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AGREEMENT BETWEEN THE UNITED STATES, MEXICO AND CANADA (USMCA/CUSMA/T-MEC) (GOODS AND SERVICES)

QUESTIONS AND REPLIES

The following communication, dated 15 October 2021, is being circulated at the request of the delegations of the United States, Mexico and Canada.

Questions from Brazil

1.1. Regarding section 3.52 of the Factual Presentation, have the Parties already discussed or adopted any sector-specific proposal to facilitate the acceptance of conformity assessment results?

Response from the Parties

The Parties have bilateral mutual recognition agreements with each other to accept conformity assessment test results.

1.2. Regarding section 3.4.2.1, how do the Parties understand that the provision to exclude partners from the application of global safeguards would be legal under multilateral rules?

Response from the United States and Mexico

This issue is currently the subject of a claim in a USMCA dispute settlement proceeding, and the Parties are accordingly not in a position to comment on it.

Response from Canada

The exclusion of regional trade partners from the application of global safeguards is consistent with multilateral rules including, in particular, Article XXIV of the GATT 1994.

1.3. As regards section 3.4.2.1, how did the Parties develop the definitions of "substantial share" and "important contribution?

Response from the United States and Mexico

This issue is currently the subject of a claim in a USMCA/CUSMA/TMEC dispute settlement proceeding, and the Parties are accordingly not in a position to comment on it.

Response from Canada

The provisions related to "substantial share" and "important contribution" were developed by the Parties in the context of NAFTA negotiations. They were simply replicated in the new Agreement.

1.4. Concerning section 3.4.2.1, Brazil requests clarification on the obligation not to apply safeguards that would reduce imports from the Parties: i) how would the provision work in practice? and ii) how does the provision relate to the rules of the WTO Agreement on Safeguards (AS)?

Response from the Parties

This issue is currently the subject of a claim in a USMCA/CUSMA/TMEC dispute settlement proceeding, and the Parties are accordingly not in a position to comment on it.

1.5. Regarding section 3.4.2.2, why were not the new commitments on trade liberalization accompanied by the provision of bilateral safeguards concerning them?

Response from the Parties

The bilateral safeguards provision that existed in NAFTA expired prior to the renegotiation and the Parties determined that a new bilateral safeguards provision was not necessary.

1.6. Relating to section 3.4.2.2, how was the experience of each of the three Parties with bilateral safeguards under NAFTA?

Response from the Parties

There was only one bilateral safeguards investigation completed under NAFTA. The determination can be found at: https://usitc.gov/publications/tariff_affairs/pub2984.pdf.

1.7. With regard to section 3.4.3, how did the Parties develop the terms of the provisions on circumvention?

Response from the Parties

In the Trade Facilitation and Trade Enforcement Act of 2015, the U.S. Congress included a negotiating objective for the United States to seek provisions regarding cooperation on preventing evasion of the trade remedy laws of the United States and the trade remedy laws of the other country. (See 19 U.S.C. sec. 4374-4375). During the USMCA/CUSMA/TMEC negotiations, the United States tabled provisions in line with that negotiating objective. In addition, due to the degree of integration of the North America region, the Parties noted that circumvention was an area that had to be addressed. Therefore, the Parties discussed and negotiated the tabled provisions until consensus was reached.

1.8. Concerning section 3.4.3, how is the provision on information sharing regarding petitions compatible with multilateral norms, particularly those on confidentiality present in the ADA and the ASCM? Is it possible to open, "ex officio", countervailing duty investigations under the FTA?

Response from the Parties

The Parties fully intend to act consistently with their respective laws and protect the confidentiality of all interested parties regarding any information received by the relevant administering authorities.

Yes, it is possible for the United States to self-initiate a countervailing duty investigation when the statutory requirements in U.S. law are met (e.g., Common Alloy Aluminum Sheet (Common Alloy Sheet) from the People's Republic of China).

In Canada, it is also possible to self–initiate a countervailing duty investigation when the statutory requirements of the Special Import Measures Act are met.

It is possible for Mexico to initiate countervailing duty investigations *ex officio*.

Response from Mexico

We see nothing in the information sharing provisions that could be considered as inconsistent with the confidentiality obligations provided by the ADA and ASCM as such. Now, in case the question refers to the way in which the information sharing provisions will be applied, we will carefully implement them in a manner consistent with both our domestic legislation and our international obligations.

Questions from China

1.9. It has been more than one year since the USMCA entered into force on 1 July 2020. How do the parties evaluate the implementation effect of the USMCA since its entry into force?

Which sectors have registered rapid growth on trade in goods, services and investment?

Response from the Parties

USMCA/CUSMA/TMEC carried over the duty-free treatment for goods from NAFTA, which covered 99% of the total tariff lines, so there is no new tariff liberalization under the USMCA for most goods. Some agriculture tariffs were liberalized between Canada and the US in the USMCA/CUSMA/TMEC (but not between Canada and Mexico). The USMCA maintains the benefits of NAFTA as well as enhanced transparency and predictability for service providers seeking market access in Canada, Mexico and the United States in all services sectors.

