

From: Jon Johnson

To: Global Affairs Canada and the Canadian Automotive Industry

Date: June 10, 2020

Re: **CUSMA UNIFORM REGULATIONS – BETTER LATE THAN NEVER**

On June 3, the United States Trade Representative published a [draft](#) of the Uniform Regulations (Draft URs) for the Canada-United States-Mexico Agreement (CUSMA). These are of critical importance to the automotive industry looking for clarity in CUSMA's complex automotive rules of origin (ROO) as they come into effect on July 1.

The US implementing legislation provides for Uniform Regulations, as required by CUSMA, regarding the implementation of the CUSMA's ROO. But it also provides separately for the development of regulations and procedures for three critical components of the automotive ROO: the steel and aluminum purchase requirement, the labour value content (LVC) requirement, and alternative staging regimes. Fortunately, despite this disconnect on the US side, the Draft URs cover these three components.

The steel and aluminum products to which the purchase requirement applies are identified by Harmonized System subheadings. The Draft URs set out details respecting the required purchases, including that such purchases must include steel and aluminum for certain major stampings. The Draft URs also carry forward the "initial melting and mixing" requirement negotiated by congressional Democrats as a condition to approving the implementing legislation.

The formulations for the LVC requirement in the Draft URs are a distinct improvement over the jumble of footnotes in the CUSMA text. The Draft URs follow the formulations in the Interim Implementing Instructions published by the US Customs and Border Protection and correct errors in those formulations. The equivalent of the USD\$16 high-wage rate is fixed at CAD\$20.88 (USD\$1 equals CAD\$1.305), which is reasonable and means that Canadian calculations will not be subject to the vagaries of exchange rate fluctuations. How these formulations will work in practice remains to be seen.

The Draft URs provide more detail regarding alternative staging regimes, which provide longer phase-ins to higher CUSMA thresholds for limited portions of production. The Draft URs do not provide guidance as to how a producer applies for alternative staging. The Draft URs define "eligible vehicles" as "passenger vehicles or light trucks for which an alternative staging regime has been approved by the USMCA countries." Does this mean that all three CUSMA countries must approve of an alternative staging regime for a producer? Or are approvals done country by country?

The Draft URs clarify the CUSMA text with some greater specificity. For example, the CUSMA text barely mentions aftermarket parts, while the Draft URs provide that the higher thresholds for parts of passenger vehicles, light trucks and heavy trucks only apply to parts used as original equipment and not as aftermarket parts.

NAFTA's ROO require light duty vehicle producers to trace the values of parts on a light duty vehicle tracing list back to their entry into a NAFTA country. Heavy-duty vehicle producers must trace the value of listed non-originating engine and transmission parts regardless of whether the engine or transmission qualifies as originating. Despite strong US criticism of tracing, the CUSMA automotive ROO retain tracing for certain vehicles. For example, NAFTA heavy-duty vehicle tracing is retained for vehicles for the transport of 16 or more persons. For passenger vehicles with diesel engines, the CUSMA ROO combine the NAFTA heavy-duty vehicle tracing language with the NAFTA light duty vehicle tracing list.

The drafters of the NAFTA Uniform Regulations were well aware of the deficiencies of the NAFTA tracing language and developed an entire new code to make tracing workable. The Draft URs simply parrot the CUSMA language and fail to provide any guidance regarding application.

Once enacted, there will be ambiguities in the CUSMA Uniform Regulations that will require rectification. Fortunately, the concept of harmonizing the regulations in the three CUSMA countries respecting the application of the ROO makes this possible.

Amending a trade agreement to rectify a problem is extremely difficult given the political and regulatory complexity of US trade agreement procedures. Uniform Regulations, on the other hand, can be amended through simple agreement among the CUSMA parties.

As long as there exists a genuine desire to make the CUSMA ROO work for the benefit of the auto industries in all three CUSMA countries, the Uniform Regulations can be treated as a work-in-progress that can be constantly improved to provide ever greater clarity.

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