

Trade and Investment in the Automotive Industry Sector

1. Except as provided in this Annex, each Party shall apply this Agreement to automotive goods of another Party and to enterprises of the automotive industry sector in its territory.
 2. Except as provided in this Annex, each Party shall promptly accord to existing producers of vehicles in its territory treatment no less favorable than that it accords, in like circumstances, to a new producer of vehicles in its territory regarding measures covered by this Annex.
 3. The Parties shall review, no later than December 31, 2003, the status of the North American automotive industry sector and the effectiveness of the measures contained in this Annex to determine actions that could be taken to strengthen the integration and global competitiveness of the industry.
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Appendix A: Canada

Existing Measures

1. Canada and the United States may maintain the Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America which entered into force on September 16, 1966, in accordance with Article 1001, Article 1002(1) and (4) (as they refer to Annex 1002.1, Part One), Article 1005(1) and (3), and Annex 1002.1, Part One (Waivers of Customs Duties) of Canada - United States Free Trade Agreement.
2. Canada may maintain the measures referred to in Article 1002(1) and (4) (as they refer to Annex 1002.1, Parts Two and Three), Article 1002(2) and (3), Article 1003, and Annex 1002.1, Parts Two (Export-Based Waivers of Customs Duties) and Three (Production-Based Waivers of Customs Duties) of the Canada - United States Free Trade Agreement. Canada shall eliminate those measures in accordance with the terms set out in that agreement.

Used Vehicles

3. Canada may adopt or maintain prohibitions and restrictions on imports of used vehicles from the territory of Mexico, except as follows:
 - (a) after January 1, 2009, Canada may not adopt or maintain prohibitions or restrictions on imports from the territory of Mexico of originating used vehicles that are at least 10 years old;

(b) after January 1, 2011, Canada may not adopt or maintain prohibitions or restrictions on imports from the territory of Mexico of originating used vehicles that are at least eight years old;

(c) after January 1, 2013, Canada may not adopt or maintain prohibitions or restrictions on imports from the territory of Mexico of originating used vehicles that are at least six years old;

(d) after January 1, 2015, Canada may not adopt or maintain prohibitions or restrictions on imports from the territory of Mexico of originating used vehicles that are at least four years old;

(e) after January 1, 2017, Canada may not adopt or maintain prohibitions or restrictions on imports from the territory of Mexico of originating used vehicles that are at least two years old; and

(f) after January 1, 2019, Canada may not adopt or maintain prohibitions or restrictions on imports from the territory of Mexico of originating used vehicles regardless of age.

Appendix B: Mexico

Auto Decree and Auto Decree Implementing Regulations

1. Subject to this Appendix, Mexico may maintain, until January 1, 2004, the Decree for Development and Modernization of the Automotive Industry ("Decreto para el Fomento y Modernización de la Industria Automotriz") (December 11, 1989) (the "Auto Decree") and the Resolution that Establishes Rules for the Implementation of the Auto Decree ("Acuerdo que Determina Reglas para la Aplicación para el Fomento y Modernización de la Industria Automotriz") (November 30, 1990) (the "Auto Decree Implementing Regulations"). Mexico may adopt or maintain any measure respecting automotive goods or manufacturers of automotive goods in its territory provided that such measure is not inconsistent with this Agreement.

Autoparts Industry, National Suppliers and Independent Maquiladoras

2. Mexico may not require that an enterprise attain a level of national value added in excess of 20 percent of its total sales as one of the conditions to qualify as a national supplier or enterprise of the autoparts industry.

2a. For purposes of paragraph 2, "national value added" means the total value of sales of such enterprises (excluding those for the aftermarket) minus the value of its total imports, direct and indirect, excluding those imports incorporated in aftermarket

parts and components, as modified by paragraph 3.

3. Mexico may require that a national supplier or an enterprise of the autoparts industry, in calculating its national value added solely for the purposes of paragraph 2, include customs duties in the value of imports incorporated into the parts and components produced by such enterprises.

