

THE IMPLEMENTATION ACT FOR THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA (USMCA)

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action (“Statement”) is submitted to the Congress in compliance with section 106(a)(1)(E)(ii) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (“Trade Priorities Act”) and accompanies the implementing bill for the Agreement Between the United States of America, the United Mexican States, and Canada (“Agreement” or “USMCA”). The bill approves and makes statutory changes strictly necessary or appropriate to implement the Agreement, which is attached as an Annex to the Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada (the “Protocol”), which the United States Trade Representative signed in Buenos Aires, Argentina on November 30, 2018, and which was amended by the Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada (the “Amended Protocol”), which the United States Trade Representative signed in Mexico City, Mexico on December 10, 2019.

As is the case with Statements of Administrative Action submitted to the Congress in connection with implementing bills for other free trade agreements approved under trade promotion authority procedures, this Statement represents an authoritative expression by the Administration concerning its views regarding the interpretation and application of the Agreement, both for purposes of U.S. international obligations and domestic law. The Administration understands that it is the expectation of the Congress that future administrations will observe and apply the interpretations and commitments set out in this Statement. In addition, because Congress will approve this Statement when it approves the implementing bill for the Agreement, the interpretation of the USMCA included in this Statement carries particular authority.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the USMCA. In addition, incorporated into this Statement are two other statements required under section 106(a)(2)(A) of the Trade Priorities Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are strictly necessary or appropriate to carry out the Agreement.

Section 106(a)(2)(A)(ii)(bb) of the Trade Priorities Act also requires a statement regarding whether and how the agreement changes provisions of an agreement previously negotiated. In May 2017, the United States Trade Representative notified Congress of the President’s intent to enter into negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA), which has been in force since January 1994. As set out in paragraph 1 of the Protocol, the USMCA will supersede the NAFTA once it enters into

force. Certain transitional provisions provided for in the USMCA are intended to ensure a smooth transition from one agreement to another.

Although the USMCA is a comprehensive overhaul of the NAFTA, many provisions of NAFTA are replicated so that the treatment the United States has committed to provide to Canada and Mexico remains the same. For example, with respect to industrial goods and textiles, the USMCA preserves the duty free treatment that had been achieved under the NAFTA. Some provisions of the NAFTA have been reproduced in the USMCA with no changes, for example with respect to temporary entry for business persons, and review and dispute settlement in antidumping and countervailing duty matters. Others have been reproduced with minimal changes, for example on duty drawback, the merchandise processing fee, origin procedures, and customs measures. However, the USMCA contains significant updates to many disciplines and adds disciplines in areas that were not covered by the NAFTA. Significantly, it includes robust labor and environment chapters as integral parts of the Agreement, rather than separate supplemental agreements. The USMCA also implements significant changes to the rules of origin for automotive goods compared to NAFTA, as well as changes to the rules for other products, in order to reflect the structure of current supply chains and incentivize additional production in the North American region, and in particular the United States. In addition, it includes disciplines to address new issues not dealt with in NAFTA, such as digital trade and state-owned enterprises.

Each USMCA Party affirms its existing rights and obligations with respect to each other under other existing international agreements.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the Protocol and the general provisions of the USMCA (Chapters 1, 29, 30, 32, and 34) at the beginning of the discussion.

For each chapter of the USMCA, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are strictly necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are required to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

**Protocol and Chapters:**  
**1 (Initial Provisions and General Definitions)**  
**29 (Publication and Administration)**  
**30 (Administrative and Institutional Provisions)**  
**32 (Exceptions and General Provisions)**  
**34 (Final Provisions)**

**1. Implementing Bill**

**a. Congressional Approval**

As required by sections 103(b)(3)(B)(i) and 106(a)(1) of the Trade Priorities Act, Section 101(a) of the implementing bill provides Congressional approval for: the Protocol and the USMCA, which is an Annex to the Protocol; the Protocol Amending the Agreement; and this Statement.

**b. Entry into Force**

Paragraph 1 of the Protocol provides that upon entry into force of the Protocol, the USMCA, which is attached as an Annex to the Protocol, will supersede the NAFTA. Paragraph 2 of the Protocol provides that each Party shall notify the others, in writing, once it has completed the internal procedures required for the entry into force of the Protocol. The Protocol and the USMCA will enter into force on the first day of the third month following the last notification.

Section 101(b) of the implementing bill authorizes the President to provide written notification to Canada and Mexico that the United States has completed its applicable legal procedures, if the President has determined that Canada and Mexico have taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force, and the President provides written notice of this determination to Congress in accordance with section 106(a)(1)(G) of the Trade Priorities Act.

Certain provisions of the USMCA become effective after the Agreement enters into force.

**c. Relationship to Federal Law**

Section 102(a) of the bill establishes the relationship between the USMCA and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the USMCA. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

As section 102(a) of the bill makes clear, those provisions of U.S. law that are not addressed by the bill are left unchanged. In particular, neither the USMCA nor the implementing bill amend section 301 of the Trade Act of 1974. Section 301 authorizes the U.S. Trade Representative to take action, subject to the direction of the President, against acts, policies, or practices that are inconsistent with, or deny benefits under, trade agreements or that are unreasonable, unjustifiable, or discriminatory and burden or restrict U.S. commerce.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, if permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the USMCA.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed or adopted in order to conform with the new U.S. rights and obligations arising from the USMCA. The latter include both regulations resulting from statutory changes made in the bill itself and changes to regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders -- other than those specifically indicated in the implementing bill and this Statement -- will be required to implement the new international obligations that the United States will assume under the USMCA. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the USMCA is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

#### **d. Relationship to State Law**

The USMCA's obligations generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, such as in the areas of government procurement, labor, environment, investment, cross-border trade in services, and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine

how it will conform with the Agreement's obligations at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the USMCA, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event of an unresolved conflict between a state law, or the application of a state law, and the USMCA. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the USMCA (for example, Chapter 17 relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter 17 exempt existing inconsistent (*i.e.*, "non-conforming") measures from key rules.

Given the provision of the McCarran-Ferguson Act, the implementing act must specifically reference the business of insurance in order for the USMCA's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the USMCA and the implementing bill as other financial services under the USMCA.

#### **e. Private Lawsuits**

Section 102(c) of the implementing bill precludes any private right of action or remedy against the federal government, a state or local government, or against a private party, based on the provisions of the USMCA. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the USMCA.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the USMCA. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the USMCA.

Section 102(c) does not preclude the exercise of the right to challenge determinations under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a). Section 102(c) also does not

preclude a private party from submitting a claim against the United States to arbitration under Chapter 14 (Investment) of the USMCA or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the USMCA, although any change in agency action would have to be consistent with domestic law.

**f. Implementing Regulations**

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the USMCA, as of the date of its entry into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement to implement immediately applicable U.S. obligations under the USMCA are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the USMCA at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

**g. Effective Dates**

Section 106(a) of the bill provides that Title I and the first three sections of the bill go into effect on the date the bill is enacted into law.

Section 621(a) provides that during any period in which a country ceases to be a Party to the USMCA, any provision of the bill and the amendments made by the bill cease to have effect with respect to that country. Section 621(b) provides that the provisions of the bill and the amendments to other statutes made by the bill will cease to have effect on the date the USMCA ceases to be in force with respect to the United States.

**h. Joint Review**

Article 34.7 of the USMCA provides a mechanism for the Parties to conduct a joint review of the Agreement on the sixth anniversary of its entry into force, and for annual reviews thereafter, if a Party does not confirm it wishes to extend the term of the Agreement at such joint review. Section 611 of the bill provides that the U.S. Trade Representative will seek public comment prior to participating in a joint review. In addition, section 611 provides for

consultations between the U.S. Trade Representative and the Ways and Means Committee of the House of Representatives and the Finance Committee of the Senate with respect to joint reviews or any annual reviews.

## **2. Administrative Action**

No administrative changes will be necessary to implement Chapter 1 (Initial Provisions), Chapter 29 (Publication and Administration), and Chapter 32 (Exceptions and General Provisions).

### **a. U.S. Sovereignty**

Under the USMCA, U.S. sovereignty and that of the states is fully protected. U.S. laws and regulations will continue to be enacted, administered, enforced, and amended solely by appropriate U.S. entities and authorities. All domestic legislative, judicial, or administrative prerogatives are fully maintained. The USMCA establishes a mechanism for resolving disputes between the USMCA governments. In no case does a finding by a panel established under that mechanism have the force of law in the United States. The appropriate federal and state executive and legislative authorities will decide how to respond under domestic law to any adverse panel finding.

The following administrative actions will be necessary to implement Chapter 30 (Administrative and Institutional Provisions), and Chapter 34 (Final Provisions).

### **b. Commission and Agreement Coordinator**

Article 30.1 of the USMCA establishes a Commission to oversee the implementation of the Agreement and the work of committees and other bodies established under the USMCA. The United States Trade Representative, or his or her designee, will represent the United States on the Commission. Article 30.5 of the USMCA requires each Party to designate an Agreement Coordinator to facilitate communications between the Parties regarding the Agreement. An official with the Office of the United States Trade Representative (“USTR”) will serve as the Agreement Coordinator.

## **Chapter 2 (National Treatment and Market Access for Goods)**

### **1. Implementing Bill**

#### **a. Proclamation Authority**

Section 103(a) of the bill grants the President authority to implement by proclamation

U.S. rights and obligations under Chapter 2 of the Agreement through the application or elimination of customs duties and tariff-rate quotas (“TRQs”) or Tariff Preference Levels (“TPLs”). Section 103(c) authorizes the President to:

- (i) modify or continue any duty;
- (ii) keep in place duty-free or excise treatment; or
- (iii) impose any duty

that the President determines to be necessary or appropriate to carry out or apply Article 2.4 (Treatment of Customs Duties), Article 2.7 (Temporary Admission of Goods), Article 2.8 (Goods Re-Entered After Repair or Alteration), Article 2.9 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials), Article 2.10 (Most-Favored-Nation Rates of Duty on Certain Goods), Article 6.2 (Handmade, Traditional Folkloric, or Indigenous Handicraft Goods), Article 6.3 (Special Provisions), and the Tariff Schedule of the United States to Annex 2-B (Tariff Commitments), including the appendices to that Annex, Annex 2-C (Provisions Between Mexico and the United States on Automotive Goods), and Annex 6-A (Special Provisions) and its appendices.

The proclamation authority with respect to Article 2.4 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Tariff Schedule of the United States to Annex 2-B of the USMCA, of customs duties on imports from Canada and Mexico that meet the Agreement’s rules of origin.