1.10. Could the Canadian and Mexican side introduce the differences of the liberalization level between the USMCA and other FTAs signed by Canada and Mexico, such as CPTPP?

Response from Mexico

USMCA/CUSMA/TMEC carried over the duty-free treatment for goods from NAFTA, which covered 100% of the total tariff lines between México and United State, and 99% between Mexico and Canada, so there is no new tariff liberalization under USMCA for goods in the case of Mexico. In CPTPP, there is a phase out period of 16 years to reach a duty-free treatment for goods which will cover 99% of the total tariff lines of Mexico.

Response from Canada

The CUSMA carried over the duty-free treatment for goods from NAFTA, which covered 99% of the total tariff lines. Once the CPTPP is fully implemented, 99% of tariff lines among CPTPP parties will be duty-free and Canada will have duty-free access to CPTPP countries for 94% of Canadian agriculture and agri-food products exports. Different to other Canadian FTAs, some agriculture tariffs were liberalized between Canada and the US in CUSMA. CUSMA also includes the most comprehensive provisions on agricultural biotechnology in Canada's FTAs. With respect to the investment and cross-border trade in services chapters, the liberalization level of the CUSMA is commensurate to that of other FTAs concluded by Canada, including the CPTPP.

1.11. As mentioned in paragraph 5.33 of the factual presentation, Annex 14-D of the USMCA provides for a mechanism for the dispute settlement of investment between Mexico and the US. The text reads as follows, "Claimant means an investor of an Annex Party that is a party to a qualifying investment dispute, excluding an investor that is owned or controlled by a person of a non-Annex Party that, ... the other Annex Party has determined to be a non-market economy..."

a. Could the US side and Mexican side elaborate what is the consideration of this provision?

Response from the Parties

Under USMCA/CUSMA/TMEC Article 14.D.3, a claimant may submit a qualifying investment dispute to arbitration on its own behalf or on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly. Under Annex 14-D, a "claimant" is different from an "investor" because the term "claimant" excludes an "investor that is owned or controlled by a person of a non-Annex Party that, on the date of signature of this Agreement, the other Annex Party has determined to be a non-market economy for purposes of its trade remedy laws and with which no Party has a free trade agreement."

Response from the United States

For the United States, the process for designation of non-market economies for purposes of its trade remedy laws is set forth in 19 U.S.C. 1677(18) and a listing of the eleven countries so designated is available at https://www.trade.gov/nme-countries-list.

Response from Mexico

Mexico does not have a list of non-market economies nor a legal mechanism to designate them.

b. What problems would the Parties like to solve through this provision? Does this provision violate the spirit of non-discrimination principle of the WTO?

Response from the Parties

International investment agreements, such as the USMCA/CUSMA/TMEC investment chapter, prescribe specific limits and conditions upon a respondent State's consent to arbitration. Each State makes a sovereign choice regarding the scope of its consent to investor-State arbitration when entering into an international investment agreement. The United States and Mexico take seriously their WTO commitments and the USMCA provisions are consistent with those commitments.

1.12. As mentioned in paragraph 5.35 of the factual presentation, "...Before commencing free trade agreement negotiations with a non-market country a Party must inform the other Parties of its intentions to do so and shall provide, upon request, as much information as possible about the objectives for such negotiations... If a Party enters into an FTA with a non-market country the other two Parties may terminate the Agreement on six months' notice..."Could the Parties clarify and explain what is the consideration of this provision? What is the relationship between " terminate the Agreement" referred in this provision and the Withdrawal procedure under Article 34.6? Will this provision be triggered if a Party intends to commence an RTA negotiation in which a "non-market country" is a Party? Is there any practice on this provision? Does it comply with Article XXIV of GATT and Article V of GATS?

Response from the Parties

Article 32.10 (Non-Market Country FTA) of the USMCA/CUSMA/TMEC requires that any Party intending to negotiate a free trade agreement with a non-market country must inform the other Parties prior to commencing negotiations. That Party must also provide an opportunity for the other Parties to review the text before signing such an agreement. 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, the other Parties would review information and ensure that they are not disadvantaged.

1.13. As mentioned in paragraph 5.50 of the factual presentation, the United States and Mexico signed a side letter to recognize "prior users" under the Mexico-European Union Global Agreement regarding GIs. As far as we know, the EU and Canada also signed an FTA (CETA) in 2017. So, without a side letter, how can the United States and Canada coordinate the issue of GIs protection? In addition, given that Canada and Mexico have reached agreement with EU respectively on the protection of GIs and have included a

series of GIs in the appendix, how would Canada and Mexico deal with the conflict between EU GIs and US GIs?

