



On 11 January 2023, a five-member arbitral panel (“Panel”), which was established pursuant to Article 31 of the United States-Mexico-Canada Agreement (“USMCA”), made public a Final Report, dated 14 December 2022, that resolved the dispute related to the interpretation of the USMCA’s automotive rules of origin.

The Panel held that the U.S.’s current application of its interpretation of the rules of origin, prohibiting the practice of “rolling up” regional North American content, was inconsistent with the USMCA. Thus, core parts included in column 1 of Table A.2 of the Appendix to USMCA Chapter 4 (“core parts of Table A.2”) that qualify as originating as part of the “super-core” part calculation should also be treated as originating when calculating the Regional Value Content (“RVC”) of a finished vehicle.

Under the USMCA automotive rules of origin, among other requirements, automotive vehicles and trucks will qualify as originating only if all core parts of Table A.2 used in their production (e.g., engines, transmissions, body and chassis, axles, suspension systems, steering systems, advanced batteries, etc.) qualify as originating. Each of the core parts of Table A.2 may be individually qualified as originating, but the USMCA also establishes several methodologies that allow producers to consider all the core parts as a single “super-core” part, grouping together all of the core parts to perform a single calculation.

Under the US interpretation, even if the “super-core” part qualified as originating, the individual core parts would have to be qualified individually when the producer conducted the RVC calculation for the finished vehicles. This created a situation where the core part could be considered as originating for purposes of the “super-core” part calculation but not for purposes of the RVC calculation of the finished vehicles.

Mexico and Canada argued that if the “super-core” part is originating, having met the applicable RVC, all underlying core parts of Table A.2 would be treated as originating in the finished vehicle’s RVC calculation. This concept is referred to as “rolling up” one hundred percent of the net cost or transaction value of each core part of Table A.2 as originating into its finished vehicle RVC calculation, rather than having to meet individual product-specific rules of origin for each of the core parts of Table A.2.

On 14 December 2022, the Panel decided in favor of Mexico and Canada’s interpretation of the USMCA’s automotive rules of origin, holding that the plain text of the USMCA allowed the application of “rolling up,” and producers may “roll up” the originating content of core

parts of Table A.2 if they qualify as originating under the “super-core” part calculation. Thus, core parts of Table A.2 that qualify as originating as part of the “super-core” part calculation should also be treated as originating when calculating the RVC of a finished vehicle.

Pursuant to Article 31 of the USMCA, the Parties were obligated to agree on the resolution of the dispute within 45 days of the 14 December 2022 decision. If the Parties do not agree on the resolution, Mexico and Canada may suspend benefits to the U.S., including the possibility of implementing retaliatory duties of “equivalent effect to the non-conformity,” until the dispute is resolved. At this time, the Parties have not confirmed whether the resolution of the dispute has been agreed upon.

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- Solicitation and certification – Providing services to solicit origin certifications from suppliers and drafting certificates of origin for finished goods exported within the USMCA region;
- Origin qualification – Reviewing product-specific requirements to confirm that goods meet the USMCA rules and may benefit from preferential duty treatment;
- Duty impact – Identifying potential savings opportunities based on the USMCA rules of origin;
- FTA processes – Reviewing potential changes to internal activities related to the solicitation of certifications of origin and origin qualification/certification;
- Operating model – Establishing a roadmap to define and implement an effective USMCA operating model, such as updates to process flows, work instructions, training materials, etc.;
- Origin verification audit defense – Identify the documentation that needs to be maintained to support USMCA claims, and develop an origin qualification defense file that traces materials and components used in the production process for use as evidence in an origin verification audit;
- Origin verification – Providing support in managing responses to origin verification questionnaires or on-site visits from U.S., Mexican or Canadian customs authorities; and
- System support – Supporting the implementation and maintenance of ERP and Global Trade Management system tools used to qualify goods.

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