The proclamation authority with respect to Articles 2.7, 2.8, 2.9, and 2.10 authorizes the President to provide for the elimination of duties on particular categories of imports from USMCA Parties. Article 2.7 pertains to the temporary admission of certain goods, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 2.8 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in a USMCA Party; or (ii) sent from a USMCA Party for repair or alteration in the United States. Article 2.9 pertains to the entry of commercial samples of negligible value and printed advertising materials imported from a USMCA Party. Article 2.10 provides for duty free treatment for certain categories of goods, such as automated processing machines, continuing treatment implemented under NAFTA.

The proclamation authority with respect to Article 6.2 authorizes the President to provide duty-free treatment for certain textile or apparel products that the United States and the exporting USMCA Party agree are within the categories of hand-loomed fabrics of a cottage industry; hand-made cottage industry goods made of those hand-loomed fabrics; traditional folklore handicraft goods; or indigenous handicraft goods, provided that these goods meet any requirements for such duty-free treatment that the United States and the exporting USMCA Party agree.



The proclamation authority with respect to Article 6.3 (Special Provisions) and Annex 6-A (Special Provisions) authorizes the President to provide preferential tariff treatment applicable to originating goods to certain textile and apparel goods from a USMCA Party that do not meet the rules of origin, up to the annual quantities specified in the Appendices to that Annex.

Section 103(c)(2) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- (i) modify or continue any duty;
- (ii) modify the staging of any duty elimination set out in the U.S. Schedule to Annex 2-B, pursuant to an agreement with another USMCA Party, under Article 2.4;
- (iii) keep in place duty-free or excise treatment; or
- (iv) impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to a USMCA Party provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 103(c)(2) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (established pursuant to section 135 of the Trade Act of 1974) and the U.S. International Trade Commission ("ITC") on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin in accordance with Article 5.18 (Committee on Rules of Origin and Origin Procedures) and Article 6.4 (Review and Revision of Rules of Origin) of the USMCA.

Section 103(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good).

**b. Drawback**

Section 208 of the bill implements U.S. commitments under USMCA Article 2.5 (Drawback and Duty Deferral Program) with respect to drawback for goods traded between the Parties to the Agreement.

This section amends section 203 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3333) to provide exceptions to the limitation on drawback implemented in NAFTA for certain goods traded between the Parties to the Agreement. This amendment includes conforming terminology changes and references to provisions of the USMCA, as well as changes to the exception for sugar to reflect new tariff nomenclature. This section also amends sections 311, 312, 313, and 562 of the Tariff Act of 1930 (19 U.S.C. 1311, 1312, 1313, and 1562) which provide that drawback with respect to goods imported into the United States and subsequently exported to the territory of another Party, used in the production of a good exported to another Party, or substituted by goods used in the production of a good exported to another Party, be limited to the lesser of the duties paid or owed upon importation into the United States, or the duties paid on the good to another Party. The amendments make conforming terminology changes with respect to the limitation on drawback implemented in NAFTA relating to bonded manufacturing warehouses, bonded smelting and refining warehouses, substitution drawback, and manipulation in bonded warehouses. This section also amends section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c), to make conforming terminology changes regarding the limitation on drawback as provided under the Foreign Trade Zones Act.

**c. Merchandise Processing Fee**

Section 203 of the bill implements U.S. commitments under USMCA Article 2.16.3 and Annex 6-A, regarding waiver of customs user fees on certain goods. Article 2.16.3 maintains the treatment that was provided under the NAFTA with respect to originating goods of Canada or Mexico. In Annex 6-A, the United States agreed to waive the merchandise processing fee for textile or apparel goods of Canada or Mexico that are imported under a Trade Preference Level (TPL). Section 203 implements these commitments by amending section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

**d. Country of Origin Marking**

Section 209 of the bill implements U.S. commitments under paragraph 7 of the General Notes to the Tariff Schedule of the United States, by amending section 304 of the Tariff Act of 1930 (19 U.S.C. 1304). Paragraph 7 provides for the applicable tariff treatment if, under Appendix 1 to the Tariff Schedule of the United States, the United States provides different tariff treatment to one USMCA Party than to the other, with reference to whether the good qualifies to be marked as a good of Canada or Mexico. The amendment makes conforming terminology

changes with respect to provisions regarding marking of goods of Canada or Mexico.

## **2. Administrative Action**

### **a. Regulations**

As discussed above, section 103(c) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.7 (Temporary Admission of Goods), Article 2.8 (Goods Re-entered after Repair or Alteration), Article 2.9 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials ), and Article 2.10 (Most-Favored-Nation Rates of Duty on Certain Goods) of the USMCA, and to proclaim the continuation, phase-out, and elimination of customs duties if there are tariff differentials among USMCA Parties and the related rules of origin, as set out in Annex 2-B. The Secretary of the Treasury will issue regulations to carry out this portion of the proclamation.

## **Chapter 3 (Agriculture)**

### **1. Implementing Bill**

#### **a. Exemption from Special Agricultural Safeguard Measures**

Section 202 of the bill amends section 405 of the Uruguay Round Agreements Act (19 U.S.C. 3602). The amendment will provide for exemption from any duty imposed under the special agricultural safeguard authority for goods from Canada or Mexico that qualify for preferential treatment under the USMCA. This amendment is necessary to comply with Article 3.9 of the USMCA.

### **2. Administrative Action**

Article 3.7 (Committee on Agricultural Trade) establishes an inter-governmental Committee on Agricultural Trade (“Agriculture Committee”) composed of government representatives of each Party. As under NAFTA, an official in USTR’s Office of Agricultural Affairs will serve as the U.S. representative to the Agriculture Committee.

Article 3.13 (Contact Points) provides that each Party shall designate and notify a contact point for sharing of information on matters related to agricultural biotechnology. An official in USTR’s Office of Agricultural Affairs will serve as the contact point for the United States.

Article 3.16 (Working Group for Cooperation on Agricultural Biotechnology) establishes an inter-governmental working group for information exchange and cooperation on policy and trade-related matters associated with products of agricultural biotechnology. An official in USTR’s Office of Agricultural Affairs will serve as a co-chair of the Working Group.

Article 3.A.2 (Tariff Rate Quota Administration) provides that Canada and the United States shall designate and notify a contact point to facilitate communications between the two countries on matters relating to the administration of its tariff-rate quotas. An official in USTR's Office of Agricultural Affairs will serve as the contact point.

Paragraph 10 of Annex 3-B (Agricultural Trade Between Mexico and the United States) establishes an inter-governmental technical working group between Mexico and the United States to review matters related to agricultural grade and quality standards, technical specifications, and other standards in Mexico and the United States and their application and implementation insofar as they affect trade between the two countries. An official in USTR's Office of Agricultural Affairs will serve as a co-chair of the technical working group.

## **Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures)**

### **1. Implementing Bill**

#### **a. General**

Section 202 of the implementing bill codifies the general rules of origin set forth in Chapter 4 (Rules of Origin) of the USMCA. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of, or import from, a USMCA Party for the purposes of other U.S. laws or regulations.

Under the general rules, there are four basic ways for a good of a USMCA Party to qualify as an "originating" good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is "originating" if it is wholly obtained or produced entirely in the territory of one or more USMCA Parties as established in Article 4.3 of the Agreement and defined in section 202(a)(4) of the bill. This includes, for example, minerals extracted from the territory of one or more USMCA Parties, animals born and raised in the territory of one or more USMCA Parties, and waste and scrap derived from production of goods that takes place in the territory of one or more of the USMCA Parties or derived from used goods collected there that are fit only for the recovery of raw materials.

Second, the general rules of origin provide that a good is "originating" if the good is produced entirely in the territory of one or more USMCA Parties, using non-originating materials, provided that the resulting good satisfies all applicable requirements of Annex 4-B (Product-Specific Rules of Origin). Such requirements include, for example, non-originating materials meeting change in tariff classification requirement, or the good meeting a regional value content or processing requirement. These requirements also include those provided for in the Appendix to Annex 4-B, Provisions Related to the Product Specific Rules of Origin for

Automotive Goods. Some product-specific rules in those Annexes have multiple requirements.

Third, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of one or more USMCA Parties exclusively from materials that themselves qualify as originating.

Fourth, under Article 4.2(d) (Originating Goods), the change in tariff classification requirement is supplemented, in sectors other than goods of Chapters 61 through 63 of the Harmonized Tariff Schedule (HTS), by a rule conferring origin based on a percentage of regional value content if, as a result of classification of the good and materials in the same heading, the rule of origin in Annex 4-B could not confer origin.

Article 4.4 (Treatment of Recovered Materials Used in the Production of a Remanufactured Good) of the Agreement provides that a recovered material qualifies as “originating” for the purposes of determining whether a remanufactured good is originating if it is derived in the territory of one or more USMCA Parties and it is used in the production of and incorporated into the remanufactured good. A recovered material is one or more parts resulting from the disassembly of used goods that are brought into sound working condition through necessary cleaning, inspecting, testing, or other processing. A remanufactured good is an originating good only if it satisfies the applicable product-specific rule of origin. The term “remanufactured good” is separately defined in section 202(a)(19) to mean a good falling within Chapters 84 through 90 of the HTS or heading 94.02 (except goods classified under certain headings and subheadings in chapters 84, 85, or 87) that is entirely or partially composed of recovered materials, has a similar life expectancy and performs the same as or similar to such a good when new and has a factory warranty similar to such a good when new.

The remainder of section 202 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement’s requirements to qualify as an originating good. While many of these rules are similar in structure to rules in previous U.S. Free Trade Agreements, the USMCA also includes new requirements, such as those found in the Appendix to Annex 4-B of the Agreement concerning the rules for automotive goods. Section 202A sets forth procedures to certify and verify the requirements regarding steel and aluminum purchases and Labor Value Content in that Appendix. Section 202A directs the Trade Representative to establish procedures and requirements to implement the Alternative Staging provided for under Article 8 of the Appendix and requires Trade Representative, in consultation with other agencies, to review the operation of the USMCA with respect to trade in automotive goods.

Section 202(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo an applicable change in tariff classification. Other provisions in section 202 address exceptions to the *de minimis* provisions for certain agricultural goods, how materials are to be valued when calculating “regional value content,” and how to determine whether fungible goods and materials qualify as originating.

Section 202(l) allows an originating good to be shipped through a non-Party without losing its status as an originating good, provided certain conditions are met. While in a non-Party, the good may not undergo further operations except operations like unloading, reloading, storing, labeling and marking required by a USMCA Party, or any other operation necessary to preserve the good in good condition or transport the good to the importing USMCA Party. The good must also remain under customs control while in that non-Party.