Response from the United States, Canada and Mexico

Section E of Chapter 20 of the USMCA/CUSMA/TMEC provides important transparency and due process safeguards for the protection or recognition of new geographical indications. In addition, Article 20.14.2 establishes a mechanism for consultation among the United States, Canada, and Mexico on future requests of recognition or protection of geographical indications pursuant to international agreements.

1.14. As mentioned in paragraph 5.51 of the factual presentation, Mexico is permitted to maintain a system other than judicial proceedings that deal with early resolution of potential pharmaceutical patent disputes.

Can Mexico provide more information on this system? How does this system work as an alternative to the patent linkage system?

Response from the Parties

Mexico has in place a coordination mechanism between the authority responsible for granting marketing authorisations for pharmaceutical products (*Comisión Federal para la Protección Contra Riesgos Sanitarios, COFEPRIS*) and the industrial property authority (*Instituto Mexicano de la Propiedad Industrial, IMPI*). As part of the procedure for marketing authorisation, applicants must provide COFEPRIS with proof that they have the right to use the patent(s) in question, whether they are the patent holder or have a licence contract. COFEPRIS consults IMPI to determine whether applications would infringe current patents. Through this mechanism, patent rights infringements in the context of marketing authorisation are prevented.

1.15. As mentioned in paragraph 5.54 of the factual presentation, Article 20.83 of the USMCA provides for ex officio action at the border against suspected counterfeit trademark goods or pirated copyright goods under customs control that are imported, destined for export, in transit and admitted into or exiting from a free trade zone or a bonded warehouse.

Could the parties share experience in customs control of suspected counterfeit trademark goods or pirated copyright goods, especially those are admitted into and exiting from a free trade zone or a bonded warehouse?

Response from the United States

In the United States, customs officials are able to examine, detain, seize, and forfeit suspected counterfeit trademark goods or pirated copyright goods being admitted into, or exiting from, a free trade zone or bonded warehouse. Customs officials also conduct random 'sweeps' of these areas, sampling packages and effectuating detentions and seizures of suspected counterfeit trademark goods or pirated copyright goods.

Response from Mexico

In Mexico, customs officials have the attribution to detain goods suspected of infringing intellectual property rights after receiving an order by the competent administrative authority (IMPI) or the judicial authority (*Fiscalía General de la República, FGR*) on intellectual property matters. Customs officials draw up a detailed record for the identification of the detained goods and place them in the location indicated by the authority issuing the detention order. Subsequently, the competent authority carries out a procedure to determine if the goods are indeed counterfeit or pirated.

1.16. With regard to Chapter 22 "STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES" of the USMCA, please explain the reasons for not using the concept of "public body" under the Agreement on Subsidies and Countervailing Measures and the concept of "benefit" in 1.1 (b) of the Definition of a Subsidy.

Response from the Parties

In light of the various Appellate Body reports that the Parties consider have incorrectly interpreted the phrase "public body," it was important to the Parties to appropriately define the entities covered by the disciplines in the chapter. The definition of "non-commercial assistance" in Chapter 22 is framed to fit within the specific context of assistance provided to SOEs.

1.17. Article 22.4 of the USMCA provides for disciplines of activities of SOEs affecting trade and investment of other Parties' enterprises in the Free Trade Area. How can the Parties "ensure" the implementation of this provision? Is it a procedural obligation (e.g., setting up relevant legislation) or ensured by result? Is this an obligation of the Governments or the SOEs? What is the remedy procedure if this provision is violated?

Response from the Parties

The obligations of Article 22.4 are taken by a Party to ensure that its state-owned enterprises behave in specified ways without specifying the mechanism by which a Party may effectuate this obligation. Regardless of the mechanism chosen, a Party would not be in compliance with its obligations if one of its state-owned enterprises was determined to be acting inconsistently with the obligations of Article 22.4. Potential violations of this provision would be subject to consultations under the Committee on State-Owned Enterprises and Designated Monopolies established under Article 22.12 or to the dispute settlement processes contained in Chapter 31 of the USMCA.

1.18. As mentioned in paragraph 5.64 of the factual presentation, Article 22.4 of the USMCA provides for non-discriminatory treatment and commercial considerations, Article 22.6 provides for discipline of non-commercial assistance. Please clarify the relationship between these two Articles. Under what circumstances do SOEs constitute non-commercial assistance under Article 22.6? Is a breach of commercial considerations under Article 22.4 the prerequisite of non-commercial assistance? Or would it constitute non-commercial assistance under Article 22.6 even if the SOEs were to transact on commercial grounds under Article 22.4?

