoption of those technologies. The USMCA auto rules are already demonstrably more stringent than those used under the North America Free Trade Agreement (NAFTA), by significantly raising the regional value content of finished vehicles and auto parts and creating entirely new requirements for core parts, steel, aluminum, and labor value content.

This administration's failure to implement the panel decision has raised concerns regarding the United States' commitment to global trade rules in the USMCA and other international trade agreements. A formal dispute settlement mechanism was a key U.S. objective in the formation of the USMCA, and a failure by any party to fully accept and implement a panel decision sends the wrong message. Investment decisions depend, in part, on the certainty provided by government implementation of the rules as they were agreed to and the uncertainty caused by failure to implement this and future panel decision may have a chilling effect on investments in several areas, including research and development, supply chains, and production.

By contrast, implementation of the USMCA as written and agreed would attract more investment to the region and realize significant benefits to all parties involved, as was envisioned by the negotiators. This is particularly crucial given the supply chain disruptions that slowed or stopped production at many manufacturing facilities across North America and worldwide.

For USMCA to fulfill its potential to create jobs and transition to new, greener technologies, the Administration should reconsider and drop its defense of the previous administration's unilateral reinterpretation of the roll-up provisions, implement the panel's decision, and be a leader in upholding the integrity of the agreement and allow automakers to implement the billions of dollars of investments they have planned for the United States and the region.

USTR Request 2: Actions taken by automotive and parts producers to demonstrate compliance with the USMCA automotive rules of origin, including:

- a. The applicable RVC requirements for passenger vehicles, light trucks, heavy trucks, other vehicles and parts thereof.**
- b. The North American steel and aluminum purchase requirements.**
- c. The LVC requirements.**

Automakers have followed through on their plans to invest billions of dollars to meet USMCA RVC, steel and aluminum and LVC requirements, and have likewise altered their operations, shifted their supply chains, and identified new suppliers towards the same objectives. They have done this at the same time as they have been investing similar amounts in creating and building out EV manufacturing plants and their supply chains in the United States and in the region. However, these actions have been hindered and delayed in some cases by the failure of the United States to implement the unanimous panel decision, as described above.

USTR Request 3: The use of alternative staging regimes by vehicle producers to meet the USMCA automotive rules of origin.

Alternative staging regimes have played an indispensable role in ensuring a smooth transition to meeting USMCA rule-of-origin requirements and in avoiding disruptions to North American automotive supply chains, which had previously been largely duty-free under NAFTA.

However, automakers made and submitted their alternative staging plans in 2019 and 2020 – a time period during which the industry was experiencing tectonic shifts due to the COVID-19 pandemic, changing consumer habits, severe supply chain constraints, and other challenges. Given those unforeseen circumstances, the persistence of the supply chain challenges created at that time, and challenges that have arisen since, even the best laid plans are likely to require additional flexibility in the coming years. It is exceedingly important for the USMCA Parties to recognize automakers' continued need for flexibility in this regard and to be receptive to requests from automakers to modify their alternative staging plans. The modification process should be reasonable and well-informed by the state of the industry and its supply chains to ensure positive outcomes for automakers, workers, and consumers.

As the automobile industry moves toward alternative powertrain solutions (including electric vehicles), automakers are taking steps to bring production to the United States and North America. Sourcing and planning require time to ensure that automakers can build in the region in a cost-effective manner with high quality components. While the USMCA allows for transition time over the first five years, we believe additional flexibility (e.g., extension of ASRs) should be considered to ensure the successful localization of new technologies.

USTR Request 4: Enforcement of the USMCA automotive rules of origin, including the alternative staging regimes and the automotive certification process for steel and aluminum content, LVC and RVC.

For steel and aluminum and Labor Value Content (LVC) annual certifications, there has been guidance that a twelve-month certification period immediately follows a 12-month calculation period. The guidance also specifies that the certification must be submitted 30 days before the start of the certification period. To provide the certification 30 days before the start of the certification period, the producer must rely on estimates for part of the 12-month calculation preceding the certification period. By requiring this, the producer must make two calculations, taking significant time and resources.

Example:

- Producer uses a calculation period of 4/1/21-3/31/22.
- Producer reports certification period of 4/1/22-3/31/23.
- CBP requests certification by 3/1/22 (30 days before certification begins)
- Producer does not have actual figures for 2/1/22 to 3/1/22, so it can only estimate.
- Producer must then, presumably, recalculate after data is available.

Some of this administrative burden could be alleviated if the certification was required 60 days after the start of the certification period to allow the producer to collect the data and make one calculation using actual results.