Section 202(l) recognizes that, in modern commerce, a good may not be directly shipped from another USMCA Party to the United States or vice versa; for example, shipments may be consolidated at an interim port. At the same time, in order to ensure that the preferential tariff treatment under the Agreement goes to producers in USMCA Parties, rather than producers in third countries, the USMCA limits the operations on the good that are permitted in non-Parties for it to retain its originating status and requires that the good remain under customs control while in the non-Party.

**b. Proclamation Authority**

Section 103(c)(5) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4-B (Product-Specific Rules of Origin), including the Appendix to Annex 4-B (Provisions Related to the Product Specific Rules of Origin for Automotive Goods), and any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 103(c)(5) gives authority to the President to modify certain specific origin rules in the Agreement by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a under the discussion of Chapter 2, above).

Section 103(c)(5)(B)(ii) of the bill limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods. Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors. In addition, changes to textile and apparel rules for reasons of availability of fibers, yarns, or fabrics in the USMCA region can be proclaimed subject to the consultation process described in Article 6.4 (Review and Revision of Rules of Origin) of the USMCA.

**c. Disclosure of Incorrect Information and Suspension of Preferential Treatment**

Article 5.4 of the USMCA (Obligations Regarding Importation) provides that a USMCA Party shall not penalize an importer that invalidly claims preferential tariff treatment under the Agreement if the importer on becoming aware that such claim is not valid and prior to the Government's discovery of the error voluntarily corrects the claim and pays any customs duty

owing, subject to exceptions provided for in the Party's law. Pursuant to Article 5.9 of the USMCA (Origin Verification), if verifications of identical goods indicate a pattern of conduct by an importer, exporter, or producer of false or unsupported representations relevant to a claim that a good imported into its territory qualifies as an originating good, the importing Party may withhold preferential tariff treatment to identical goods imported, exported, or produced by that person until that person demonstrates that the identical goods qualify as originating.

Section 204(a) of the bill implements Article 5.4 for the United States by amending section 592(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1592(c)). Section 204(b) of the bill implements Article 5.9 for the United States by amending section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

**d. Claims for Preferential Tariff Treatment**

Article 5.11 of the USMCA (Refunds and Claims for Preferential Tariff Treatment after Importation) provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if a claim was not made at the time of importation, provided that the good would have qualified for preferential tariff treatment at the time of importation. In seeking a refund for excess duties paid, the importer may be asked to provide to the customs authorities a certification of origin and any other information substantiating that the good was in fact an originating good at the time of importation.

Section 205 of the bill implements U.S. obligations under Article 5.11 of the USMCA by amending section 520(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

**e. Certifications of Origin**

Article 5.2 of the USMCA (Claims for Preferential Treatment) provides that an importer may base a claim for preferential tariff treatment on a certification of origin completed by the importer, exporter, or producer. As an exception, under Article 5.5 (Exception to Certification of Origin), a USMCA Party cannot require a certification of origin if the customs value of the importation does not exceed \$1,000 (or the equivalent amount in domestic currency) or it is a good for which the USMCA Party has waived the requirement for certification, except in such circumstances where a series of importations may reasonably be considered to have been undertaken or arranged for the purpose of evading compliance with the importing Party's laws, regulations, or procedures governing claims for preferential tariff treatment.

Article 5.3 (Basis of a Certification of Origin) sets out the basis of a certification. If the producer completes a certification of origin of a good, the certification is completed on the basis of the producer having information that the good is originating. If an exporter completes a certification of origin, it must either be based on the person's knowledge that the good is

originating or reasonable reliance on the producer's information that the good is originating. If the importer completes a certification of origin, it must be on the basis of the importer having documentation that the good is originating or reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

Article 5.6 (Obligations Regarding Exportations) sets out rules governing incorrect certifications of origin issued by exporters or producers. If an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly notify in writing every person and every Party to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification.

Section 204(a) of the bill implements U.S. obligations under Article 5.6 by amending section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592). New subsection (f) of section 592, as added by section 204(a), imposes penalties on exporters and producers that issue false USMCA certifications of origin through fraud, gross negligence, or negligence.

#### **f. Record Keeping Requirements**

Article 5.8 of the USMCA (Record Keeping Requirements) sets forth record keeping requirements that each USMCA Party must apply to its importers. U.S. obligations under Article 5.8 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508).

Article 5.8 also sets forth record keeping requirements that each Party must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 206 of the bill implements Article 5.8 as it relates to exporters and producers for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 206 of the bill, subsection (l) of section 508 of the Tariff Act of 1930, as amended defines the terms "USMCA certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a USMCA certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. Section 508 of the Tariff Act of 1930 also sets forth penalties for violations of this record keeping requirement, which will appear in renumbered subsection (m).

#### **g. Determinations on Claims for Preferential Treatment**

Under Article 5.10 (Claims for Preferential Tariff Treatment), the importing Party must grant a claim for preferential tariff treatment made in accordance with Chapter 4 of the



Agreement, except in the instances set forth in Article 5.10.2 or Article 6.7 (Determinations) of the USMCA. Articles 5.10.2 and 6.7 provide the circumstances when an importing Party may deny a claim for preferential tariff treatment. Such circumstances include when the importing Party determines that the good does not satisfy the rules of origin or the information is not sufficient to make a positive determination, when the importer, exporter, or producer does not respond to a request for information or the exporter or producer does not consent to a visit, and when the importer, exporter, or producer fails to comply with any requirement of Chapter 4, the Rules of Origin Chapter. Section 208 implements these obligations.

## **2. Administrative Action**

The rules of origin in Chapter 4 of the USMCA are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in USMCA Parties. The rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in the territory of one or more USMCA Parties, or (ii) undergoes substantial processing in the territory of one or more USMCA Parties as set out in the USMCA, including the product-specific rules of origin.

### **a. Claims for Preferential Treatment**

Section 210 of the bill authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. As noted above, Article 5.3 of the USMCA (Basis of a Certification of Origin) sets out the basis on which an importer, exporter, or producer may complete a certification of origin. A certification need not be in a prescribed format, but must include the elements set out in that article. Under Article 5.7 (Errors and Discrepancies), a Party may not reject a certification of origin based on minor errors or discrepancies in the certification of origin. Article 5.2 (Claims for Preferential Tariff Treatment) provides that a Party can require that a certification of origin must be separate from the invoice if the invoice is issued in a non-Party.

### **b. Verification**

Under Article 5.9 of the USMCA (Origin Verification), an importing USMCA Party may use a variety of methods to verify claims that goods imported from another USMCA Party satisfy the USMCA's rules of origin. The importing USMCA Party may request information from the importer, exporter, or producer of the good, conduct a visit to the premises of the exporter or producer, or use other methods as may be decided by the importing Party and the Party where the exporter or producer is located. Section 207 of the bill implements U.S. obligations under Article 5.9.16 by providing that U.S. customs authorities must seek information from the exporter or producer before denying a claim for preferential tariff treatment when conducting a verification through an importer that based the claim on a certification of

origin completed by the exporter or producer. In addition, Article 6.6 (Verification) sets out special procedures for verifying claims that textile or apparel goods imported from another USMCA Party meet the Agreement's origin rules or by conducting a visit to an exporter or producer with respect to customs offenses. U.S. officials will carry out verifications under Articles 5.9 and 6.6 of the USMCA pursuant to authorities under current law, including inquiries and visits to U.S. importers, exporters, and producers. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

### **c. Automotive Goods**

The USMCA sets forth specific provisions related to the automotive sector, including the rules of origin in the Appendix to Annex 4-B (Provisions Related to the Product Specific Rules of Origin for Automotive Goods). The Appendix covers new requirements for passenger vehicles and trucks to be eligible for preferential treatment, including stronger product-specific rules for vehicles and vehicle parts and a requirement that certain core parts used in the production of a vehicle be originating. The Appendix eliminates NAFTA's "tracing" provisions. It also includes new requirements that vehicle producers' purchases of steel and aluminum have a minimum percentage of originating steel and aluminum.

The USMCA rules also require that vehicle producers source a significant share of content from North American plants or facilities that, on average, pay direct production workers at least \$16 per hour, also known as a Labor Value Content requirement. The Labor Value Content requirement, when combined with the core parts and other requirements in the Product Specific Rules, will incentivize U.S. jobs and facilitate U.S. development and manufacture of high-technology parts, such as advanced batteries.

The Appendix includes provisions to facilitate the transition in the sector to meet the above requirements of the USMCA, including alternative staging, and provisions to ensure that the USMCA rules remain relevant to the sector and continue to promote U.S. and North American competitiveness, investment, and jobs in light of new technology and the changing composition and character of automobiles.

Section 213 of the bill will authorize the development of regulations and other guidelines to carry out these provisions. Such regulations and guidelines will help facilitate implementation of the rules of origin with automotive producers and other stakeholders. Specifically, Section 210 of the bill will authorize the Secretaries of Treasury and Labor to prescribe regulations necessary to carry out certain provisions of the bill with respect to the Labor Value Content requirement in the Appendix. Section 202A(c)(2)(C) will also authorize the Secretary of Treasury to prescribe regulations relating to purchases of originating steel and aluminum. Such regulations would supplement customs regulations to facilitate the implementation of other product-specific rules for vehicles and vehicle parts.

To facilitate the transition to these new requirements and ensure effective coordination with U.S. agencies and with stakeholders in implementing such requirements, the President will issue an Executive Order establishing an interagency committee, led by the United States Trade Representative with participation by other relevant agencies, such as the Department of Commerce, the U.S. Customs and Border Protection, the U.S. International Trade Commission, and the Department of Labor. This Committee will issue guidelines to facilitate implementation and enforcement of provisions of the USMCA related to automotive goods. The Committee will also review the operation of the agreement with respect to trade in automotive goods, to ensure that the Agreement's provisions remain relevant in light of changes in technology and vehicle content, and facilitate the use of originating auto parts, as prescribed under the Appendix.

## **Chapter 6 (Textiles and Apparel)**

### **1. Implementing Bill**

#### **a. Proclamation Authority**

Section 103(c)(5)(B) of the implementing bill grants the President authority to proclaim modifications to the HTS regarding textile and apparel products in order to put into effect USMCA's textile and apparel provisions, including Tariff Preference Levels (TPLs) and preferential tariff treatment for handmade, traditional folkloric, or indigenous handicraft goods provided for under Article 6.2 (Handmade, Traditional Folkloric, or Indigenous Handicraft Goods) of the USMCA. Section 103(c)(5)(B)(ii) grants the President authority to proclaim modifications to the rules of origin in the USMCA based on issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties, subject to the layover and consultation provisions of section 104. Section 103(c)(5)(B) provides that no modifications can be made to the rules of origin for products covered by chapters 50 through 63 of the HTS.