4. Mexico shall grant national supplier status to an independent maquiladora that requests such status and meets the requirements for that status set out in the existing Auto Decree. Mexico shall continue to grant to all independent maquiladoras that request national supplier status all existing rights and privileges accorded to independent maquiladoras under the existing Decree for the Promotion and Operation of the Maquiladora Export Industry ("Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación") (December 22, 1989) (the "Maquiladora Decree").

4a. For purposes of paragraph 4, "independent maquiladora" means an enterprise registered as an export maquiladora enterprise under the Maquiladora Decree which has no common majority shareholder with any manufacturer, and for which no manufacturer is directly or indirectly a majority shareholder.

National Value Added

5. Mexico may provide that a manufacturer ("empresa de la industria terminal") calculate its required national value added from suppliers (VANp) as a percentage of:

(a) a manufacturer's reference value as defined in paragraph 8; or

(b) a manufacturer's total national value added (VANt),

whichever is greater.

6. Mexico shall not require that the percentage referred to in paragraph 5 be greater than:

(a) 34 percent for each of the first five years beginning January 1, 1994;

(b) 33 percent for 1999;

(c) 32 percent for 2000;

(d) 31 percent for 2001;

(e) 30 percent for 2002; and

(f) 29 percent for 2003.

7. Notwithstanding paragraph 6, Mexico shall allow a manufacturer that produced vehicles in Mexico before model year

1992 to use as its percentage referred to in paragraph 5 the ratio of actual national value added from suppliers (VANp) to total national value added (VANt) that such manufacturer attained in model year 1992, for so long as that ratio is lower than the applicable percentage specified under paragraph 6. In determining such ratio for 1992, purchases that such manufacturer made from independent maquiladoras that would have been eligible to receive national supplier status had paragraphs 2, 3 and 4 of this Appendix been in effect at that time, shall be included in the calculation of the manufacturer's national value added from suppliers (VANp), in the same manner as parts and components from any other national supplier or enterprise of the autoparts industry.

8. "The annual reference value for a manufacturer" ("reference value") shall be:

(a) for each of the years 1994 through 1997, the base value for the manufacturer, plus no more than 65 percent of the difference between the manufacturer's total sales in Mexico in that year and its base value;

(b) for each of the years 1998 through 2000, the base value for the manufacturer, plus no more than 60 percent of the difference between the manufacturer's total sales in Mexico in that year and its base value; and

(c) for each of the years 2001 through 2003, the base value for the manufacturer, plus no more than 50 percent of the difference between the manufacturer's total sales in Mexico in that year and its base value.

9. Mexico shall provide that where a manufacturer's total sales in Mexico in a year are lower than its base value, the reference value for such manufacturer for that year shall be equal to the manufacturer's total value of sales in Mexico for the year.

9a. For purposes of paragraphs 8 and 9:

(a) "base value" means the average annual value of the manufacturer's production in Mexico for sale in Mexico (VTVd) in model years 1991 and 1992, adjusted for inflation, using the Mexican producer price index for automotive goods published by the Bank of Mexico ("Banco de Mexico"); and

(b) "manufacturer's total sales in Mexico in that year" means the invoice value of sales by a manufacturer of vehicles it produced in Mexico for sale in Mexico plus the invoice value of its sales of imported vehicles.

10. In the event an abnormal production disruption affects a manufacturer's production capability, Mexico shall allow such manufacturer to seek a reduction in its reference value before the Intersecretariat Automotive Industry Commission, established under Chapter V of the Auto Decree. If the Commission finds that

the production capability of the manufacturer has been impaired by such an abnormal production disruption, the Commission shall reduce the manufacturer's reference value in an amount commensurate to such event.

10a. For purposes of paragraph 10, "abnormal production disruption" means a disruption in a manufacturer's production capability resulting from a natural disaster, fire, explosion or other unforeseen event beyond the manufacturer's control.

