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## **Circular 894-2019**

Transcribimos copia en idioma ingles (no hemos conseguido aun la versión en idioma español) del proyecto de Protocolo de Correcciones al Tratado de Libre Comercio T-MEC que fue suscrito el día de ayer, 10 de diciembre 2019 en Palacio Nacional.

### **PROTOCOL OF AMENDMENT TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA**

The Governments of the United States of America, the United Mexican States, and Canada;

Desiring to amend the Agreement between the United States of America, the United Mexican States, and Canada, done at Buenos Aires, on November 30, 2018 (hereinafter “the Agreement”),

**HAVE AGREED** to amend the Agreement as follows:

1.
  - A. *In Chapter 1 (Initial Provisions and General Definitions) after Article 1.2*

*insert a new article as follows and renumber the remaining articles, footnotes, and article references accordingly:*

### **“Article 1.3: Relation to Environmental and Conservation Agreements**

1. In the event of any inconsistency between a Party’s obligations under this Agreement and its respective obligations under the following multilateral environmental agreements (“covered agreements”):<sup>1</sup>

1. (a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended;
2. (b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;
3. (c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;
4. (d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;
5. (e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;
6. (f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and

1 For the purposes of this paragraph, (1) “covered agreements” shall encompass the multilateral environmental agreements provided herein and those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which the Party is party; and (2) a Party’s “obligations” shall be interpreted to reflect, *inter alia*, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

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(g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949,

a Party’s obligations under this Agreement shall not preclude the Party from taking a particular

measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade.

2. Pursuant to Article 34.3 (Amendments), the Parties may agree in writing to modify paragraph 1 to include any amendment to an agreement referred to therein, and any other environmental or conservation agreement.”.

*B. In Articles 14.1 (Definitions), 15.1 (Definitions), 17.1 (Definitions), 18.1 (Definitions) and 19.1 (Definitions), replace the references to “Article 1.4” with “Article 1.5”.*

*2. In Chapter 4 (Rules of Origin):*

*A. In Article 6.1 of the Appendix to Annex 4-B to Chapter 4 (Rules of Origin), insert the following footnote immediately after footnote 73, and renumber the remaining footnotes accordingly.*

“74 Notwithstanding any other provision of this Agreement, beginning seven years after entry into force of this Agreement, for steel to be considered as originating under this Article, all steel manufacturing processes must occur in one or more of the Parties, except for metallurgical processes involving the refinement of steel additives. Such processes include the initial melting and mixing and continues through the coating stage. This requirement does not apply to raw materials used in the steel manufacturing process, including steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys. Ten years after entry into force of this Agreement, the Parties shall consider appropriate requirements that are in the interests of all three Parties for aluminum to be considered as originating under this Article.”; *and*

*1. In Article 8.2(a) of the Appendix to Annex 4-B to Chapter 4 (Rules of Origin), insert the following text at the end of renumbered footnote 82 after “treatment” and before the end period :*

“, including requirements as provided in Article 403(1) of NAFTA 1994 and any corresponding Uniform Regulations”; *and*

1. *In Article 9 of the Appendix to Annex 4-B to Chapter 4 (Rules of Origin), add a period at the end of paragraph 1.*

3. *In Chapter 20 (Intellectual Property Rights):*

A. *In Article 20.36 (Patentable Subject Matter), delete paragraph 2, renumber the*

*remaining paragraphs and cross-references accordingly.*

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B. *In*

“40 Such conditions and limitations with respect to paragraph 3 may include,

among other things:

1. (i) limiting the applicability of paragraph 2 to a single patent term adjustment for each pharmaceutical product that has been granted marketing approval;

2. (ii) requiring the adjustment to be based on the first marketing approval granted to the pharmaceutical product in that Party;

3. (iii) limiting the period of the adjustment to a maximum of 5 years; and

4. (iv) if a Party makes available a period of additional *sui generis* protection, limiting the period of the additional

*ui generis*

protection to a maximum of 2 years.”.

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C. *Amend Article 20.47 (Regulatory Review Exception) to read as follows:*

“Without prejudice to the scope of, and consistent with, Article 20.39 (Exceptions), each Party shall adopt or maintain a regulatory review exception for pharmaceutical products that permits a

third person to make, use, sell, offer to sell, or import in the territory of that Party a product covered by a subsisting patent solely for purposes related to generating information to meet requirements for marketing approval for the product.”

D. *In Article 20.48 (Protection of Undisclosed Test or Other Data):*

“42 For greater certainty, a Party may deem that such person has provided consent if, after that person is directly notified by a third person that an unexpired applicable patent claiming the approved product or its approved method of use is invalid or is not infringed by the product for which the third person is seeking marketing approval, an infringement action is not initiated against the third person with respect to the patent within 45 days of the notification.”

