

From: Jon Johnson

To: Global Affairs Canada and the Canadian Automotive Industry

Date: July 17, 2020

Re: **HOW THE LABOUR VALUE DISCONNECT IN US CUSMA IMPLEMENTING LEGISLATION PLAYS OUT**

The US implementing legislation for the Canada-United States-Mexico Agreement (CUSMA) provides for Uniform Regulations as required by its Article 5.16 regarding the “interpretation, application, and administration” of the rules of origin (ROO). However, the legislation provides separately for the development of regulations and procedures for the labour value content (LVC) requirement of the CUSMA automotive ROO, which include Donald Trump’s \$16 an hour wages for Mexican factories.

We now know how this apparent disconnect plays out.

The text of Uniform Regulations released on June 3 is set out in the July 1 volume of the US Federal Register as an Appendix to a new Part 182 of Volume 19 of the US Code of Federal Regulations (CFR).

In that same Federal Register volume, the US Department of Labor published [an interim final rule](#) (IFR) on high-wage components of the labour value content requirements, which is open for comment until August 31.

The IFR states that the department “intends the regulations set forth in this IFR to be consistent with the Uniform Regulations.” Much of the IFR covers purely US administrative matters such as verification procedures to determine whether a vehicle complies with the LVC requirements.

However, the IFR also addresses substantive ROO matters. To take an example, the IFR establishes rules to determine how the “hourly base wage rate average,” an important component in the LVC calculation, is to be calculated. The reason given is that “[n]either the USMCA [i.e., CUSMA], its implementing legislation, nor the Uniform Regulations address how to calculate the hourly base wage rate ‘average’”.

A component of the LVC calculation is “HWM” which is the sum of “high-wage material expenditures used in production.” A “high-wage material” is a material (e.g., a part) produced in a “qualifying wage-rate plant,” namely a plant in a CUSMA country at which the “average base hourly wage” is at least US\$16 in the US, CA\$20.88 in Canada and MXN\$294.22 in Mexico. The expenditure on the part counts towards the vehicle’s LVC only if the part is produced in a “qualifying wage-rate plant.” Otherwise the expenditure doesn’t count.

The vehicle producer is responsible for certifying that its vehicle meets the required LVC requirement. To include the value of a part in its “HWM,” the vehicle producer must obtain sufficient information from its supplier respecting its average wages to establish that the part was produced in a “qualifying wage-rate plant.” For vehicles imported into the US, the vehicle producer’s certification is reviewed for errors or omissions by the Wage and Hour Division of the US Department of Labor.

While these expressions are defined in the Uniform Regulations, the rules for actually calculating an “average” are (evidently by default) set out in the IFR. These rules should have been set out in the trilaterally agreed Uniform Regulations as they clearly relate to the “interpretation, application, and administration” of the ROO. However, the US did consult to some extent with Global Affairs respecting these rules and other IFR provisions and did not proceed unilaterally in their development.

The Regulatory Impact Statement (RIS) in the IFR provides insight into potential impact of the LVC requirements. The RIS notes that single vehicle manufacturer can have hundreds of suppliers providing thousands of parts. The department does not have information on how many of the 4,723 US parts manufacturers export parts to Mexico and Canada, but the export of parts is “widespread.” While an assembler does not need wage information from every parts supplier, it needs information from enough parts suppliers to meet its LVC threshold.

There is a not-so-subtle “America First” component in the IFR. It states that the exclusion of benefits from wage calculations “strengthens the US\$16 per hour standard, which increases the likelihood that producers will use American plants to meet the LVC requirements, and in turn promotes more high-wage jobs for US auto industry workers.”

On a mildly positive note, US Customs and Border Protection recognizes in its June 30 implementing instructions that businesses will need time to adjust to the new CUSMA requirements. Accordingly, it says that it may “show restraint in enforcement during the six-month period” after CUSMA’s entry-into-force and will take into account “difficulties importers may face in complying with the new rules, as long as importers are making satisfactory progress toward compliance and are making a good faith effort to comply.”

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