11. If, upon the request of a manufacturer, the Intersecretariat Automotive Industry Commission finds that the production capability of such manufacturer has been significantly disrupted as a result of a major retooling or plant conversion in the facilities of the manufacturer, the Commission shall reduce the reference value for the manufacturer for that year in an amount commensurate with the disruption, provided that such reduction in that manufacturer's required national value added from suppliers (VANp) that may result from the Commission's determination to lower the manufacturer's reference value shall be fully made up by the manufacturer over the following two model years.

11a. For purposes of paragraph 11, "significant disruption" means a sizable impairment in the manufacturer's production capability that lasts at least six months but no longer than 12 months.

Trade Balance

12. Mexico shall not require a manufacturer to include in the calculation of its trade balance (S) a percentage of the value of direct and indirect imports of parts and components that such manufacturer incorporated into vehicles it has produced in Mexico for sale in Mexico (VTVd) in the corresponding year, greater than the following:

- (a) 80 percent for 1994;
- (b) 77.2 percent for 1995;
- (c) 74.4 percent for 1996;
- (d) 71.6 percent for 1997;
- (e) 68.9 percent for 1998;
- (f) 66.1 percent for 1999;
- (g) 63.3 percent for 2000;
- (h) 60.5 percent for 2001;
- (i) 57.7 percent for 2002; and
- (j) 55.0 percent for 2003.

13. For purposes of determining a manufacturer's total national value added (VANt), paragraph 12 shall not apply to the calculation of its trade balance (S).

14. Mexico shall permit a manufacturer with a surplus in its extended trade balance to divide its extended trade balance by the applicable percentages in paragraph 12 to determine the value of new vehicles that it may import.

15. Mexico shall provide that in the calculation of a manufacturer's adjustment factor (Y) in its extended trade balance:

(a) a manufacturer's total national value added (VANt) be replaced by that manufacturer's reference value in any year in which the manufacturer's total national value added (VANt) is lower than its reference value; and

(b) the applicable percentage under paragraphs 6 or 7, as appropriate, be used.

16. In determining the annual amount that a manufacturer may apply to its extended trade balance from surpluses earned prior to model year 1991, Mexico shall in any given year allow such manufacturer to elect:

(a) to use the procedures of the existing Auto Decree Implementing Regulation; or

(b) to apply up to \$US 150 million, adjusted for inflation in accordance with the U.S. GDP Price Deflator or its equivalent in Mexican pesos,

until such surpluses have been exhausted.

Other Restrictions in the Auto Decree

17. Mexico shall eliminate the restriction set out in the existing Auto Decree that limits the number of vehicles that a manufacturer may import into Mexico in relation to the total number of vehicles that such manufacturer sells in Mexico.

Autotransportation Decree and Autotransportation Implementing Regulations

18. Mexico shall eliminate the Mexican Decree for Development and Modernization of the Autotransportation Vehicle Manufacturing Industry (December 1989) ("Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte") (the "Autotransportation Decree") and the Resolution that Establishes Rules for the Implementation of the Autotransportation Decree (November 1990) ("Acuerdo que Establece Reglas de Aplicación del Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte") (the "Autotransportation Decree Implementing Regulations"). Mexico may adopt or maintain any measure respecting

autotransportation vehicles or manufacturers of autotransportation vehicles in its territory provided that such measure is not inconsistent with this Agreement.

Importation of Autotransportation Vehicles

19. Except as provided in paragraphs 20 and 21, Mexico may adopt or maintain a prohibition or restriction on the importation of autotransportation vehicles of another Party until January 1, 1999.

20. For each of the years 1994 through 1998, Mexico shall allow any manufacturer of autotransportation vehicles to import, for each type of autotransportation vehicle, a quantity of originating autotransportation vehicles equal to at least 50 percent of the number of vehicles of such type that such manufacturer produced in Mexico in that year.

20a. For purposes of paragraph 20, "manufacturer of autotransportation vehicles" means an enterprise, established in Mexico, that produces autotransportation vehicles, is registered with the Ministry of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), and whose sales in Mexico incorporate at least 40 percent national value added, where national value added is the result of subtracting from the total sales (excluding imports of autotransportation vehicles) of an autotransportation manufacturer the invoice value of its direct and indirect imports of parts and components.