“45 For greater certainty, the Parties understand that the United States may comply with the obligations in subparagraph (a) with respect to “the same or a similar product” through 21 U.S.C. §§ 355(c)(3)(E)(ii) and 355(j)(5)(F)(ii), 42 U.S.C. § 262(k)(7), and the regulations implemented at 21 C.F.R. 314.”; *and*

(iii) *in paragraph 2, delete subparagraph (a) and the subparagraph numbering “(b)”, and in renumbered footnote 47 replace “*  
Article

*Article 20.46 (Patent Term Adjustment for Unreasonable Curtailment), add*

*a new footnote 40 at the end of paragraph 3 to read as follows and renumber*

*remaining footnotes accordingly:*

*(i) in paragraph 1(a), after the fourth clause, add a new footnote 42 to*

*read as follows and renumber remaining footnotes accordingly:*

*(ii) at the end of paragraph 1(a) add a new footnote 45 to read as follows*

*and renumber remaining footnotes accordingly:*

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20.48.2(b) (Protection of Undisclosed Test or Other Data)” *with* “paragraph 2”.

1. *Delete*
2. *In*

“48 Annex 20-A applies to this Article.”; *and*  
(ii) *replace the text of paragraph 2 with the following text:*

“2. Further to paragraph 1, that Party may also provide:

1. (a) effective rewards for a successful assertion of the invalidity or non-infringement of the applicable patent;<sup>50</sup> and
2. (b) procedures, consistent with its obligations under this Chapter, to promote transparency by providing information regarding applicable patents and relevant periods of exclusivity for pharmaceutical products that have been approved in that Party.”.

1. *In*
2. *Relabel Annex 20-A as Annex 20-B, renumber cross-references accordingly,*

*and insert a new Annex 20-A to read as follows: “**ANNEX 20-A***

## **ANNEX TO ARTICLE 20.50**

1. As an alternative to implementing Article 20.50, and subject to paragraph 2, Mexico may instead maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

2. If Mexico maintains the system referred to in paragraph 1, Mexico shall ensure that in administrative proceedings under that system:

*Article 20.49 (Biologics) and renumber the remaining articles and*

*cross-references accordingly.*

*Article 20.50 (Measures Relating to the Marketing of Certain*

*Pharmaceutical Products):*

*(i) at the end of the title add a new footnote 48 to read as follows and*

*renumber remaining footnotes accordingly:*



*Article 20.90 (Final Provisions) in paragraph 1 replace “paragraphs 2 and*

*3” with “paragraphs 2, 3, and 4”.*

50 Effective rewards may include providing a period of marketing exclusivity to the first applicant that successfully asserts the invalidity or non-infringement of the patent in accordance with the Party’s marketing approval process.

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1. (a) a person of another Party that is directly affected by the proceeding is provided, whenever possible and, in accordance with domestic procedures, with reasonable notice of the initiation of a proceeding, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issue in question;

2. (b) a person of another Party that is directly affected by the proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person’s position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

3. (c) the procedures are in accordance with its law.”.

4. *In Chapter 23 (Labor):*

A. *In Article 23.3 (Labor Rights):*

(i) *amend the text of footnote 4 to read as follows:*

“4 A failure to comply with an obligation under paragraphs 1 or 2 must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is “in a manner affecting trade or investment between the Parties” if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.”; *and*

(ii) *immediately after footnote 4, insert a new footnote 5 to read as follows and renumber all footnotes accordingly:*

“5 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

*B. In Article 23.4 (Non-Derogation), immediately after renumbered footnote 8, insert a new footnote 9 to read as follows :*

“9 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

*C. In Article 23.5 (Enforcement of Labor Laws), immediately after renumbered footnote 11, insert a new footnote 12 to read as follows and renumber all footnotes accordingly :*

“12 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

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1. *In Article 23.6.1 (Forced or Compulsory Labor), delete the text that reads “, through measures it considers appropriate,” , delete the footnote at the end of the paragraph, and renumber remaining footnotes accordingly*

2. *In Article 23.7 (Violence Against Workers):*  
1. (i) *delete the text that reads “cases of”;*  
2. (ii) *delete the text that reads “through a sustained or recurring course of action or inaction”<sup>11</sup>, including the footnote at the end of that text;*  
3. (iii) *amend renumbered footnote 13 to read as follows:*

“13 For greater certainty, a failure is “in a manner affecting trade or investment between the Parties” if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.”; *and*

1.  
1. (iv) *insert a new footnote 14 to read as follows, and renumber remaining footnotes accordingly :*

“14 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

1. *In Article 23.17.8 (Labor Consultations), delete the text that reads as follows: “a meeting of the Commission pursuant to Article 31.5 (Commission, Good*

Offices, Conciliation, and Mediation) and thereafter request”.

5. *In Chapter 24 (Environment):*

1. *In Article 24.4 (Enforcement of Environmental Laws), insert a new footnote 5 to read as follows :*

“5 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

1. *In Article 24.8 (Multilateral Environmental Agreements):*

(i) *insert the following footnotes immediately after the title of the article:*

“6 A violation of Article 24.8.4 must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is “in a manner affecting trade or investment between the Parties” if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party. For greater certainty, a Party’s compliance with its respective

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obligations under a covered agreement shall only be subject to Article 24.29 (Environment Consultations) or Article 24.32 (Dispute Settlement) under this Agreement if the complaining Party is a party to the relevant covered agreement.