Response from the Parties

Article 22.4 disciplines the activities of state-owned enterprises and designated monopolies by requiring that a Party ensure they act in accordance with the article's obligations on non-discriminatory treatment and commercial considerations, as defined in the USMCA/CUSMA/TMEC. Article 22.6 applies both to the Party in its provision of non-commercial assistance to a state-owned enterprise and a state-owned enterprise's provision of non-commercial assistance to another state-owned enterprise. Articles 22.4 and 22.6 are separate and distinct obligations, and neither is a prerequisite for the other. There may be instances in which a failure to act in accordance with commercial considerations on the part of a state-owned enterprise may also constitute a form of non-commercial assistance. For example, a loan that is provided by a state-owned enterprise, on more favorable terms than those commercially available, to another state-owned enterprise may be both inconsistent with commercial considerations and an example of non-commercial assistance.

1.19. As mentioned in paragraph 5.84 of the factual presentation, there are various channels for the settlement of disagreements regarding labour issues. Has such settlement of disagreements occurred since the entry into force of the USMCA? If so, how has this settlement been implemented?

Response from the United States

There have been no Chapter 31, section A dispute settlement actions regarding Chapter 23. The United States has sent to Mexico two requests for review under Annex 31-A, the United States-Mexico Facility-Specific Rapid Response Labor Mechanism of the USMCA/CUSMA/TMEC.

Adding links to U.S. press releases:

First RRM request for review: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-seeks-mexicos-review-alleged-workers-rights-denial-auto-manufacturing-facility-0

Second RRM request for review: https://ustr.gov/index.php/about-us/policy-offices/press-office/press-releases/2021/june/united-states-seeks-mexicos-review-alleged-freedom-association-violations-mexican-automotive-parts

Response from Mexico

Since the enter into force of the USMCA/CUSMA/TMEC, US had been notified to Mexico two request for review under Annex 31-A. Both cases are settled. You can see the Mexico press releases in the following links:

First request:

https://www.gob.mx/se/articulos/concluye-con-exito-el-primer-curso-de-reparacion-del-mecanismo-laboral-de-respuesta-rapida-del-t-mec-283451?idiom=es

Second request:

https://www.gob.mx/se/articulos/comprometidos-con-el-correcto-funcionamiento-del-t-mec-se-anuncian-acuerdos-respecto-a-peticion-laboral-de-empresa-de-autopartes-279274?idiom=es

1.20. As mentioned in paragraph 5.86 of the factual presentation, Article 19.4 of the USMCA provides for non-discriminatory treatment for digital products, how could the Parties reconcile this provision with those conservations in sectors of trade in services that are exempted from a Party's obligation of market access or national treatment under GATS and FTAs ?

Response from the Parties

The flexibilities provided for in the GATS and other FTAs are not relevant to obligations made under the USMCA/CUSMA/TMEC. In some cases, the USMCA provides for similar flexibility; in other cases, the same kind of flexibility may not exist, or may be addressed in a different manner.

1.21. As mentioned in paragraph 5.87 of the factual presentation, Article 19.11 of the USMCA provides for cross-border transfer of information and specifies that a Party may adopt exceptions to legitimate public policy objectives, but the Article 19.12 for location of computing facilities has no such exceptions. What is the definition of "legitimate public policy objectives"? Is there any practice on citing this concept? The prohibition of the cross-border transfer of information of due to a legitimate public policy objective may result in localization of computing facilities, which may violate Article 19.12. How would the Parties reconcile this contradiction?

Response from the Parties

While there is general understanding of examples of what constitutes legitimate public policy objectives, for example the goals referenced in GATT Article XX (incorporated into the USMCA/CUSMA/TMEC in Article 32.1 (General Exceptions)), such as protection of health and safety, this term is intended to provide broad scope for governments to define independently. However, despite a broad scope for defining what constitutes a legitimate public policy objective, simply citing such an objective is not sufficient to demonstrate compliance, given other elements of the provision. Furthermore, the GATS general exceptions (Article XIV) are incorporated into the USMCA as it applies to Chapter 19: Digital Trade, including with respect to Article 19.12: Location of Computing Facilities, which provides for analogous exceptions as provided for under Article 32.1.2

Questions from Colombia

Rules of origin

1.22. Paragraph 3.27. A good is considered to be originating if it is (a) wholly obtained or produced entirely in the territory of one or more of the Parties; (b) produced entirely in the territory of one or more of the Parties using non-originating materials which must satisfy the product-specific rules in Annex 4-B; (c) produced entirely in the territory of

one or more of the Parties exclusively from originating materials; or (d) except for a good in HS Chapters 61-63 (i) produced entirely in the territory of one or more of the Parties; (ii) one or more of the non-originating materials used in the production of the good cannot satisfy the product specific rules because both the good and the materials used are classified in the same sub-heading or heading that is not further subdivided into sub-headings or the good was imported into the territory of a Party in an unassembled or disassembled form but was classified as an assembled good; and (iii) the regional value content (RVC) of the good is not less than 60% under the transaction value method or not less than 50% under the net cost method; and that the good satisfies all other applicable requirements of Chapter 4.

What cases and goods can apply the condition described in the rule of origin cited in literal d (ii) "... the good was imported into the territory of a Party in an unassembled or disassembled form but was classified as an assembled good" for? And How often does this situation occur?