#### **b. Enforcement of Textile and Apparel Rules of Origin**

The USMCA includes verification provisions designed to ensure the accuracy of claims of origin and to detect and address violations of the Agreement and of customs laws and regulations. In addition to the general verification provisions in Chapter 5 (Rules of Origin Procedures), Article 6.6 of the Agreement (Verification) provides for verifications and in particular visits to exporters and producers of textile and apparel goods, to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with customs laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Article 6.6, the United States may conduct a verification of whether a textile or apparel good qualifies for preferential tariff treatment by using the procedures that apply for goods that are not textile or apparel goods (under Article 5.9 (Origin Verification)) or through a

site visit to a textile or apparel exporter or producer. In a site visit to a textile or apparel exporter or producer, the United States may verify whether a textile or apparel good qualifies for preferential tariff treatment or customs offenses are occurring or have occurred.

Under Article 6.6.11, if verifications of identical goods indicate a pattern of conduct by an exporter or producer of making false or unsupported representations that a good imported into the United States qualifies for preferential tariff treatment, the United States may withhold that preferential treatment for identical textile or apparel goods imported, exported, or produced by that person until it is demonstrated to the United States that the identical goods qualify for preferential tariff treatment. In addition, under Article 6.7 (Determinations), the United States may deny a claim for preferential tariff treatment for a textile or apparel good: (i) for the reasons listed in Article 5.10 (see description above); (ii) if it has not received sufficient information to determine that the good qualifies as originating; or (iii) if access or permission for a site visit is denied, U.S. officials are prevented from completing the visit on the proposed date and an acceptable alternative is not provided, or the exporter or producer does not provide access to the relevant records or facilities during a site visit.

Section 208 of the bill implements Articles 5.9, 5.10, 6.6, and 6.7 of the Agreement. Section 207(a) authorizes the President to direct the Secretary to take “appropriate action” while a verification is being conducted. For textile and apparel goods, the purpose of a verification is to determine the accuracy of a claim for preferential tariff treatment under the Agreement or compliance with applicable customs law. Under section 207(a)(2)(D), appropriate action for a textile and apparel good may include, but is not limited to, suspension of liquidation of entries of textile or apparel goods exported or produced by the person that is the subject of the verification.

Under section 207(c), “action” based on a determination that the good does not qualify for preferential treatment would include denying preferential treatment under the Agreement for the goods subject to the verification.

## **2. Administrative Action**

### **a. Enforcement of Textile and Apparel Rules of Origin**

The President will delegate to the Committee for the Implementation of Textile Agreements (CITA) his authority under the bill to direct appropriate U.S. officials to take an action described in section 207(a)(2)(D) of the bill while such a verification is being conducted. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies as directed by the President. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 207(c) in the case of an adverse determination, if sufficient information has not been received to determine if the good qualifies as originating, or if access to exporter or producer sites or relevant information is not made available. If CITA decides that it is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to CBP.

Section 207 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 6.6 of the Agreement.

**b. Consultations on Rules of Origin**

The President will authorize CITA to review and make recommendations on requests to modify a rule of origin for a textile or apparel good under the USMCA. Any interested person may submit to CITA a request for a modification to a rule of origin based on a change in the availability in North America of a particular fiber, yarn, or fabric. The requesting party will bear the burden of demonstrating that a change is warranted. If, on the basis of this consideration, CITA recommends a change to a rule of origin for a textile or apparel good, and the USMCA Parties have agreed following consultations as provided for in the USMCA, the President may proclaim the recommended change under section 103(c)(5), subject to the consultation and layover provisions contained in Section 104 of the bill.

**c. Handmade, Traditional Folkloric, and Indigenous Handicraft Goods**

The President will authorize CITA to consult with Mexico and Canada to determine which, if any, textile or apparel goods will be treated as handloomed, handmade, folklore, or indigenous handicraft articles. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

**d. Contact Point for Textile and Apparel Matters**

Article 6.5 (Cooperation) calls for each USMCA Party to designate a contact point for information exchange and other cooperation with regard to matters under the Textiles and Apparel Chapter. USTR's Office of Textiles will be designated as the U.S. contact point.

**Chapter 7 (Customs Administration and Trade Facilitation)**

**1. Implementing Bill**

The USMCA maintains the treatment currently provided under the NAFTA. While no substantive changes to U.S. law are required to implement Chapter 7, conforming changes must be made to maintain the treatment currently provided with respect to a "NAFTA country" in certain provisions of the Tariff Act of 1930, as amended. Section 210 amends the following sections of that Act: (i) section 304(k) (19 U.S.C. 1304(k)) with respect to marking of imported articles and containers; (ii) section 509 (19 U.S.C. 1509) with respect to examination of books and witnesses; and (iii) section 628(c) (19 U.S.C. 1628(c)) with respect to exchange of information.

## **2. Administrative Action**

### **a. Advance Rulings**

No substantive changes to authority and practice are required to implement the USMCA provisions on advance rulings as the Treasury regulations for advance rulings under Article 7.5 (Advance Rulings) (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the CBP Regulations (19 C.F.R. Part 177) for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the USMCA will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

### **b. Enquiry Point and Communication with Traders**

Article 7.4 (Enquiry Points) requires each USMCA Party to designate or maintain an enquiry point for inquiries from interested persons concerning importation, exportation, or transit procedures. CBP will serve as the U.S. enquiry point for this purpose. Consistent with Article 7.2 (Online Publication), CBP will post information on the Internet at [www.cbp.gov](http://www.cbp.gov) on how interested persons can make customs-related inquiries. CBP also will post information for traders on its mechanism to communicate on its procedures to give traders and opportunity to raise emerging issues and provide views as required by Article 7.3 (Communication with Traders).

### **c. Contact Point for Cooperation and Enforcement relating to USMCA**

Article 7.26 (Exchange of Specific Confidential Information) requires each Party to designate or maintain a contact point for cooperation under Section B of the Chapter, Cooperation and Enforcement. USTR will be the designated USMCA contact point.

## **Chapter 8 (Recognition of the United Mexican States' Direct, Inalienable, and Imprescriptible Ownership of Hydrocarbons)**

The United States does not have any obligations under this Chapter. No statutory or administrative changes will be required to implement Chapter 8.

## **Chapter 9 (Sanitary and Phytosanitary Measures)**

### **1. Implementing Bill**

No statutory changes are required to implement Chapter 9. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

### **2. Administrative Action**

Article 9.5 (Competent Authorities and Contact Points) provides that each Party shall provide to the other Parties a list of its central level of government competent authorities. On request of a Party, and, if applicable, a Party shall provide contact information or written descriptions of the sanitary and phytosanitary responsibilities of its competent authorities.

Article 9.5 provides that each Party shall designate and notify a contact point for SPS matters. An official in USTR's Office of Agricultural Affairs will serve as the contact point for the United States, as was the practice under the NAFTA.

Article 9.13.5 provides that a USMCA party should normally allow at least 60 days for another USMCA party to comment on an SPS measure, other than legislation, that affects international trade. This is consistent with existing U.S. policy as reflected in Executive Order 12889. The Administration will ensure that the appropriate notice and comment periods continue under USMCA.

Article 9.17 (Committee on Sanitary and Phytosanitary Measures) establishes an inter-governmental Committee on Sanitary and Phytosanitary Measures ("SPS Committee") composed of government representatives of each Party. An official in USTR's Office of Agricultural Affairs will serve as the U.S. representative to the SPS Committee. USTR will coordinate with other agencies with relevant responsibility, including U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the U.S. Environmental Protection Agency (EPA), and the National Oceanic and Atmospheric Administration (NOAA).

## **Chapter 10 (Trade Remedies)**

### **1. Implementing Bill**

#### **a. Relief from Global Safeguard Measures**

Article 10.2 of the USMCA, which replicates Article 802 of the NAFTA, provides that a Party shall exclude imports of a good from each other Party from global safeguard actions subject to certain conditions. Sections 301 and 302 of the bill implement Article 10.2 by maintaining the treatment provided in sections 311 and 312 of the North American Free Trade

Agreement Implementation Act (19 U.S.C. 3371 and 3372) authorizing the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of a Canadian or a Mexican good when certain conditions are present.

Specifically, section 301(a) replicates section 311 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3371) by requiring the ITC to make special findings with respect to imports from Canada or Mexico if the ITC makes an affirmative determination in a global safeguard action investigation under section 202(b) of the Trade Act of 1974. The ITC must find whether:

- (i) imports of the good from Canada or Mexico, considered individually, account for a “substantial share” of total imports; and
- (ii) imports of the good from Canada or Mexico, considered individually or, in exceptional circumstances, import from Canada or Mexico considered collectively, “contribute importantly” to the serious injury, or threat thereof, caused by imports.

The term “contribute importantly” is defined to mean “an important cause, but not necessarily the most important cause”.

The ITC normally will not consider imports from Canada and Mexico to constitute a “substantial share” of total imports if the country is not among the top five suppliers of the product subject to the investigation, measured in terms of import share during the most recent three-year period. Nor will imports from Canada and Mexico, individually or collectively, normally be considered to contribute importantly to serious injury or the threat of serious injury if the growth rate of imports from Canada and Mexico, individually or collectively, during the period in which the injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period. In determining whether imports from Canada and Mexico, individually or collectively, “contribute importantly” to the serious injury or threat thereof, the ITC is to consider such factors as the change in the import shares from Canada and Mexico, individually or collectively, and the level and change in the level of imports from Canada and Mexico.

As the use of the modifier “normally” makes clear, there will likely be instances when it is appropriate for the ITC to find that Canada or Mexico accounts for a substantial share of total imports even though the country is not one of the top five suppliers. For example, when there is little difference between the share of the fifth-place supplier and those that fall below fifth-place, or there are many suppliers, each accounting for a substantial share, the sixth- or seventh-place supplier may nevertheless account for a substantial share of imports. Similarly, a growth rate in imports from Canada or Mexico that is appreciably lower than the growth rate from all sources would not necessarily be determinative of whether imports from Canada or Mexico contribute importantly to the serious injury or threat thereof. In addition, the ITC is likely to consider



imports from Canada and Mexico collectively when imports from them individually are each small in terms of import penetration, but collectively are found to contribute importantly to the serious injury or threat thereof.