21. For each of the years 1994 through 1998, Mexico shall allow persons other than manufacturers of autotransportation vehicles to import, in a quantity to be allocated among them, originating autotransportation vehicles of each type as follows:

(a) for each of the years 1994 and 1995, no less than 15 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico;

(b) for 1996, no less than 20 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico; and

(c) for each of the years 1997 and 1998, no less than 30 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico.

Mexico shall allocate such quantity through a non-discriminatory auction.

Used Vehicles

22. Mexico may adopt or maintain prohibitions and restrictions on imports of used vehicles from the territory of another Party, except as follows:

(a) after January 1, 2009, Mexico may not adopt or maintain

prohibitions or restrictions on imports from the territories of Canada or United States of originating used vehicles that are at least ten years old;

(b) after January 1, 2011, Mexico may not adopt or maintain prohibitions or restrictions on imports from the territories of Canada or United States of originating used vehicles that are at least eight years old;

(c) after January 1, 2013, Mexico may not adopt or maintain prohibitions or restrictions on imports from the territories of Canada or United States of originating used vehicles that are at least six years old;

(d) after January 1, 2015, Mexico may not adopt or maintain prohibitions or restrictions on imports from the territories of Canada or United States of originating used vehicles that are at least four years old;

(e) after January 1, 2017, Mexico may not adopt or maintain prohibitions or restrictions on imports from the territories of Canada or United States of originating used vehicles that are at least two years old; and

(f) after January 1, 2019, Mexico may not adopt or maintain prohibitions or restrictions on imports from the territories of Canada or United States of originating used vehicles, regardless of age.

Appendix B: Definitions

Note: (The following terms shall be defined as provided in the Auto Decree and Auto Decree Implementing Regulations, incorporating those specific modifications required by this Appendix.

For purposes of transparency, set out below for each term are the corresponding Spanish term, citations to the relevant provisions of the Auto Decree and Auto Decree Implementing Regulations and, where appropriate, the paragraph of this Appendix that modifies the definition in the Auto Decree or Auto Decree Implementing Regulations. English translations of these definitions, amplified for clarity where appropriate, and incorporating modifications required by this Appendix, will be set out here at a later date.)

adjustment factor (Y) means "factor de ajuste Y" as defined in rule 18 of the Auto Decree Implementing Regulations and as modified by paragraph 15 of this Appendix;

enterprise of the autoparts industry means "empresa de la industria de autopartes" as set out in Article 2, paragraph V of the Auto Decree, as modified by paragraph 2 of this Appendix;

extended trade balance means "balanza comercial ampliada" referred to in rule 28 of the Auto Decree implementing Regulations, and is equal to the numerator (S+W+.3I+Sft+T-Y) of formula (1) in rule 8, of the Auto Decree Implementing Regulations;

manufacturer means an "empresa de la industria terminal" as defined in Article 2, paragraph IV of the Auto Decree that produces any of the following classes of vehicles:

(a) passenger car: a vehicle for the transportation of up to 10 people or a compact car of popular use, provided for in subheadings (to be specified) of the Harmonized System;

(b) commercial truck: a vehicle with or without a chassis, for the transportation of cargo or over 10 people, with a GVW of up to 2,727 kgs., provided for in heading (to be specified) of the Harmonized System;

(c) light duty truck: a vehicle with a chassis, for the transportation of cargo or over 10 people, with a GVW of over 2,727 but less than 7,272 kgs., provided for in headings (to be specified); or