Response from the Parties

In some cases, both the input and final good may be classified in the same subheading or heading that is not further subdivided into subheadings. Similarly, a good in unassembled form might also be classified under the same subheading or heading as the same good in assembled form. In such instances, the good might not undergo a tariff shift during production. This part of the rule of origin text is intended to allow such goods to be considered to be originating if they satisfy a regional value content requirement.

Subsidies and state aid

1.23. Paragraphs 3.66 and 3.67 refer to subsidies to fishing activities. Colombia would like to obtain more information on how the Parties to this agreement have implemented these commitments, and if they have had to adopt internal changes to their respective national legislations and subsidies programs.

Response from the United States

The United States implements the commitments referenced in paragraphs 3.66 and 3.67 by administering our programs, which are limited to managed fisheries or limited access fisheries, consistent with the relevant provisions of the USMCA/CUSMA/TMEC. This did not require changes to our legislation or programs.

Response from Canada

Canada does not grant or maintain any subsidies that contribute to overfishing, overcapacity, Illegal, unreported and unregulated (IUU) fishing, or subsidies that negatively affect fish stocks in an overfished condition. Therefore, no changes to national legislation or subsidy programs were required.

Response from Mexico

Mexico's legislation and programmes were already in line with the commitments referred, as no subsidies are granted to vessels or operators determined to be engaged in illegal fishing activities, or to overfished fisheries according to Mexico's fisheries management regulations. Additionally, Mexico notifies subsidies granted –including subsidies to fisheries subsidies- as required by Article 25 of the WTO Agreement on Subsidies and Countervailing Measures, so complying with this obligation did not require any changes to the ongoing transparency practice.

1.24. Colombia would also like to know if the Environment Committee of the agreement has met and discussed the implementation of these provisions and the potential future treatment of subsidies that contribute to overfishing and overcapacity.

Response from the Parties

The inaugural meeting of the USMCA/CUSMA/TMEC Environment Committee took place on June 17, 2021, the purpose of which was to discuss Parties' implementation of chapter 24. The fisheries subsidies provisions were not specifically discussed at that time.

The Joint Statement corresponding to the Environment Committee's inaugural meeting, where information on the matters discussed can be found, is available in the following link:

https://www.gob.mx/se/prensa/declaracion-conjunta-sobre-la-reunion-inaugural-del-comite-de-medio-ambiente-del-tratado-entre-mexico-estados-unidos-y-canada?state=published

https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/joint-public-statement-inaugural-meeting-environment-committee-united-states-mexico-canada-agreement

https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/2021-06-17-environ_comm_agree-comite_environ_accord.aspx?lang=eng

Questions from Costa Rica

1.25. Paragraph 4.108: Annex 17-C modifies Annex 14-D (Mexico-US investment disputes in financial services) for the settlement of qualifying investment disputes under Chapter 17.

Could the countries please provide more information on the mechanisms applicable to the settlement of investment disputes in financial services? What are the main differences with NAFTA?

Response from the Parties

With respect to investor-state disputes relating to financial services between the United States and Mexico, as outlined in Annex 17-C, a claimant from the United States or Mexico, on its own behalf or on behalf of a financial institution it owns or controls directly or indirectly, may submit to arbitration under Annex 14-D a claim that Mexico or the United States has committed a breach, and that the claimant has incurred loss or damage by reason of, or arising out of, that breach, of the following USMCA obligations: Article 17.3.1 (National Treatment), Article 17.3.2 (National Treatment), Article 17.4.1(a) (Most-Favored-Nation Treatment), Article 17.4.1(b) (Most-Favored-Nation Treatment), or Article 17.4.1(c) (Most-Favored-Nation Treatment), except with respect to the establishment or acquisition of an investment; or Article 14.8 (Expropriation and Compensation) as incorporated into the Financial Services Chapter under Article 17.2.2(a) (Scope), except with respect to indirect expropriation. All such claims are subject to the procedures and limitations contained in Annex 17-C and Annex 14-D, and all other relevant limitations and exceptions contained in Chapter 17, Chapter 14, and the remainder of the USMCA.

In the North American Free Trade Agreement (NAFTA), with respect to investor-state disputes relating to Chapter 14 (Financial Services), involving an investor from the United States, Mexico or Canada, a claimant could submit to arbitration a claim that another Party had committed a breach of the following NAFTA obligations: Article 1109 (Transfers); Article 1110 (Expropriation and Compensation); Article 1111 (Special Formalities and Information Requirements); Article 1113 (Denial of Benefits) and Article 1114 (Environmental Measures).

With respect to state-to-state dispute settlement relating to financial services, both agreements permit state-to-state dispute settlement for a wide variety of USMCA or NAFTA obligations, which are also subject to the relevant procedures, limitations and exceptions contained in the corresponding agreement. In both cases, several specificities regarding the composition of the panel and suspension of benefits apply.

