

APPENDIX D

BETWEEN JAPAN AND CANADA ON MOTOR VEHICLE TRADE

Article 1

1. For the purposes of this Appendix:

Appendix Party means either Japan or Canada, as the case may be;

motor vehicle means any good classified under heading 87.03; and

originating motor vehicle means any motor vehicle qualifying as originating under Chapter 3 (Rules of Origin and Origin Procedures).

2. No Party other than an Appendix Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Appendix or to dispute settlement under Article 4 for any matter arising under this Agreement. No Appendix Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for nullification or impairment within the meaning of Article 28.3.1(c) (Scope) for any matter arising under Article 3 or Article 4 of this Appendix.

Article 2

An Appendix Party shall accord to the other Appendix Party treatment no less favourable than that accorded to a Party other than the other Appendix Party with respect to technical regulations, standards or conformity assessment procedures on motor vehicles that are adopted or applied in accordance with a bilateral agreement provided for in this Agreement.

Article 3

An Appendix Party may apply a transitional safeguard measure on originating motor vehicles from the other Appendix Party classified under heading 87.03, during the transition period only, in accordance with the provisions set out in Chapter 6 (Trade Remedies), with the following procedural modifications:

- (a) In lieu of the definition of transition period provided for in Article 6.1 (Definitions), the following definition shall apply:

transition period means the period beginning on the date of entry into force of this Agreement with respect to Japan and Canada and ending on the date that is 12 years after the end of the period of the staged tariff elimination for a particular good.

- (b) In lieu of Article 6.4.2 (Standards for a Transitional Safeguard Measure), the following shall apply:

Neither Appendix Party shall apply a transitional safeguard measure for a period exceeding three years, except that the period may be extended by up to two years if the competent authority of the Appendix Party that applies the measure determines, in conformity with the procedures set out in Article 6.5 (Investigation Procedures and Transparency Requirements), that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

- (c) Paragraphs 4 and 6 of Article 6.4 (Standards for a Transitional Safeguard Measure) shall not apply.

- (d) In lieu of paragraphs 1 and 2 of Article 6.7 (Compensation), the following shall apply:

(i) An Appendix Party applying a transitional safeguard measure shall consult with the other Appendix Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Appendix Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure;

(ii) If the consultations under subparagraph (d)(i) do not result in an agreement on trade liberalising compensation within 30 days after the consultations begin, the Appendix Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Appendix Party applying the transitional safeguard measure; and

(iii) The right of suspension referred to in subparagraph (d)(ii) shall not be exercised for the first 24 months during which a transitional safeguard measure is in effect, provided that the transitional safeguard measure conforms to the provisions of this Agreement.

Article 4

1. For the purposes of this Article, the definitions set out in Article 28.1 (Definitions) shall apply, *mutatis mutandis*.¹
2. With respect to any matter described in Article 28.3 (Scope) that relates to motor vehicles, an Appendix Party may initiate the dispute settlement procedures set out in this Article in lieu of the procedures provided for in Article 28.4 (Choice of Forum), Article 28.5 (Consultations), Article 28.6 (Good Offices, Conciliation and Mediation), Article 28.7 (Establishment of a Panel), Article 28.8 (Terms of Reference), Article 28.9 (Composition of Panels), Article 28.10 (Qualifications of Panellists), Article 28.11 (Roster of Panel Chairs and Party Specific Lists), Article 28.12 (Function of Panels), Article 28.13 (Rules of Procedure for Panels), Article 28.14 (Third Party Participation), Article 28.15 (Role of Experts), Article 28.16 (Suspension or Termination of Proceedings), Article 28.17 (Initial Report), Article 28.18 (Final Report), Article 28.19 (Implementation of Final Report), Article 28.20 (Non-Implementation – Compensation and Suspension of Benefits) and Article 28.21 (Compliance Review).²
3.
 - (a) An Appendix Party may request consultations with the other Appendix Party with respect to any matter described in paragraph 2. The Appendix Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint. The requesting Appendix Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 27.5.1 (Contact Points).
 - (b) The Appendix Party to which a request for consultations is made shall, unless the Appendix Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request.³ That Appendix Party shall circulate its reply

¹ For the purposes of this paragraph, the references to “Article 28.5.1 (Consultations)”, “Article 28.7 (Establishment of a Panel)” and “Article 28.7.1 (Establishment of a Panel)” in Article 28.1 (Definitions) shall be deemed to read “paragraph 3”, “paragraph 4” and “paragraph 4(a)”, respectively.