USTR Request 5: Whether the current USMCA automotive rules of origin are effective in light of new technology and changes in the content, production processes and character of automotive goods. In particular, whether the rules of origin remain effective for:

- a. The large-scale transition towards electric and other clean-energy vehicles;**
- b. The transition away from internal combustion and diesel vehicles;**
- c. The automotive parts applicable to electric and clean-energy vehicles and internal combustion or diesel vehicles; or**
- d. Any other vehicle and part subject to the USMCA automotive rules of origin.**

As the automobile industry moves toward alternative powertrain solutions (including electric vehicles), automakers are taking steps to bring production to the United States and North America. However, the development of entirely new supply chains for these products takes significant time and resources – regardless of where those supply chains are based.

Furthermore, automakers remain subject to numerous other U.S. federal and state regulatory regimes that impose stringent safety and emissions standards on auto parts and components. Automakers must frequently conduct testing and certifications years in advance of planned production. Thus, planning for compliance with these requirements, in addition to the heightened USMCA RVC, LVC, and core part requirements, leaves little flexibility or room for error. In some cases, the failure of a single small business that supplies a minor component to deliver on a contract, or the need to redesign a part after failed testing, can cause an entire vehicle model to fall below the USMCA-qualifying thresholds as unilaterally reinterpreted by the prior administration. While the USMCA allows for transition time over the first five years, we believe additional flexibility should be considered to ensure the successful localization of new technologies and the sustainable development of new automotive jobs and supply chains in the USMCA region.

USTR Request 6: Whether the USMCA rules of origin are effective in supporting the competitiveness of the North American automotive industry in light of global challenges, such as excess capacity of electric vehicles.

As noted above, the more stringent rule-of-origin roll-up interpretation adopted by the previous administration fails to reflect the new technologies and changes being adopted by the industry and will delay those changes and adoption of those technologies. This administration's failure to implement the unanimous panel decision, which found that reinterpretation to be clearly inconsistent with the United States' USMCA obligations, has further undermined the competitiveness of the North American automotive industry by causing automakers to shift limited investment and resources elsewhere in numerous cases.

USTR Request 7: An update on the supply chain challenges identified in the 2022 report (e.g., semiconductor shortage, war in Ukraine) and the impact the USMCA had on overcoming those supply chain challenges.

The effects of the supply chain challenges identified in the 2022 report persist. The USMCA, particularly in light of the reinterpretation by the prior administration and this administration's persistence in that reinterpretation, has not aided automakers in overcoming the effects of those challenges.

Moreover, additional supply chain challenges are now impacting the sector. For example, automakers are responding to this administration's desire to rapidly increase and incentivize electric vehicle production and adoption. However, the supply chains for the raw materials and other parts and components necessary to do so remain quite nascent in the USMCA region. Prices for key inputs routinely fluctuate wildly. Consumer demand has also oscillated, particularly in the absence of sustained government investment in the infrastructure required to support widespread adoption of electric vehicles. The significantly reduced availability of 30D consumer tax credits under the IRA due to increasingly stringent battery component and critical mineral requirements has also dampened consumer demand. These challenges significantly impact electric production in the USMCA region. Batteries for electric vehicles, on average, comprise



about 50 percent of the entire value of the vehicle. As a result, the lack of availability or capacity in USMCA-based battery supply chains can have an outsize impact on both core part RVC values and vehicle RVC values. When these vehicles are unable to achieve the required thresholds, the duties-imposed cause them to be more expensive to produce and more expensive for consumers to purchase, slowing adoption.

While the USMCA contains a more flexible rule of origin for electric vehicle batteries, part of this rule will phase out with the end of the alternative staging period. For the USMCA to be helpful in supporting the competitiveness of the North American automotive industry and overcoming these supply chain challenges, the USMCA Parties should consider providing automakers additional flexibility in the alternative staging regimes.

USTR Request 8: The impact of the 2022 Inflation Reduction Act and similar legislation, e.g., the CHIPS and Science Act of 2022, and the Infrastructure Investment and Jobs Act, on the overall trade in automotive goods under the USMCA and those goods' ability to meet the USMCA rules of origin.

While both the Inflation Reduction Act (IRA) and the USMCA contain provisions to further incentivize the domestic production of electric vehicles and their components, the eligibility requirements and staging for each are divergent. Furthermore, while the Bipartisan Infrastructure Law/IJA includes \$5 billion for charging infrastructure development, only 2 charging sites have opened in Ohio and Pennsylvania. To encourage BEV adoption, charging infrastructure needs to dramatically increase. Moreover, the IRA incentives only partially capture as qualifying production activities that may take place in Canada or Mexico. In any case, as domestic laws that are unrelated to the USMCA, U.S. activities under the IRA, CHIPS Act, and IJA are simply not a substitute for full implementation of the USMCA as written and agreed by all three Parties.

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Autos Drive America appreciates the opportunity to provide feedback on the operation of the USMCA as related to automotive goods. We urge USTR and the administration to implement policies that will provide the intended benefits of the USMCA to the United States and to all of North America, continuing to make the region a destination for investment and good paying, high-quality jobs.

Sincerely,

A handwritten signature in black ink that reads 'Jennifer M. Safavian'.

Jennifer M. Safavian
President & CEO
Autos Drive America