

March 15, 2023

Inv. No. 332-592

Written Comment

PUBLIC DOCUMENT

VIA ELECTRONIC FILING

The Honorable Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**Re: Written Comment from Autos Drive America to Provide Further Relevant
Information for the Investigation on USMCA Automotive Rules of Origin:
Economic Impact and Operation, 2023 Report (Inv. No. 332-592)**

Dear Secretary Barton:

Pursuant to the International Trade Commission's August 9, 2022 "Notice of Investigation and Scheduling of a Public Hearing" with respect to Investigation No. 332-592, USMCA Automotive Rules of Origin: Economic Impact and Operations, 2023 Report, Autos Drive America hereby submits this written comment to provide further information to the Commission that has been made available since the close of the scheduled written and oral proceedings in this investigation.

During Autos Drive America's testimony to the Commission during the public hearing held on November 3, 2022, Autos Drive America referred to ongoing USMCA state-to-state dispute settlement proceedings in which Mexico and Canada challenged the U.S. reinterpretation of the USMCA automotive rules of origin. Several other witnesses also discussed the uncertainty caused by the U.S. reinterpretation of the methodology for calculating the regional

value content (“RVC”) of vehicles, and the overall importance of the outcome of the dispute to the North American industry.

On January 11, 2023, the arbitral panel in that dispute released its final report to the public. A copy of the final report is attached to this comment. The panel found unanimously that the U.S. reinterpretation of the RVC calculation methodology was incorrect, unsupported by the text and negotiating history, and in violation of U.S. obligations under the USMCA.

Specifically, the panel stated as follows:

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.

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 9(4) of the Uniform Regulations, one that falls outside the scope of what was intended by the Agreement.

[. . .]

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.

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.

The United States’ interpretation and application are inconsistent with Article 3 of the Autos Appendix and Article 4.5 of the Agreement.¹

¹ USMCA Panel Report, *US – Automotive Rules of Origin*, paras. 203-209.

Under procedures established in Chapter 31 of the USMCA, the Parties should have agreed on a resolution of the dispute by February 10, giving Canada and Mexico the right to retaliate against the United States if they fail to agree on a resolution. Instead, the Office of the U.S. Trade Representative has communicated to Autos Drive America that it is working to understand the implications of the decision with regard to investments and production in North America. The full implementation of the panel's final decision by all three USMCA Parties is of paramount importance to ensure the continued competitiveness of auto manufacturing in our region to receive the full benefits of a rules-based trading system.

Autos Drive America thanks the Commission for its consideration of this follow-up written submission. If the Commission has any questions regarding this submission, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink, reading "Rory B. Heslington". The signature is fluid and cursive, with the first name "Rory" being the most prominent part.

Rory Heslington,
Vice President of Government Affairs
Autos Drive America