² For greater certainty, no Appendix Party shall have recourse to dispute settlement under this Article for any matter for which it shall not have recourse to dispute settlement under Chapter 28 (Dispute Settlement).

³ For greater certainty, if the Appendix Party to which a request for consultations is made does not reply within the time period specified in this subparagraph, it shall be deemed to have received the request seven days after the date on which the Appendix Party making the request for consultations transmitted that request.

concurrently to the other Parties through the overall contact points and enter into consultations in good faith.

- (c) Unless the Appendix Parties agree otherwise, they shall enter into consultations no later than 15 days after the date of receipt of the request.
 - (d) Unless the Appendix Parties agree otherwise, paragraphs 5 through 8 of Article 28.5 (Consultations) shall apply, *mutatis mutandis*,⁴ to the consultations under this paragraph.
- 4.
- (a) An Appendix Party that requested consultations under paragraph 3(a) may request, by means of a written notice addressed to the other Appendix Party, the establishment of a panel if the Appendix Parties fail to resolve the matter within a period of 30 days after the date of receipt of the request for consultations under paragraph 3(a).
 - (b) The complaining Appendix Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 27.5.1 (Contact Points).
 - (c) Paragraphs 3, 4 and 7 of Article 28.7 (Establishment of a Panel) shall apply, *mutatis mutandis*, to the establishment of a panel. Unless the Appendix Parties agree otherwise, the panel shall be composed in a manner consistent with this Article and, subject to the time frames set out in paragraph 6, the Rules of Procedure.
- 5.
- (a) Unless the Appendix Parties agree otherwise no later than 15 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:
 - (i) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under paragraph 4(a); and
 - (ii) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 28.17.4 (Initial Report) as applied pursuant to paragraph 8.
 - (b) If, in its request for the establishment of a panel, the complaining Appendix Party claims that a measure nullifies or impairs benefits within the meaning of Article 28.3.1(c) (Scope), the terms of reference shall so indicate.

⁴ For the purposes of this subparagraph, the references to “this Article” in paragraphs 6 and 7 of Article 28.5 (Consultations) shall be deemed to read “this paragraph”.

6. (a) A panel shall be composed of three members.
- (b) Unless the Appendix Parties agree otherwise, they shall apply the following procedures to compose a panel:
- (i) Within a period of 15 days after the date of delivery of the request for the establishment of a panel under paragraph 4(a), the complaining Appendix Party, on the one hand, and the responding Appendix Party, on the other, shall each appoint a panellist and notify each other of those appointments.
 - (ii) If the complaining Appendix Party fails to appoint a panellist within the period specified in subparagraph (b)(i), the dispute settlement proceedings shall lapse at the end of that period.
 - (iii) If the responding Appendix Party fails to appoint a panellist within the period specified in subparagraph (b)(i), the complaining Appendix Party shall select the panellist not yet appointed:
 - (A) from the responding Appendix Party's list established under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists);
 - (B) if the responding Appendix Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists), from the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists); or
 - (C) if the responding Appendix Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists) and no roster of panel chairs has been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), by random selection from a list of three candidates, who are not nationals of the complaining Appendix Party, nominated by the complaining Appendix Party,

no later than 20 days after the date of delivery of the request for the establishment of a panel under paragraph 4(a).
 - (iv) For appointment of the third panellist, who shall serve as chair:

- (A) the Appendix Parties shall endeavour to agree on the appointment of a chair;
 - (B) if the Appendix Parties fail to appoint a chair under subparagraph (b)(iv)(A) within a period of 15 days after the date of delivery of the request for the establishment of the panel under paragraph 4(a), the Appendix Parties shall select the chair by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) within a period of 20 days after the date of delivery of the request for the establishment of the panel; or
 - (C) if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (b)(iv)(A) and (B) cannot apply, each Appendix Party may nominate up to three candidates. The chair shall be randomly selected from those candidates that are nominated within a period of 20 days after the date of delivery of the request for the establishment of a panel under paragraph 4(a).
 - (D) The chair shall not be a national of either Appendix Party and any nationals of the Appendix Parties appointed to the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) shall be excluded from a selection process under subparagraph (b)(iv).
- (v) If a panellist selected under subparagraph (b)(iii) or (iv)(B) is unable to serve on the panel, the Appendix Parties shall meet no later than five days after the date of learning that the panellist is unavailable to select another panellist from among the remaining members of the list (in the case of subparagraph (b)(iii)) or the roster (in the case of subparagraph (b)(iv)(B)).
- (vi) If a panellist appointed under this paragraph resigns or becomes unable to serve on the panel, either during the course of proceeding or when the panel is reconvened under paragraph 13 or Article 28.21 (Compliance Review) as applied under paragraph 12, 17 or 18, a replacement panellist shall be appointed within 12 days in accordance with the selection procedures prescribed in this subparagraph for the appointment of the original panellist.

The replacement shall have all the powers and duties of the original panellist. The work of the panel shall be suspended pending the appointment of the replacement panellist, and all time frames set out in this Article and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

- (vii) Paragraphs 4, 5 and 10 of Article 28.9 (Composition of Panels) shall apply, *mutatis mutandis*,⁵ to the selection procedures.

7. All panellists shall meet the requirements set out in Article 28.10.1 (Qualifications of Panellists). An individual shall not serve as a panellist for a dispute in which that person has participated under Article 28.6 (Good Offices, Conciliation, and Mediation) as applied pursuant to paragraph 8.

8. Unless the Appendix Parties agree otherwise, Article 28.4 (Choice of Forum), Article 28.6 (Good Offices, Conciliation and Mediation), Article 28.12 (Function of Panels), Article 28.15 (Role of Experts), Article 28.16 (Suspension or Termination of Proceedings), Article 28.17 (Initial Report) and Article 28.18 (Final Report) shall apply, *mutatis mutandis*,⁶ to panel proceedings under this Article, except that:

- (a) with respect to Article 28.17.3 (Initial Report), the panel shall present an initial report to the Appendix Parties no later than 100 days after the date of the appointment of the last panellist;
- (b) with respect to Article 28.17.4 (Initial Report), the panel shall also make a determination as to whether the non-conformity or the nullification or impairment, if any, has materially affected the sale, offering for sale, purchase, transportation, distribution or use of originating motor vehicles from the complaining Appendix Party;
- (c) with respect to Article 28.17.7 (Initial Report), an Appendix Party may submit written comments to the panel on its initial report no later than 10 days after the presentation of the initial report or within another period as the Appendix Parties may agree; and

⁵ For the purposes of subparagraph (b)(vii), the reference to “this Article” in Article 28.9.10 (Composition of Panels) shall be deemed to read “this paragraph”.

⁶ For the purposes of this paragraph, the reference to “Article 28.7 (Establishment of a Panel)” in Article 28.6.4 (Good Offices, Conciliation and Mediation) shall be deemed to read “paragraph 4”, the references to “this Chapter” in Article 28.12.2 (Function of Panels) and Article 28.16.1 (Suspension or Termination of Proceedings) shall be deemed to read “this Article” and the reference to “paragraph 3” in Article 28.17.5 (Initial Report) shall be deemed to read “paragraph 8 (a)”.

- (d) with respect to Article 28.18.1 (Final Report), the panel shall present a final report to the Appendix Parties, including any separate opinions on matters not unanimously agreed, no later than 20 days after presentation of the initial report. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the Appendix Parties shall release the final report to the public.

9. Unless the Appendix Parties agree otherwise, paragraphs 1 and 2 of Article 28.19 (Implementation of Final Report) shall apply, *mutatis mutandis*,⁷ to the implementation of the final report.

10. (a) Unless the Appendix Parties agree otherwise, if in its final report the panel determines that:

- (i) (A) the measure at issue is inconsistent with an Appendix Party's obligations in this Agreement;
- (B) an Appendix Party has otherwise failed to carry out its obligations in this Agreement; or
- (C) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope);

and

- (ii) the non-conformity or the nullification or impairment that the panel has determined to exist has materially affected the sale, offering for sale, purchase, transportation, distribution or use of originating motor vehicles from the complaining Appendix Party,

the complaining Appendix Party may suspend the application to the responding Appendix Party of benefits in accordance with this paragraph, paragraph 11 and paragraphs 13 through 16.