Section 302 replicates section 312 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3372) by providing that the President must exclude a Canadian or Mexican good from a global safeguard action if the President makes a negative determination that imports from Canada or Mexico account for a substantial share of total imports or imports from Canada or Mexico, individually or collectively, contribute importantly to the serious injury or threat thereof. Section 302 includes a “surge” provision that allows the President to include the previously excluded imports in the action if the President later determines that a surge in imports of the good from the excluded country is undermining the effectiveness of the action. The domestic industry may request the ITC to conduct an investigation to determine whether a surge in imports is undermining the effectiveness of the action. The ITC must submit its findings on the surge investigation to the President no later than 30 days after the request is received.

**b. Dispute Settlement in Antidumping and Countervailing Duties**

Article 10.5 (Rights and Obligations) and Annex 10-A (Practices Relating to Antidumping and Countervailing Duty Proceedings) provide for greater cooperation and transparency among USMCA Parties in the administration of their antidumping and countervailing duty laws, including online access to laws and regulations that pertain to antidumping and countervailing duty proceedings, sample questionnaires for antidumping proceedings, and electronic files for the record of each proceeding. Annex 10-A (Practices Relating to Antidumping and Countervailing Duty Proceedings) also provides for the disclosure of verification information, antidumping and countervailing duty rate calculations, and sharing of information about third-country unfair trade practices. U.S. laws and regulations are already in conformity with the obligations assumed under this section of the Chapter.

**c. Cooperation on Preventing Duty Evasion of Trade Remedy Laws**

Articles 10.6 (General) and 10.7 (Duty Evasion Cooperation) provide for cooperation on the prevention of duty evasion of trade remedy laws, including the exchange of information between respective authorities and the opportunity to conduct a duty evasion verification in the territory of another USMCA Party. U.S. laws and regulations are already in conformity with the obligations assumed under this section of the Chapter.

Section 401 of the bill amends section 414 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4374) to provide that Canada and Mexico shall be deemed countries signatory to a bilateral agreement, as provided for in subsection (b) of section 414, for purposes of trade enforcement and compliance assessment activities of U.S. customs authorities that concern evasion by such country’s exports.

**d. Dispute Settlement in Antidumping and Countervailing Duty Cases**

Articles 10.8 through 10.18 and Annexes 10-B.1 through 10-B.5 of the USMCA replicate Chapter 19 of the NAFTA, providing, among other things, for binational review and dispute settlement in antidumping and countervailing duty matters. Section 501 of the bill implements Article 10.12 (Review of Final Antidumping and Countervailing Duty Determinations), which replicates Article 1904 of the NAFTA, Article 10.13 (Safeguarding the Panel Review System), and Annex 10-B.5 (Amendments to Domestic Laws). This section replicates the amendments enacted in Pub. Law 103-182 to implement Chapter 19 of the NAFTA, adding the relevant provisions of Chapter 10 of the USMCA. In substance, U.S. laws and regulations are already in conformity with the obligations assumed under this section of the Chapter.

**2. Administrative Action**

No changes in administrative regulations, practices, or procedures are required to implement the safeguard, duty evasion, or antidumping and countervailing duty related provisions of Chapter 10. U.S. administrative regulations, practices, and procedures are already in conformity with the obligations assumed under the Chapter.

**Chapter 11 (Technical Barriers to Trade)**

**1. Implementing Bill**

No statutory changes will be required to implement Chapter 11. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

**2. Administrative Action**

Article 11.11 (Committee on Technical Barriers to Trade) establishes an inter-governmental Committee on Technical Barriers to Trade (“TBT Committee”) composed of government representatives of each Party. A USTR official responsible for TBT matters will serve as the U.S. representative to the TBT Committee.

Article 11.7.4 provides that a USMCA party should normally allow at least 60 days for another USMCA party to comment on a technical regulation, other than legislation, that affects international trade. This is consistent with existing U.S. policy as reflected in Executive Order 12889. The Administration will ensure that the appropriate notice and comment periods continue under USMCA.

Article 11.12 provides that each Party shall designate and notify a contact point for TBT matters. A USTR official responsible for TBT matters will serve as the contact point for the

United States.

## **Chapter 12 (Sectoral Annexes)**

### **1. Implementing Bill**

No statutory changes will be required to implement Chapter 12. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

### **2. Administrative Action**

Articles 12.A.3, 12.B.3, 12.D.3, 12.E.3, and 12.F.3 (Competent Authorities) provides that each Party shall publish online a description of each of its central level of government competent authorities that has responsibility for matters covered by that respective sectoral annex as well as a contact point within each competent authority. The United States will meet these obligations by having the relevant competent authority describe its responsibilities and provide a contact point on its respective webpage. The Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA) are the competent authorities for purposes of Annex A. The U.S. Food and Drug Administration (FDA) is the competent authority for purposes of Annexes B, D, E, and F.

For pharmaceuticals, Article 12.F.5 (Application of Regulatory Controls) further provides that, upon certification by the competent authority in the United States, the competent authority of the United States shall establish mechanisms with the competent authority in Canada or Mexico, as applicable, to permit the exchange of confidential information relevant to pharmaceutical inspections, including unredacted Good Manufacturing Practice inspection reports. The mechanism in this case would be a confidentiality commitment made by FDA that would allow FDA, at its discretion, to share trade secret and commercial confidential information with the competent authority in Canada or Mexico.

## **Chapter 13 (Government Procurement)**

### **1. Implementing Bill**

Chapter 13 of the USMCA establishes rules that certain government entities listed in Annex 13-A will apply whenever these entities undertake procurements of covered goods and services valued above thresholds specified in Annex 13-A. Chapter 13 applies only as between the United States and Mexico. The United States already had procurement obligations with respect to Mexico under the NAFTA and will continue to have similar obligations under the USMCA. Under USMCA, however, the United States has excluded uniforms and clothing

procurement by the Transportation Security Administration of the Department of Homeland Security from coverage. Once the USMCA enters into force, the United States will continue to have procurement obligations with respect to Canada under the WTO Agreement on Government Procurement and will also have national treatment and most-favored-nation obligations with respect to the purchase or acquisition of financial services by public entities in the United States under the GATS, as set out in the U.S. Schedule of Commitments and the Understanding on Commitments in Financial Services.

Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) (Trade Agreements Act), as amended, authorizes the President to waive for eligible products of foreign countries that the President designates under section 301(b) of that Act the application of certain federal laws, regulations, procedures, and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. The term “eligible product” in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act.

Section 505 of the bill implements U.S. obligations under Chapter 13 by amending the definition of “eligible product” in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that “eligible product” means a product or service of Mexico that is covered under the USMCA for procurement by the United States. This amended definition, coupled with the President’s exercise of his waiver authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the USMCA to purchase on non-discriminatory terms covered products and services from Mexico for procurements that fall above the thresholds established under the USMCA.

Section 505 of the bill also makes certain conforming changes to the procurement provisions of the Trade Agreements Act of 1979. Sections 301(b)(1) (19 U.S.C. 2511) and 301(e) are amended by replacing the references to the NAFTA with references to the USMCA.

## **2. Administrative Action**

As noted above, Annex 13-A of the USMCA provides that U.S. government entities subject to Chapter 13 must apply the chapter’s rules to covered goods and services from Mexico when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council (“FAR Council”) of the entry into force of the USMCA and the thresholds that pertain to Mexico under the USMCA. The FAR Council will then make the necessary changes to provide for the appropriate treatment for Mexico under the Federal Acquisition Regulation (“FAR”) in accordance with applicable procedures under the Office of Federal Procurement Policy Act. The FAR Council will also make the necessary changes to treatment with respect to Canada and Mexico once the NAFTA is no longer in force. Specific changes to the FAR include, removal of Canada from the list of Free Trade Agreement Countries in FAR 25.003, removal of references to NAFTA and addition of USMCA in FAR Subpart 25.4, and removal of Canada from the summary of thresholds in FAR Subpart 25.402. The

Department of Homeland Security will also make changes with respect to the removal of obligations with respect to uniforms and clothing by the Transportation Security Administration.

Article 13.7.5 (Conditions for Participation) clarifies that a procuring entity is not precluded from promoting compliance with laws in the territory in which a good is produced or the service is performed relating to the fundamental principles and rights at work and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. Thus, for example, a procuring entity is permitted to require a foreign producer to comply with laws guaranteeing freedom of association and protecting collective bargaining rights that generally apply in the territory in which the good is produced. In addition, Article 13.11 of the USMCA (Technical Specifications) clarifies that a procuring entity is not precluded from preparing, adopting, or applying “technical specifications” to promote the conservation of natural resources or protect the environment.

Finally, neither this provision nor any other provision of Chapter 13 will affect application of the Davis-Bacon Act and related Acts (40 U.S.C. 3141 - 48 and 29 C.F.R. 5.1).

#### **Chapter 14 (Investment)**

No statutory or administrative changes will be required to implement Chapter 14. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

#### **Chapter 15 (Cross-Border Trade in Services)**

No statutory or administrative changes will be required to implement Chapter 15. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

#### **Chapter 16 (Temporary Entry)**

##### **1. Implementing Bill**

Consistent with the overall trade negotiating objectives under the Trade Priorities Act, the USMCA does not require changes to U.S. immigration laws nor does it change access to visas under section 1101(a)(15) of the Immigration and Nationality Act (INA). The USMCA maintains the same treatment as provided under the NAFTA with respect to the temporary entry of four categories of business persons: business visitors, traders and investors, intra-corporate transferees, and professionals. Section 503 of the implementing bill, makes conforming changes to the NAFTA-specific elements of the INA in order to continue to provide the same treatment to Canada and Mexico as had been provided under the NAFTA, but neither modifies nor expands access to visas issued under the INA.

**2. Administrative Action**

No administrative changes will be required to implement Chapter 16.

**Chapter 17 (Financial Services)**

**1. Implementing Bill**

No statutory changes will be required to implement Chapter 17. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

**2. Administrative Action**

Article 17.20 (Consultations) sets out that each Party's financial authorities specified in Annex 17-B (Authorities Responsible for Financial Services) shall serve as the contact point to respond to requests and to facilitate the exchange of information regarding the operation of measures covered by those requests. For the United States, the Department of the Treasury is the contact point for the purposes of Annex 17-C (Mexico-United States Investment Disputes in Financial Services) and for all matters involving banking, securities, and financial services other than insurance, and the Department of the Treasury, in cooperation with the Office of the United States Trade Representative, is the contact point for insurance matters.