(d) medium duty truck: a vehicle with a chassis for the transportation of cargo or over ten people, with a GVW of over 7,272 kgs. but less than 8,864 kgs., provided for in headings (to be specified) of the Harmonized System;

manufacturer's production in Mexico for sale in Mexico (VTVd) means "valor total de las ventas que realicen las empresas de la industria terminal al mercado domestico, excluyendo vehiculos importados" as set out in rule 18 of the Auto Decree Implementing Regulations;

manufacturer's total national value added (VANt) means "valor agregado nacional de la empresa de la industria terminal" as defined in rule 18 of the Auto Decree Implementing Regulations;

national supplier means a "proveedor nacional" as defined by article 2 paragraph VII of the Auto Decree, as modified by paragraph 2 of this Appendix;

national value added from suppliers (VANp) means "valor agregado nacional de proveedores", as provided in rule 18 of the Auto Decree Implementing Regulations;

parts and components means "partes y componentes automotrices" as defined in article 2, paragraph X of the Auto Decree;

trade balance (S) means "saldo en balanza comercial de la empresa de la industria terminal", as defined in rule 9 of the Auto Decree Implementing Regulation, as modified by paragraphs 12 and 13 of this Appendix;

autotransportation vehicles means a vehicle included in any of the following types:

(a) heavy duty truck: a vehicle with a chassis for the transport of goods or more than ten people with a GVW over 8,864 kgs., provided for in headings (to be specified) of the Harmonized System;

(b) truck tractor: a vehicle with 2 or 3 axles for transporting goods by hauling trailers, semi-trailers or containing integrated equipment, provided for in subheading (to be specified) of the Harmonized System;

(c) integral bus: a vehicle without a chassis but with an integral body used to transport more than 10 people, provided for in heading (to be specified) of the Harmonized System; and

(d) specialty vehicles: special purpose motor vehicles or vehicles modified for the handicapped provided for in heading (to be specified) of the Harmonized System, (as provided for in Article 2 of the Autotransportation Decree).

Appendix C: United States

Corporate Average Fuel Economy

1. As provided in paragraph 2, for purposes of the Energy Policy and Conservation Act (October 1975), as amended ("the CAFE Act"), the United States shall consider an automobile to be domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in Canada, Mexico or the United States, unless the assembly of such automobile is completed in Canada or Mexico and such automobile is not imported into the United States prior to the expiration of the 30 days following the end of such model year.

2. The United States shall implement the obligation set out in paragraph 1 for all automobiles of a manufacturer sold in the United States, wherever produced and irrespective of car line or truck line, beginning with the next model year after January 1, 2004, except as provided in the following schedule:

(a) with respect to a manufacturer that initiated the manufacture of automobiles in Mexico before model year 1992, the enterprise that provides certification under the CAFE Act may make a one-time election at any time between January 1, 1997 and January 1, 2004, to have paragraph 1 applied beginning with the next model year after such election;

(b) with respect to a manufacturer initiating the manufacture of automobiles in Mexico after model year 1991, paragraph 1 shall apply beginning with the next model year after either January 1, 1994 or the date that such manufacturer initiates manufacturing automobiles in Mexico, whichever is later;

(c) with respect to any other manufacturer of automobiles in the territory of a Party, the enterprise that provides certification under the CAFE Act may make a one-time election at any time between January 1, 1997 and January 1, 2004, to have paragraph 1 applied beginning with the next model year after such election. If such a manufacturer initiates manufacturing automobiles in Mexico, it shall be subject to subparagraph (b) on the date it initiates such manufacturing; and

(d) with respect to all manufacturers of automobiles not manufacturing automobiles in the territory of a Party, paragraph 1 shall apply beginning with the next model year after January 1, 1994.

3. The United States shall make any future changes pertaining to the definition of domestic production in the CAFE Act or its implementing regulations equally applicable to value added in any of the Parties.

4. Nothing in this Appendix shall require the United States to make any changes in its fuel economy requirements for automobiles.

5. For purposes of this Appendix, "automobile" means a motor vehicle that complies with the definition in the CAFE Act and its implementing regulations.

Appendix D: General Definitions

existing producer of vehicles means a producer that was producing in the territory of the relevant Party prior to model year 1992;
and

automotive goods means all types of motor vehicles, and parts and components intended for use in motor vehicles.

Note: (Additional terms may be added where appropriate)