- (b) Unless the Appendix Parties agree otherwise, the responding Appendix Party shall have a reasonable period of time in which to eliminate the non-conformity or nullification or impairment if it is not practicable to do so immediately.
- (c) Unless the Appendix Parties agree otherwise, the reasonable period of time shall be:

⁷ For the purposes of this paragraph, the reference to "this Chapter" in Article 28.19.1 (Implementation of Final Report) shall be deemed to read "this Article".

- (i) six months from the presentation of the final report under Article 28.18.1 (Final Report) as applied pursuant to paragraph 8; or
 - (ii) if elimination of the non-conformity or nullification or impairment requires amendment of laws or regulations adopted by the Diet of Japan or the Parliament of Canada, or the legislative body of local subdivision, 12 months from the presentation of the final report.
- 11. (a) The responding Appendix Party shall, if requested by the complaining Appendix Party, enter into negotiations with the complaining Appendix Party no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:
 - (i) the responding Appendix Party has notified the complaining Appendix Party that it does not intend to eliminate the non-conformity or the nullification or impairment; or
 - (ii) following the expiry of the reasonable period of time set out in paragraph 10(c), there is disagreement between the Appendix Parties as to whether the responding Appendix Party has eliminated the non-conformity or the nullification or impairment.
- (b) A complaining Appendix Party may suspend benefits in accordance with subparagraph (c) if the Appendix Parties have:
 - (i) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun in accordance with subparagraph (a); or
 - (ii) agreed on compensation but the complaining Appendix Party considers that the responding Appendix Party has failed to observe the terms of the agreement.
- (c) A complaining Appendix Party may, at any time after the conditions set out in subparagraph (b) are met in relation to the complaining Appendix Party, provide a written notice to the responding Appendix Party that it intends to suspend benefits under paragraph 14 or 15. The notice shall specify the level of benefits that the complaining Appendix Party proposes to suspend. The complaining Appendix Party may begin suspending benefits in accordance with paragraph 14 or 15 after the date on which it provides the notice.

- (d) Compensation and suspension of benefits shall be temporary measures. None of these measures is preferred to full implementation through elimination of the non-conformity or the nullification or impairment. Compensation and suspension of benefits shall only be applied until the responding Appendix Party has eliminated the non-conformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

12. Unless the Appendix Parties agree otherwise, if in its final report the panel determines that the non-conformity or the nullification or impairment that the panel has determined to exist under paragraph 10(a)(i) has not materially affected the sale, offering for sale, purchase, transportation, distribution or use of originating motor vehicles from the complaining Appendix Party, the procedures provided for in paragraphs 3 through 7 of Article 28.19 (Implementation of Final Report), Article 28.20 (Non-Implementation – Compensation and Suspension of Benefits) and Article 28.21 (Compliance Review) shall apply, *mutatis mutandis*.

13. (a) If the responding Appendix Party considers that:
- (i) the level of benefits proposed to be suspended under paragraph 15 is manifestly excessive; or
 - (ii) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may, no later than 30 days after the date of delivery of the written notice provided by the complaining Appendix Party under paragraph 11(c), request that the panel be reconvened to consider the matter. The responding Appendix Party shall deliver its request in writing to the complaining Appendix Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the Appendix Parties no later than 90 days after delivery of the request.

- (b) If the panel determines that the level of benefits the complaining Appendix Party proposes to suspend under paragraph 15 is manifestly excessive, it shall determine the level of benefits that the complaining Appendix Party may suspend. The panel shall determine:
- (i) the level of benefits of equivalent effect, as set out in Article 28.20.5 (Non-Implementation – Compensation and Suspension of Benefits); and
 - (ii) if the prevailing most-favoured-nation applied rate of customs duty imposed by the complaining Appendix Party on motor vehicles classified under heading 87.03 is zero per cent, the level of benefits equivalent to the effect of

application by the responding Appendix Party of its prevailing most-favoured-nation applied rate of customs duty on motor vehicles classified under heading 87.03.