**Chapter 18 (Telecommunications)**

No statutory or administrative changes will be required to implement Chapter 18. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

**Chapter 19 (Digital Trade)**

No statutory or administrative changes will be required to implement Chapter 19. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

**Chapter 20 (Intellectual Property Rights)**

**1. Implementing Bill**

No statutory changes will be required to implement Chapter 20. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

## **2. Administrative Action**

Article 20.12 (Contact Points for Cooperation) permits a Party to designate one or more contact points for the purpose of cooperation under Section B of Chapter 20. USTR's Innovation and Intellectual Property Office will serve as the contact point for this purpose.

Article 20.14 (Committee on Intellectual Property Rights) establishes an inter-governmental Committee on Intellectual Property Rights ("IPR Committee") composed of government representatives of each Party. An official in USTR's Innovation and Intellectual Property Office will serve as the U.S. representative to the IPR Committee.

### **Chapter 21 (Competition Policy)**

No statutory or administrative changes will be required to implement Chapter 21. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

### **Chapter 22 (State-Owned Enterprises and Designated Monopolies)**

No statutory or administrative changes will be required to implement Chapter 22. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

### **Chapter 23 (Labor)**

As noted earlier, one of the significant improvements from NAFTA is the inclusion of the labor disciplines subject to dispute resolution into the core of the USMCA. Paragraph 3 of the Protocol sets out that upon entry into force of the Protocol, the *North American Agreement on Labor Cooperation* (NAALC), shall be terminated. The NAALC established a tri-national Commission for Labor Cooperation, composed of a Ministerial Council and an administrative Secretariat. By agreement of the NAFTA Parties, the NAALC Secretariat ceased operations in 2010, and since then the National Administrative Offices (NAOs) have assumed its duties, including carrying out cooperative activities. (Each NAFTA Party established an NAO within its Labor Ministry to serve as a contact point with the other Parties to the NAALC and to provide for the submission and review of public communications on labor law matters). Chapter 23 includes, and improves upon, the substantive obligations under the NAALC and provides for the continuation of the submission and review process. In addition, the USMCA Labor Chapter includes Annex 23-A, on Worker Representation in Collective Bargaining in Mexico, which establishes specific legislative actions that Mexico must take to reform its system of labor justice and provide for the effective recognition of the right to collectively bargain. To further support compliance with USMCA labor obligations, Annex 31-A of the Dispute Settlement Chapter

establishes a Rapid Response Mechanism between the United States and Mexico that provides for monitoring and expedited enforcement of labor rights in Mexico at particular facilities.

## **1. Implementing Bill**

No statutory changes will be required for the United States to implement its obligations under Chapter 23. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

However, the implementing bill contains provisions to ensure that Mexico and Canada implement their obligations under the Labor Chapter, and contains provisions implementing Annex 31-A specifically to identify labor rights problems in Mexico related to Annex 23-A of the Labor Chapter.

Sections 711 to 718 of the implementing bill require the establishment of an Interagency Labor Committee for Monitoring and Enforcement (“Labor Committee”) that shall be responsible for overseeing the implementation of the Labor Chapter including by monitoring Mexico’s implementation of the Chapter and Annex 23-A and recommending enforcement actions to the Trade Representative, as warranted. The Labor Committee shall regularly assess Mexico’s implementation of, and compliance with, its obligations under the Labor Chapter of the USMCA, including in particular whether it has implemented its labor reform as required under Annex 23-A of the USMCA. If the Labor Committee determines that Mexico is failing to meet its obligations, it shall recommend that the Trade Representative initiate enforcement actions. The Labor Committee will also receive and review petitions from the public regarding USMCA labor matters, and establish a web-based hotline administered by the U.S. Department of Labor, to receive confidential information. The Labor Committee will provide regular reports to the Congress regarding its activities and labor rights issues in Mexico.

Section 719 of the implementing bill requires the Labor Committee to consult with the Labor Advisory Committee, the Advisory Committee for Trade Policy and Negotiations, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives on the appointment of candidates for the list of Rapid Response Panelists under Annex 31-A of the Dispute Settlement Chapter.

Sections 721 to 723 of the implementing bill direct the U.S. Department of Labor to hire and assign five Labor Attaches at the U.S. Embassy or a Consulate in Mexico, to monitor labor rights issues related to the USMCA Labor Chapter and Annex 23-A. The Labor Attaches will regularly report to the Labor Committee and support its monitoring activities.

Sections 731 to 734 of the implementing bill establish an Independent Mexico Labor Expert Board. The Board will monitor and evaluate Mexico’s implementation of its labor reform legislation from 2019, as well as compliance with the USMCA labor obligations, and report to the Congress and the Labor Committee. The Board will have 12 members, four appointed by the



Labor Advisory Committee for Trade Negotiations and Trade Policy, and eight appointed by the Congress. The U.S Department of Labor, in coordination with the Labor Committee, will provide logistical support for the Board, as appropriate.

Section 741 to 744 of the implementing bill require the establishment of a Forced Labor Enforcement Task Force, chaired by the U.S. Department of Homeland Security, to monitor enforcement by United States of prohibitions on the importation of goods produced by forced labor under the Tariff Act of 1930. The Task Force will develop a plan for addressing forced labor issues in Mexico, and report its activities and findings to the Labor Committee and the Congress.

Section 751 of the implementing bill requires that all reports of the Rapid Response Labor Panels be provided to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Labor Advisory Committee, as well as a version for the public.

Section 752 and 753 authorize the Trade Representative to direct the Secretary of the Treasury to impose trade remedies or other penalties on goods and services from facilities in Mexico that are found to be out of compliance with USMCA labor obligations per the procedures of the Rapid Response Mechanism established in Annex 31-A.

## **2. Administrative Action**

### **a. Labor Council**

Article 23.14 (Labor Council) of the Agreement establishes a Labor Council, composed of senior governmental representatives at the ministerial or other level from trade and labor ministries, as designated by each Party. The Assistant U.S. Trade Representative for Labor Affairs and the Deputy Undersecretary for International Affairs at the U.S. Department of Labor will serve as the U.S. representatives. Article 23.15 (Contact Points) calls for each Party to designate a contact point to address matters related to the Labor Chapter. The Department of Labor's Bureau of International Labor Affairs (ILAB) will serve as the U.S. contact point for these purposes, in regular consultation and coordination with USTR's Office of Labor Affairs.

### **b. Interagency Labor Committee for Monitoring and Enforcement**

Not later than 90 days after the enactment of the implementing bill, the President will establish the interagency Labor Committee provided for in section 711 of the implementing bill. The Labor Committee will be co-chaired by the Trade Representative and the Secretary of Labor, and be comprised of other agencies with relevant experience, as appropriate. The day-to-day operations of the Labor Committee for the lead agencies will be carried out by the Assistant U.S. Trade Representative for Labor Affairs in the Office of the United States Trade Representative, and the Deputy Undersecretary for International Affairs at the U.S. Department

of Labor. The Labor Committee will meet at least quarterly during the first five years after its establishment, and semi-annually for the following five years. During the first five years after its establishment, the Labor Committee will conduct monitoring visits to Mexico semi-annually. Labor attachés in Mexico will be required to provide quarterly monitoring reports to the Labor Committee. The Labor Committee will coordinate monitoring activities with officials from the Departments of Labor and State, including labor attachés stationed in Mexico, as well as other U.S. government agencies, and interested labor and human rights stakeholders with knowledge of labor issues in Mexico.

The Labor Committee will provide opportunities for input by members of the Labor Advisory Committee for Trade Negotiations and Trade Policy in its work. The Labor Committee will also provide other stakeholders with opportunities to provide input, consistent with Federal Advisory Committee Act requirements. In order to maximize the opportunities for interested parties to provide information, including confidential information, regarding Mexico's labor reform efforts and compliance by Mexican enterprises with labor laws, the Labor Committee will establish a web-based "hotline", to be managed by the Secretary of Labor, to receive such information.

In order to ensure ongoing communications with the Government of Mexico regarding its labor reforms and the resources being committed to carry out those reforms, the Labor Committee will establish and maintain a dialogue with officials from the Ministries of Labor, Trade, and Foreign Affairs, as well as officials from the legislative and judicial branches. The Labor Committee, drawing on the expertise of the Department of Labor, shall identify issues for capacity building activities in Mexico.

### **c. Enforcement**

The USMCA, as compared to NAFTA, makes a greater range of labor practices subject to dispute settlement under Chapter 31 (Dispute Settlement). In addition, Annex 31-A establishes a Facility-Specific Rapid Response Mechanism between the United States and Mexico, which will provide an expedited procedure to identify labor rights problems in Mexico related to Annex 23-A of the Labor Chapter. The Labor Committee will establish procedures for recommending that the United States take actions under the Mechanism, including trade remedies and other penalties for goods or services from specific facilities in Mexico. In implementing the petition process set out in Section 716, the USTR shall promptly submit a request for review under 716(b)(3), upon the affirmative determination under Section 716(b)(1), absent extraordinary circumstances.

By entry into force of the Agreement, the Trade Representative will establish lists of panelists per Annex 31-A, to serve as labor experts for cases under the Rapid Response Mechanism, and will consult with the Congress on the appointment and funding for panelists.

The effective implementation of this Facility-Specific Rapid Response Mechanism recognizes that, in connection with the assessment of any Denial of Rights, that an on-site verification is an effective and typically necessary tool to ascertain the facts, obtain input from the affected parties at such facility, and ensure that the Mechanism advances the goals of this Agreement.

The USTR recognizes that the goals of procedures under Annex 31-A is to address Denial of Rights on an expedited basis. Where the respondent Party seeks to remediate such violations, the USTR will seek the shortest possible remediation period, commensurate with the nature of such Denial of Rights and recognizing that in cases of severe labor violations, including violence against workers, pursuing a course of remediation may not be adequate.

**d. Independent Mexico Expert Labor Board**

The USMCA implementing legislation establishes an Independent Mexico Expert Labor Board (Board), to monitor Mexico's compliance with USMCA labor obligations as well as its implementation of Mexico's historic labor law reform. Mexico is in the process of creating a new national system of labor justice, which include new federal and state labor courts, and new administrative institutions to register unions and ensure worker support for collective bargaining agreements. Mexico's reforms are in accordance with Annex 23-A, and the Board will report to the Labor Committee on these issues. The U.S. Department of Labor will coordinate with the Trade Representative to provide logistical support for the Board, whose membership will include appointments from the Labor Advisory Committee and the Congress, per the implementing legislation.

**e. Forced Labor Task Force**

The USMCA Labor Chapter includes an obligation for Parties to prohibit the importation of goods produced by forced labor, and the implementing legislation establishes a Forced Labor Enforcement Task Force. The Task Force will be chaired by the Secretary of Homeland Security, and work with the Labor Committee to monitor forced labor issues in Mexico, as well as report to the Congress on activities by the U.S. Department of Homeland Security to enforce prohibitions under Section 307 of the Tariff Act of 1930.