1.26. Paragraph 4.109: Article 17.19 establishes a Committee on Financial Services that supervises the implementation of Chapter 17 and its further elaboration. The inaugural Financial Services Committee met virtually on 15 April 2021 to discuss the implementation of the agreement and other issues relevant to the financial sector.

Could the countries please provide some examples of the kind of "issues relevant to the financial sector" that would eventually be addressed by the Committee on Financial Services?

Response from the Parties

As noted in Article 17.19.2, the Financial Services Committee shall supervise the implementation of the Financial Services Chapter and its further elaboration, including by considering issues regarding financial services that are referred to it by a Party. Each Party may therefore refer to the Financial Services Committee an issue regarding financial services for consideration, with the expectation that such referrals will relate to implementation of the Financial Services Chapter and its further elaboration.

1.27. Paragraph 4.118: The Parties agree to establish a Telecommunications Committee, which shall meet at times as the Parties may decide (Article 18.27). The functions of the Committee include reviewing and monitoring the implementation of the Chapter and discussing issues relevant to telecommunications sector.

Could the countries please refer to their practice of creating a Telecommunications Committee in other trade agreements? What kind of issues could this Committee address in the future?

Response from the United States

The United States previously included a Telecommunications Committee in the NAFTA and a consultative process on telecommunications and ICT issues in the U.S.-Australia FTA. It has not established a Telecommunications Committee in other Free Trade Agreements. The USMCA Telecommunications Committee may discuss issues related to Chapter 18 of the USMCA and any other issues relevant to the telecommunications sector.

Response from Canada

Canada previously included a Telecommunications Committee in the NAFTA and in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. It has not established a Telecommunications Committee in other Free Trade Agreements.

Response from Mexico

In addition to the Telecommunications Standards Subcommittee in the NAFTA (which is not in force) and the USMCA/CUSMA/TMEC's Telecommunications Committee, Mexico has included a Telecommunication Committee in the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership). About the USMCA/CUSMA/TMEC's Telecommunications Committee, it may discuss issues related to the Chapter 18 and any other issues relevant to the telecommunications sector the Parties may decide.

1.28. Paragraph 5.85: Provisions on electronic commerce are found in Chapter 19 on digital trade. It applies to measures adopted or maintained by the Parties that affect trade by electronic means but does not apply to government procurement or to information held or processed by or on behalf of the Parties or measures relating to that information or its collection (except for Article 19.18 on Open Government Data).[1]

Response from the United States

We do not understand what question is being asked, if any.

[1] **A measure affecting the supply of a service delivered or performed electronically is subject to Chapter 14 on investment, Chapter 15 on cross border trade in services, and Chapter 17 on financial services, including any exception or non-conforming measure in the Agreement that is applicable to obligations in these Chapters (Article 19.2).**

Response from Mexico and Canada

Affirmative, Chapter 19 applies to measures adopted or maintained that affect electronic commerce, however, Article 19.2: Scope and General Provisions of the chapter, excludes government procurement or the information held or processed by or on behalf of the Parties or measures relating to that information or its collection, except for Article 19.18 on Open Government Data.

1.29. Paragraph 5.89. The Parties shall endeavour to exchange information and share experiences on regulations, policies, enforcement, and compliance relating to digital trade (Article 19.14) and to build the capabilities of their respective national entities responsible for cybersecurity incident response and strengthen their cooperation in the area (Article 19.15). With regard to interactive computer services, the Parties commit to not adopt or maintain measures that treat a supplier or user of such a service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed or made available by the service, except to the extent the supplier or user has, in whole or in part created, or developed the information (Article 19.17). Annex 19-A provides a three-year transition to Mexico to implement Article 19.17.

Could the countries please explain the difference between the scope of e-commerce provisions and those concerning "digital trade"?

Response from the Parties

The scope is intended to be the same.

Questions from Japan

Provisions on trade in goods

Rules of origin

Rules of origin for automotive goods

1.30. Paragraph 3.31: Japanese automotive companies operating in US, Mexico and Canada are contributing to the strengthening of the North American supply chain. Some of these automotive companies have expressed concerns regarding discrepancy on the interpretation among the member countries concerning the 75% regional value content (RVC) for passenger vehicles and light trucks in the automotive rules of origin. The discrepancy would seriously affect their operation in the region, as such we would like to know when we could find the uniform interpretation on the issue.

Response from the Parties

The Parties to the USMCA/CUSMA/TMEC endeavour to agree on the interpretation and application of the Agreement. However, in the event of a disagreement, Chapter 31 (Dispute Settlement) of the USMCA provides an avenue for the Parties to resolve the matter.

This issue is currently the subject of a claim in a USMCA dispute settlement proceeding, and the Parties are accordingly not in a position to comment on it.