14. Unless the panel has determined that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment, 30 days after the later of:

- (a) the date on which the complaining Appendix Party provides the notice under paragraph 11(c); or
- (b) if the responding Appendix Party requests that the panel be reconvened to consider the matter under paragraph 13(a)(ii), the date that the panel issues its determination under paragraph 13,

the complaining Appendix Party may increase the rate of customs duty on originating motor vehicles from the responding Appendix Party classified under heading 87.03 to a level not to exceed the prevailing most-favoured-nation applied rate of customs duty on those motor vehicles, for a period of up to 100 days following the 30-day period.

15. Unless the panel has determined that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment:

- (a) if the panel determines the level of benefits under paragraph 13(b), 30 days after the later of the date on which the complaining Appendix Party provides the notice under paragraph 11(c) or the date that the panel issues its determination under paragraph 13, the complaining Appendix Party may:
 - (i) increase the rate of customs duty on originating motor vehicles from the responding Appendix Party classified under heading 87.03 up to the level the panel has determined under paragraph 13(b)(i); or
 - (ii) if the prevailing most-favoured-nation applied rate of customs duty imposed by the complaining Appendix Party on motor vehicles under heading 87.03 is zero per cent, suspend the application to the responding Appendix Party of benefits with respect to originating goods from the responding Appendix Party:
 - (A) up to the level the panel has determined under paragraph 13(b)(i); and

(B) up to the level the panel has determined under paragraph 13(b)(ii) for a period of up to 100 days following the 30-day period,

and

(b) if the responding Appendix Party does not request that the panel be reconvened to consider the matter under paragraph 13(a)(i) or the panel has not determined the level under paragraph 13(b), after the 30-day period, the complaining Appendix Party may suspend the application to the responding Appendix Party of benefits up to the level the complaining Appendix Party has proposed to suspend under paragraph 11(c),

provided that the increased rate of customs duty applied to any goods under this paragraph shall not exceed the prevailing most-favoured-nation applied rate of customs duty on such goods.

16. As long as the complaining Appendix Party is applying the increased rate of customs duty under paragraph 14, it shall not suspend the application to the responding Appendix Party of benefits under paragraph 15.

17. Unless the Appendix Parties agree otherwise, Article 28.21 (Compliance Review) shall apply, *mutatis mutandis*,⁸ to compliance review.

18. If a final report is presented after the 10-year period beginning on the date of entry into force of this Agreement, the procedures provided for in paragraphs 3 through 7 of Article 28.19 (Implementation of Final Report), Article 28.20 (Non-Implementation – Compensation and Suspension of Benefits) and Article 28.21 (Compliance Review) shall apply, *mutatis mutandis*, in lieu of the procedures provided for in paragraphs 10 through 17.

Article 5⁹

1. The Appendix Parties hereby establish a special bilateral Committee on Motor Vehicles (Committee), composed of representatives of the relevant authorities of each Appendix Party. The Committee shall:

(a) monitor implementation of the obligations in this Agreement with respect to motor vehicles;

⁸ For the purposes of this paragraph, the references to “Article 28.20 (Non-Implementation – Compensation and Suspension of Benefits)” in Article 28.21 (Compliance Review) shall be deemed to read “paragraphs 11 and 13 through 16”.

⁹ No Appendix Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) or Article 4 for any matter arising under this Article.

- (b) consult to resolve issues affecting trade and investment between the Appendix Parties that an Appendix Party raises with respect to the development and implementation of measures relating to motor vehicles and motor vehicle parts;
- (c) facilitate increased cooperation with respect to emerging issues, including the manufacture, importation, sale and operation of motor vehicles using alternative fuels, and cooperation between the Appendix Parties with respect to issues concerning other markets;
- (d) monitor bilateral, regional and global market developments and trends in trade, investment, production, sales and distribution with respect to motor vehicles and motor vehicle parts;
- (e) provide opportunities for input from interested persons of the Appendix Parties on matters relevant to the Committee's work, as the Appendix Parties may agree; and
- (f) address other issues, if the Appendix Parties agree.

2. The Committee shall meet at mutually agreed times. Meetings shall take place in such locations and through such means as the Appendix Parties decide.