**Chapter 24 (Environment)**

No statutory changes will be required for the United States to implement its obligations under Chapter 24. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

However, the implementing bill contains provisions to ensure that Mexico and Canada implement their obligations under the Environment Chapter.

As noted earlier, one of the significant improvements from NAFTA was the inclusion of the environment disciplines subject to dispute resolution into the core of the USMCA. Chapter 24 includes and improves upon the substantive provisions of the *North American Agreement on Environmental Cooperation* (NAAEC). In parallel to the negotiations of the USMCA, the Governments of the United States, Canada, and Mexico, negotiated the *Agreement on Environmental Cooperation* (ECA). The ECA was signed by Mexico on November 30, 2018, by the United States on December 11, 2018, and by Canada on December 19, 2018. The ECA will support implementation of the environmental commitments of the USMCA and will modernize and enhance the effectiveness of environmental cooperation between the Parties. Article 17 of the ECA provides that the ECA will enter into force upon entry into force of the USMCA and will supersede the NAAEC. In addition, in parallel to the USMCA, the Governments of the United States and Mexico entered into the Environment Cooperation and Customs Verification Agreement. The Environment Cooperation and Customs Verification Agreement was signed in Mexico City on December 10, 2019.

## **1. Implementing Bill**

The Environment Chapter (Chapter 24) of the USMCA calls on the United States, Mexico, and Canada to take certain actions with respect to the implementation of certain Multilateral Environmental Agreements (MEAs), effective enforcement of environmental laws and regulations, sustainable management of fisheries, conservation of wild flora and fauna, and other related environment commitments. The Chapter commits the Parties to comply with certain MEAs to which they are a party, to conserve natural resources and sustainably manage their fisheries, and to combat and cooperate to prevent trade in illegally harvested wildlife, fish, and timber species, among other obligations.

Section 811 of the bill establishes the Interagency Environment Committee for Monitoring and Enforcement (“Interagency Environment Committee”) to oversee implementation, monitoring, and enforcement of the Environment Chapter of the USMCA. Section 812 provides for the Interagency Environment Committee to carry out an assessment of the environmental laws and policies of the USMCA countries to determine if such laws and policies are sufficient to implement their environmental obligations and identify any gaps. Section 813 describes monitoring actions that the Interagency Environment Committee will undertake relating to implementation of the Environment Chapter of the USMCA. Section 813 also provides authority to the Interagency Environment Committee to: review public submissions filed pursuant to Article 24.27 (Submissions on Enforcement Matters) and factual records prepared by the Secretariat of the Commission for Environmental Cooperation; review reports provided by U.S. government environment experts; and request verifications and review information regarding the legality of certain wildlife, timber and seafood shipments from Mexico, pursuant to the bilateral Environment Cooperation and Customs Verification Agreement between the United States and Mexico. Section 814 describes enforcement actions that the Committee may undertake, including requesting environment consultations under article 24.29 of

the USMCA Environment Chapter or requesting the initiation of monitoring or enforcement actions under the existing authorities as set out in Section 815.

Section 816 of the bill provides that no later than one year after the USMCA enters into force, and annually for each of the next four years, and biennially thereafter, USTR will report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on steps the Parties have taken to implement and enforce the commitments in the Environment Chapter of the USMCA, and additional actions that may need to be taken with respect to USMCA countries that might be failing to implement their environmental obligations. Additionally, Section 816 provides for a comprehensive determination regarding the USMCA countries' implementation efforts along with an updated assessment to be submitted in the fifth year report.

Section 822 provides for additional monitoring and implementation resources, including three environmental experts from relevant U.S. government agencies to be detailed to the Office of the USTR and assigned as environment attaches at the U.S. Embassy or a Consulate in Mexico in order to assist the Committee in carrying out its duties to monitor and enforce the Environment Chapter.

Subtitle C of title VIII contains provisions concerning the role of the North American Development Bank in relation to the implementation of the Environment Chapter of the USMCA. The Administration affirms the operations and purposes of the North American Development Bank as set forth in the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank. In particular, the Administration recognizes Article II of Chapter III of such Agreement which gives preference in financial assistance to environmental infrastructure projects relating to water pollution, wastewater treatment, water conservation, municipal solid waste, and related matters.

## **2. Administrative Action**

### **a. Environment Committee**

Article 24.26(1) of the Agreement provides that each Party will designate and notify a contact point from its relevant authorities to facilitate communication between the Parties on implementation of the Environment Chapter. The USTR Environment and Natural Resources Office, in regular consultation and coordination with the U.S. Environmental Protection Agency and the U.S. Department of State (Bureau of Oceans and International and Scientific Affairs), will serve as the U.S. contact point. Article 24.26(2) of the Agreement establishes an Environment Committee, composed of senior government representatives, or their designees, of the relevant trade and environment national authorities of each Party responsible for implementation of this Chapter. The Assistant U.S. Trade Representative for Environment and Natural Resources will serve as the U.S. representative, in regular consultation and coordination

with the U.S. Environmental Protection Agency and the U.S. Department of State (Bureau of Oceans and International and Scientific Affairs). USTR will coordinate with other agencies with relevant expertise.

**b. Interagency Environment Committee for Monitoring and Enforcement**

USTR and other agencies will monitor the progress of Mexico and Canada in implementing the broad range of obligations contained in the Environment Chapter, including those designed to further improve the Parties' governance of natural resources, including fisheries. In particular, USTR will work with the U.S. Environmental Protection Agency (EPA), U.S. Department of Interior, U.S. Department of State, U.S. Department of Commerce, and other appropriate agencies to identify specific areas in which the United States, Mexico, and Canada can collaborate, through capacity building, to ensure compliance with the Environment Chapter of the USMCA. USTR will coordinate the interagency effort to address these specific areas under the Environmental Cooperation Agreement, as provided for in Article 24.25 (Environmental Cooperation).

No later than 30 days after enactment of the USMCA, the President will establish the interagency committee provided for in Section 811 and will direct the appropriate authorities in the executive branch, in consultation with USTR, to issue those measures, including agency regulations, that may be necessary to implement the Environment Chapter of the USMCA. The interagency committee, which USTR will chair and coordinate, will comprise of agencies with relevant authorities or expertise, including the U.S. Department of State, EPA, the U.S. Department of Agriculture (USDA) – Animal and Plant Health Inspection Service (APHIS), the U.S. Department of the Interior – Fish and Wildlife Service (FWS), Department of Commerce – National Oceanic and Atmospheric Administration (NOAA), U.S. Customs and Border Protection (CBP), the U.S. Department of Justice and other agencies, as appropriate. The interagency committee will coordinate across U.S. government agencies to fully utilize all existing authorities under the USMCA enforcement mechanisms, the Cooperation and Customs Verification Agreement, and existing U.S. law to ensure the obligations set out in the Environment Chapter are implemented and the USMCA is effectively enforced.

Especially in the context of sustainable fisheries management, marine species conservation, and efforts to combat illegal, unreported and unregulated (IUU) fishing, NOAA will bring to the interagency committee its long history of developing and implementing policies to protect and manage marine resources and make use of enforcement tools available, such as MSRA. The experience of FWS and APHIS in ensuring compliance with the Endangered Species Act and the Lacey Act, and in particular in making use of the enforcement tools available under those statutes, will serve to inform the interagency committee as it determines whether the Parties are complying with their laws implementing the Convention on International Trade in Endangered Species (CITES) and what compliance measures, if any, may be appropriate. The Department of State, through its Bureau of Oceans and International Environmental and Scientific Affairs, has worked extensively with other governments, including

in Mexico and Canada, to address concerns relating to local and cross-border wildlife and forest issues, as well as IUU fishing under Regional Fisheries Management Organizations (RFMOs), such as IATTC and CCAMLR. EPA has extensive experience working with Canada and Mexico on environmental cooperation, including developing, monitoring, and enforcing environmental laws and regulations. CBP has experience targeting high-risk shipments of illegal timber and wildlife and sharing information with counterpart agencies in Canada and Mexico.

USTR will coordinate with the Department of State, FWS, EPA, NOAA, and other agencies, as appropriate, ahead of reporting to the Senate Committee on Finance and the House of Representatives Committee on Ways and Means as required under Section 816 (Report to Congress) of the bill.

### **Chapter 25 (Small and Medium-Sized Enterprises)**

For the first time in a U.S. free trade agreement, the USMCA includes a dedicated, stand-alone chapter on small and medium-sized enterprises (SMEs), which is intended to promote cooperation between the three Parties and help ensure that SMEs can benefit from the Agreement.

#### **1. Implementing Bill**

No statutory or administrative changes will be required to implement Chapter 25. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

#### **2. Administrative Action**

Article 25.4 establishes the Committee on SME Issues (“SME Committee”), which will convene within one year after the date of entry into force of the USMCA.

### **Chapter 26 (Competitiveness)**

#### **1. Implementing Bill**

No statutory changes will be required to implement Chapter 26. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

#### **2. Administrative Action**

Article 26.1 establishes the inter-governmental North American Competitiveness Committee (“Competitiveness Committee”) and provides that each Party shall designate and notify a contact point for the Competitiveness Committee. A USTR official will serve as the contact point for the United States.

### **Chapter 27 (Anticorruption)**

No statutory or administrative changes will be required to implement Chapter 27. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

### **Chapter 28 (Good Regulatory Practices)**

#### **1. Implementing Bill**

No statutory changes will be required to implement Chapter 28. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

#### **2. Administrative Action**

U.S. administrative regulations, practices, and procedures, including pursuant to the APA, are already in conformity with the obligations assumed under this Chapter.

Article 28.9 provides that each Party shall designate and notify a contact point for matters arising under this Chapter. A USTR official responsible for good regulatory practices (GRP) matters will serve as the contact point for the United States.

Article 28.18 (Committee on Good Regulatory Practices) establishes an inter-governmental Committee on Good Regulatory Practices (“GRP Committee”) composed of government representatives of each Party, including representatives from their central regulatory coordinating bodies as well as relevant regulatory agencies. A USTR official responsible for GRP matters will serve as the lead U.S. representative to the GRP Committee.

### **Chapter 31 (Dispute Settlement)**

#### **1. Implementing Bill**

Section 105(a) of the bill authorizes the President to establish or designate within the Department of Commerce a United States Section of the Secretariat established under Article 30.6 of the USMCA. The United States Section, subject to the oversight of the interagency group established under section 402 of the North American Free Trade Agreement



Implementation Act, shall carry out its functions with the Secretariat to facilitate the operation of the Agreement, including the operation of the panels and committees under Section D of Chapter 10 and the work of panels under Chapter 31 of the USMCA. The United States Section will not be an “agency” within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels and committees established under Section D of Chapter 10 and panels established under Chapter 31 are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the United States Section established pursuant to section 105(a).