General provisions of the agreement

Dispute settlement

1.31. Paragraphs 5.31-32: USMCA has strengthened the labour-related rules and Japanese companies operating in three countries are working hard to be in line with the new requirements. On the other hand, there are uncertainties within those Japanese companies regarding when and how the newly established Facility-Specific Rapid

Response Labour Mechanism (the Mechanism) would be applied to individual cases. Information on the procedure with which a case is initiated would be appreciated.

Response from the United States and Canada

USMCA/CUSMA/TMEC Article 31-A.4.2 provides in the annex for the United States- Mexico Facility-Specific Rapid Response Labor Mechanism:

If a complainant Party has a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, it shall first request that the respondent Party conduct its own review of whether a Denial of Rights exists and, if the respondent Party determines that there is a Denial of Rights, it shall attempt to remediate within 45 days of the request. The complainant Party shall provide sufficient information for the respondent Party to conduct its review. The respondent Party shall have 10 days to notify the complainant Party as to whether it intends to conduct a review. If the respondent Party does not choose to conduct a review or does not notify within the 10-day period, the complainant Party may request the formation of a Rapid Response Labor Panel (the "panel") to conduct a separate verification and determination pursuant to Article 31-A.5.

Please see Article 31-B.4.2 in the annex for the Canada-Mexico Facility-Specific Rapid Response Labor Mechanism for a similar provision.

Response from Mexico

In addition to US responses, as set out in article 31-A 4.1 provide and purpose as follow:

1. The United States and Mexico are agreeing to this Annex pursuant to Article 31.5.1 (Good Offices, Conciliation, and Mediation).

2. The purpose of the Facility-Specific Rapid Response Labor Mechanism (the "Mechanism"), including the ability to impose remedies, is to ensure remediation of a Denial of Rights, as defined in Article 31-A.2, for workers at a Covered Facility, not to restrict trade. Furthermore, the Parties have designed this Mechanism to ensure that remedies are lifted immediately once a Denial of Rights is remediated.

3. The Parties shall make every attempt to cooperate and arrive at a mutually acceptable solution with respect to matters that can be raised through the Mechanism.

4. This Annex applies only as between Mexico and the United States.

In regard of the last provision above, the USMCA Article 31-A.4.2, footnote 4 establishes the following:

With respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labor Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).

Electronic commerce

1.32. Paragraph 5.86: What is the difference between "customs duties, fees, or other charges on or in connection with the importation or exportation of digital products" in Article 19.3 and "customs duties on electronic transmissions" which not to be imposed under the WTO multilateral moratorium on customs duties on electronic transmissions? More specifically, what is the difference between "digital products" in this Article and "electronic transmissions"?

Response from the Parties

The formulation used in the WTO moratorium is drafted in a broad and general manner, and in our view is meant to cover the same elements addressed in the USMCA/CUSMA/TMEC. The USMCA's focus on digital products, rather than transmissions, was intended to focus on the clearest example of how duties might be imposed, but again, is intended to cover the same cases.

Questions from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Provisions on trade in goods

Regulatory provisions on trade in goods

Technical barriers to trade

1.33. Paragraph 3.5: To facilitate the acceptance of conformity assessment results, Article 11.9 goes beyond the WTO TBT Agreement by requiring the Parties to give consideration to a request by another Party on any sector-specific proposal for cooperation. The Parties also recognize mechanisms to support greater regulatory alignment and eliminate unnecessary technical barriers to trade in the region such as through regulatory dialogue and cooperation, facilitation of the greater use and alignment of standards, technical regulations and conformity assessment procedures with international standards, guides and recommendations and promotion of equivalence of other Parties' technical regulations. Article 11.10 sets up a framework for information exchange and technical discussions between the Parties to address trade concerns. A Committee on Technical Barriers to Trade as well as contact points are established (Articles 11.11 and 11.12). The Committee shall meet at least once a year unless otherwise determined by the Parties.

a. Please explain the mechanisms of the USMCA concerning policy dialogues on TBT issues, such as their frequency and the discussion topics.

Response from the Parties

The USMCA/CUSMA/TMEC has been in force for a little over a year. The Parties convened one trilateral TBT Committee, and have met on a bilateral basis to discuss WTO and USMCA specific trade concerns on the margins of each of the three annual WTO TBT Committees, and conducted videoconferences on several ad hoc USMCA topics of bilateral and trilateral interest, such as national quality infrastructure, standardization, and particular regulatory schemes.

On the frequency, besides the one established for the T-MEC TBT Committee, meetings can take place upon request from one of the Parties.

b. Could the U.S., Canada, and Mexico provide information on which countries currently have similar mechanisms?

Response from the Parties

The Parties have similar bilateral mechanisms with several of their bilateral free trade agreement partners.