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Section 105(c) of the bill authorizes the U.S. Section to retain funds distributed to it by the Mexican or Canadian sections of the Secretariat in connection with the reimbursement of expenses generated by panel proceedings under Chapter 10 or 31. Continuing the practice from NAFTA, the governments involved in the proceedings will share the costs of such proceedings equally and will agree in advance on the nature and amount of expenses that panelists and other experts will be permitted to incur.

## **2. Administrative Action**

### **a. Implementation of Panel Reports**

It bears repeating that panel reports presented under Chapter 31 have no effect under the law of the United States. Neither federal agencies nor state governments are bound by any finding or recommendation included in such reports. In particular, panel reports do not provide legal authority for federal agencies to change their regulations or procedures or refuse to enforce particular laws or regulations, such as those related to human, animal or plant health, or the environment. Furthermore, the United States will not seek to introduce a panel report into evidence in any civil suit brought by the United States challenging a state law or regulation on the ground that it is inconsistent with the NAFTA.

In normal circumstances, the United States will agree with its USMCA partners on a resolution of disputes under Chapter 31 that is in conformity with panel recommendations. Where the matter involves a law or regulation of a state of the United States, any resolution would be reached in consultation and coordination with the state concerned, as described in this Statement in connection with Chapter 1.

The USMCA recognizes that it may not be possible for a USMCA government to agree to the removal of a federal or state or provincial measure that a panel has found to be inconsistent with the Agreement. Accordingly, it provides for alternative resolutions, including the provision of trade compensation and other negotiated settlements, or the suspension of benefits. In all cases following a panel report, the USMCA makes discretionary any change in U.S. law and

leaves to the United States the manner in which any such change may be implemented – whether through the adoption of legislation, a change in regulation, judicial action, or otherwise.

**b. Dispute Settlement: Nominations for Dispute Settlement Roster**

Article 31.8 of the USMCA requires that by the date of entry into force of the USMCA the Parties establish a roster of up to 30 individual who are willing to serve as panelists. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (“Trade Committees”) as it considers nominees for the roster of panelists and will provide the Trade Committees with the names of the experts it is considering, and detailed background information on each, at least 30 days before submitting the names of any nominees.

**c. Enforcement of U.S. Rights**

Legislative authority currently exists for the Executive Branch fully to enforce U.S. rights under Chapter 31. Section 301 of the Trade Act of 1974, as amended, authorizes the United States Trade Representative (“USTR”) to take specific action, subject to the President’s direction, and to take all “appropriate and feasible action” in the President’s power that the President directs the USTR to take to enforce U.S. rights under trade agreements such as the USMCA.

The United States shall enforce its rights under the USMCA through consultations and the dispute settlement mechanism provided for in Chapter 31 when possible. However, a decision by Canada or Mexico to prevent or unreasonably delay formation of a dispute settlement panel would not prevent the Executive Branch from enforcing U.S. rights. In this circumstance, the USTR’s determination on whether the USMCA partner breached USMCA obligations or impaired U.S. rights under the USMCA would be based on the USTR’s evaluation of the relevant legal and factual issues, including the fact that the USMCA partner failed to cooperate in the dispute settlement process.

Once the USMCA enters into force, an interested person may file a petition with the USTR requesting section 301 action in any case in which the person considers that another USMCA government has failed to honor a provision of the Agreement or has caused the nullification or impairment of benefits that the United States could reasonably have anticipated under the Agreement. Alternatively, the USTR may, on his or her own initiative, institute a section 301 proceeding.

If the USTR decides to initiate an investigation under section 301 with respect to alleged Canadian or Mexican practices, section 303(a) of the Trade Act requires the USTR initially to attempt consultations with the government of the relevant USMCA country to resolve the matter. If the case involves a possible breach of the USMCA or impairment of U.S. rights under the USMCA, and if consultations have failed to produce a mutually acceptable solution, then section 303(a) requires that the matter be submitted to the formal dispute resolution procedures of the

Agreement, or to the applicable dispute settlement procedures of another trade agreement to which the United States and the other USMCA country are parties. The USTR will seek information and advice from the private sector, including from the petitioner, if any, in preparing U.S. presentations for consultations and formal dispute resolution procedures.

Section 301 provides the USTR with authority to take appropriate retaliatory action in the event that a panel report upholds a U.S. allegation that another USMCA government has breached the Agreement or nullified or impaired U.S. benefits and the other government does not take satisfactory remedial action or provide satisfactory compensation.

### **Chapter 32 (Exceptions and General Provisions)**

Article 32.6 (Cultural Industries) exempts certain measures adopted or maintained by Canada with respect to a cultural industry, as defined in the Article, from a number of obligations under the USMCA. It also allows the United States or Mexico to take a measure of equivalent commercial effect in response. The Administration is committed to using all appropriate tools at its disposal to discourage Canada from taking measures that discriminate against it, or restrict market access for U.S. industries. In addition, although the Administration agreed to carry over the NAFTA cultural industry exception in revised form, it remains the policy of the United States not to agree to this type of exception in future free trade agreements.

#### **1. Implementing Bill**

Section 306 of the bill amends subsection (f) to section 182 of the Trade Act of 1974 (19 U.S.C. 2242). Subsection (f) was added by the NAFTA Implementation Act to address the similar concerns arising from NAFTA Article 2106. It requires the U.S. Trade Representative to identify, within 30 days of the release of the annual National Trade Estimates Report on Foreign Barriers, any new Canadian act, policy, or practice affecting cultural industries that is actionable under Article 2106. In deciding whether to identify an act, policy, or practice, the U.S. Trade Representative will consult with the relevant domestic industries, the appropriate advisory committees, and other U.S. agencies, and take into account such other information as may be available. Any act, policy, or practice identified under subsection (f) will become the subject of an investigation under section 301 of the Trade Act of 1974 unless the United States has already taken action against it.

In order to maintain this enforcement tool, section 306 makes conforming changes to subsection (f) in order to continue its application for purposes of the USMCA.

#### **2. Administrative Action**

No administrative changes will be required to implement Chapter 32.

Article 32.10 (Non-Market Country FTA) of the USMCA requires that any Party intending to negotiate a free trade agreement with a non-market country must inform the other Parties and provide information and an opportunity to review the text. It also provides that entry into such an agreement by one Party allows for the other Parties to terminate the USMCA and replace it with an agreement as between those other Parties. This provision is intended to ensure that the negotiated benefits of the USMCA remain with the USMCA Parties and are not diluted by one Party's agreement with a non-market country. If a USMCA Party were to enter into such an agreement, it is the policy of the United States to rigorously review the information and ensure that the United States is not disadvantaged.

### **Chapter 33 (Macroeconomic Policies and Exchange Rate Matters)**

#### **1. Implementing Bill**

No statutory changes will be required to implement Chapter 33. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

#### **2. Administrative Action**

For the United States, the Department of the Treasury will serve as the point of contact for all matters arising under Chapter 33.

### **Annex II (Schedule of the United States)**

#### **1. Implementing Bill**

Subtitle C of Title III of the implementing bill establishes a petition mechanism whereby the U.S. International Trade Commission (the "Commission") would initiate an investigation to determine whether grants of authority, or requests for grants of authority, for persons of Mexico to provide cross-border long-haul trucking services in the territory of the United States outside the border commercial zones are causing, or threaten to cause, material harm to U.S. suppliers, operators, or drivers. Section 324(a) of the bill authorizes the President, where the Commission has made an affirmative finding of material harm or threat thereof, to direct the Secretary of Transportation to impose limitations on grants of authority for persons of Mexico to provide cross-border long-haul trucking services in the territory of the United States outside the border commercial zones. The focus of the Commission's investigation will be on determining whether the grants of authority described in section 322(a)(1)-(3) of the bill are causing or threaten to cause material harm to U.S. suppliers, operators, or drivers of cross-border long-haul trucking services beyond the border commercial zone. For purposes of such determinations, the term "causing" or "cause" does not necessarily mean "wholly causing" or "wholly cause."

## **2. Administrative Action**

### **a. Confidential Business Information**

The implementing bill requires the U.S. International Trade Commission (the “Commission”) to promulgate regulations to provide access to confidential business information under protective order in limited circumstances. In promulgating such regulations, the Commission shall adopt procedures similar to those the Commission has adopted for conducting investigations under the countervailing duty and antidumping duty provisions in title VII of the Tariff Act of 1930 and under section 202 of the Trade Act of 1974.

### **b. Provision of Information by Other Agencies**

To assist the Commission in making determinations under subtitle C of Title III, the implementing bill requires the U.S. Department of Transportation, the U.S. Department of Commerce, and U.S. Customs and Border Protection to make available to the Commission any information requested by the Commission as necessary to conduct its investigation. Upon enactment of this bill, the three agencies shall promptly meet with the Commission to identify the types of information that the respective agencies routinely collect relevant to cross-border long-haul trucking and may be able to provide to the Commission. The implementing bill also provides that Customs will collect and maintain such additional data and other information on trucks engaged in cross-border long-haul trucking as the Commission may request. If appropriate, the Commission may also request that the Department of Transportation require additional information from persons of Mexico providing or seeking to provide long-haul trucking services in the United States beyond the border commercial zone.

### **c. Inspector General Review**

Within 60 days of the filing of the report in section 327, the Inspector General of the Department of Transportation shall review the procedures and actions taken by the Secretary to determine whether each Mexico-domiciled motor carrier with any operating authority covered under section 321(7) is in compliance with applicable Federal motor carrier safety laws and regulations and Title III, section 350 of Public Law 107-87, 115 Stat. 833, 864 (2001) (49 U.S.C. 13902 Note), and shall report on the result of the review to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate.

## **Miscellaneous**

### **1. Implementing Bill**

The Annex on Energy Regulatory Measures and Regulatory Transparency, attached to the exchange of letters executed on Nov. 30, 2018 between the United States and Canada, which is integral to the USMCA, contains obligations with respect to energy regulatory measures similar to obligations under Chapter 6 of the NAFTA (Energy and Basic Petrochemicals). Section 1017(c) of the Energy Policy Act of 1992 (42 U.S.C. 2296b-6) contains a savings clause that references the NAFTA. Section 307 of the bill makes a conforming change to that section to maintain the treatment provided with respect to Canada once the USMCA enters into force.