Provisions on trade in goods

Sector-specific provisions on trade in goods

Agriculture

1.34. Paragraph 3.82: In Section B of Chapter 3 the Parties confirm the importance of encouraging agricultural innovation and facilitating trade in agricultural biotechnology products, while fulfilling legitimate objectives, including by promoting transparency and cooperation and exchange of information. The Parties are not required to mandate

authorization for agricultural biotechnology products to be on the market. Paragraph 4 of Article 3.14 includes actions to reduce the likelihood of disruptions to trade in agricultural biotechnology products such as encouraging the submission of timely and concurrent applications to the Parties and measures to be taken by a Party related to the authorization of such products.

The USMCA addresses agricultural biotechnology specifically in Section B of Chapter 3, encouraging agricultural innovation and facilitating trade in agricultural biotechnology products. Nevertheless, Mexico published a decree in 2020 announcing its intention to phase out the use of important agricultural technologies, such as GMO corn for human consumption by 2024. Are there any provisions or mechanisms available in the USMCA for the Parties to constructively settle disputes arising from such kind of issues?

Response from the Parties

The Parties have no comment on the specific issue raised by TPKM. We note that the USMCA/CUSMA/TMEC includes formal dispute settlement mechanisms as well as various fora to discuss issues that may arise between the Parties.

General provisions of the agreement

Electronic commerce

1.35. Paragraph 5.87: Article 19.4 ensures non-discriminatory treatment by the Parties of digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or digital products of which the author, performer, producer, developer or owner is a person of another Party. Except for a subsidy or grant provided by a Party, including a government supported loan, guarantee or insurance.

How does Article 19.4 "Non-discriminatory Treatment of Digital Products" relate to Annex 15-D Programming Services and Annex 15-E Cultural Exceptions under Chapter 15 "Cross-border Trade in Services," as well as to Cultural Industries under Chapter 32 "Exceptions and General Provisions"? How will Article 19.4 be applied?

Response from Canada

Canada's commitments pursuant to Annex 15-D apply to the supply of broadcasting services in Canada and are not related to Article 19.4: Non-Discriminatory Treatment of Digital Products. With some specified exceptions (see Article 32.6.2), Article 32.6: Cultural Industries applies to the CUSMA Agreement, including with respect to Article 19.4: Non-Discriminatory Treatment of Digital Products.

Response from Mexico

Article 19.4: Non-Discriminatory Treatment of Digital Products is directly related to Annex 15-E Cultural Exceptions according to Article 19.2: Scope and General Provisions, where is stablished, for greater certainty, that a measure that affects the supply of a service delivered or performed electronically is subject to Chapter 15 (Cross-Border Trade in Services), including any exception or non-conforming measure set out in this Agreement that is applicable to the obligations contained in that Chapter.

Schedule of the United States (Market Access)

1.36. Based on the USMCA, we noted that the United States made no commitments regarding public education. Under Annex II Schedule of the United States, it inserted new commitments on higher education services, except for the flying instructions.

Under the USMCA, public education in the U.S. is not open to Canada and Mexico. Is it open to countries other than Canada and Mexico?

Response from the United States

For the United States, public education refers to education services supported by public funds of the United States, and is therefore only supplied by the United States. The rest of the education market is considered to be private education services, for which the United States has an open market and has taken extensive commitments under the USMCA.

Questions from Switzerland

Rules of origin for automotive goods

1.37. Paragraph 3.32:

a. Why have such rules of origin also linked to a minimum wage been adopted in the automotive sector specifically?

Response from the United States and Canada

The North American auto industry is highly integrated and USMCA's labor value content rules for autos are designed to support better paying jobs by requiring that significant portion of vehicle content be made with high-wage labor and incentivize new investments within the region.

Response from Mexico

The LVC requirements in conjunction with the other components of the USMCA/CUSMA/TMEC automotive rule of origin, are intended to incentivize investment and strengthen the automotive industry. Hence the importance of maintaining the delicate balance reached during the negotiations to achieve the objectives for this specific sector

b. How has the minimum wage of $16 per hour been defined?

Response from the United States, Canada, and Mexico

The production wage rate is the average hourly base wage rate, not including benefits, of employees directly involved in the production of the part or component used to calculate the LVC, and does not include salaries of management, R&D, engineering, or other workers who are not involved in the direct production of the parts or in the operation of production lines. (Chapter 4, footnote 77).

c. How are these rules implemented, namely how is the evidence of their respect provided and how is it checked, if necessary?

Response from the United States

For the United States, producers must certify to the U.S. Department of Labor that production of covered vehicles meet the labor value content requirements. The U.S. Department of Labor has the authority to verify producer compliance with the requirements.

Response from Canada

For Canada, vehicles that benefit from preferential tariff treatment under the CUSMA may be subject to an origin verification by the Canada Border Services Agency during which compliance with the labor value content and other requirements must be demonstrated.

Response from Mexico

For Mexico, vehicles that benefit from preferential tariff treatment may be subject to an origin verification by the competent authority during which compliance with the labor value content and other requirements must be demonstrated.