7 For purposes of dispute settlement, a panel shall presume that a failure is in a manner

affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”; *and*

(ii) *insert the following new text after paragraph 3, and renumber the remaining footnotes accordingly* :

4. Each Party shall adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfill its respective obligations under the following multilateral environmental agreements (“covered agreements”):<sup>8</sup>

1. (a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended;
2. (b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;
3. (c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;
4. (d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;
5. (e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;
6. (f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and
7. (g) the Convention for the Establishment of an Inter- American Tropical Tuna Commission, done at Washington, May 31, 1949.

5. Pursuant to Article 34.3 (Amendments), the Parties may agree in writing to modify paragraph 4 to include any amendment to an agreement referred to therein, and any other environmental or conservation agreement.”.

*C. In Article 24.9 (Protection of the Ozone Layer):*

<sup>8</sup> For purposes of this paragraph: (1) “covered agreements” shall encompass the multilateral environmental agreements provided herein and those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which the Party is party; and (2) a Party’s “obligations” shall be interpreted to reflect, *inter alia*, existing and future reservations,

exemptions, and exceptions applicable to it under the relevant agreement.

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(i) *in paragraph 1:*

1. (a) *replace* “such substances” *with* “substances controlled by the

Montreal Protocol”;

1. (b) *amend renumbered footnote 9 by deleting* “ozone depleting”;
2. (c) *amend renumbered footnote 11 to read as follows:*

“11 If compliance with this provision is not established pursuant to footnote 10, a violation of this provision must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is “in a manner affecting trade or investment between the Parties” if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.”; *and*

(d) *add a new footnote 12 at the end to read as follows, and renumber all footnotes accordingly:*

“12 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

(ii) *in paragraph 3 replace “ozone depleting” with “such” everywhere it appears.*

*D. In Article 24.10 (Protection of the Marine Environment from Ship Pollution): (i) amend renumbered footnote 15 to read as follows*

:

“15 If compliance with this provision is not established pursuant to footnote 14, a violation of this provision must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is “in a manner affecting trade or investment between the Parties” if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.”; *and*

(ii) *insert a new footnote 16 immediately after footnote 15 to read as follows and renumber the remaining footnotes accordingly* :

“16 For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”.

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1. *In Article 24.22 (Conservation and Trade), delete paragraph 2 and its associated footnotes and renumber the remaining footnotes accordingly* .

2. *In Article 24.32 (Dispute Resolution):*

1. (i) *in paragraph 1 delete the text that reads:*

“a meeting of the Commission pursuant to Article 31.5 (Commission, Good Offices, Conciliation, and Mediation) and thereafter request”;

1.

1. (ii) *in the chapeau to paragraph 2, replace “24.22 (Conservation and Trade)” with “24.8 (Multilateral Environmental Agreements)”;*  
*and*

2. (iii) *in paragraph 2(a) replace “CITES” with “the relevant multilateral environmental agreement”.*

6. *In Chapter 30 (Administrative and Institutional Provisions):*

A.

B.

*amend Article 30.6.3(b)(ii) (The Secretariat) to read as follows:*

*“(ii) panels established under Chapter 31 (Dispute Settlement), including under Annex 31-A (United-States-Mexico Facility-Specific Rapid Response Labor Mechanism) and Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Mechanism);”; and*

*amend Article 30.6.3(c) (The Secretariat) to read as follows:*

*“(c) be responsible for the payment of remuneration to and expenses of panels and committees established under Section D of Chapter 10 (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and panelists, assistants, and experts involved in dispute settlement proceedings under Chapter 31 (Dispute Settlement), including under Annex 31-A (United-States-Mexico Facility-Specific Rapid Response Labor Mechanism) and Annex 31-B (Canada-Mexico Facility-Specific Rapid Response Mechanism); and”.*



7. *In Chapter 31 (Dispute Settlement):*

1. *In Article 31.5 (Commission, Good Offices, Conciliation, and Mediation):*

1. (i) *delete “Commission” in the title and revise references to the title accordingly;*
2. (ii) *delete paragraphs 1 through 5; and*
3. (iii) *renumber the remaining paragraphs and footnotes accordingly.*

4. *In Article 31.6 (Establishment of a Panel):*

(i) *replace the text in paragraph 1 with the following text:*

**“Article 31.6: Establishment of a Panel**

1. *If the consulting Parties fail to resolve the matter within:*

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1. (a) 30 days after a Party has delivered a request for consultations under Article 31.4 (Consultations) in a matter regarding perishable goods;
2. (b) 75 days after a Party has delivered a request for consultations under Article 31.4 (Consultations); or
3. (c) another period as the consulting Parties may decide,

a consulting Party may request the establishment of a panel by means of a written notice delivered to the responding Party through its Section of the Secretariat.”; *and*

(ii) *replace the text in paragraph 4 with the following text:*

“4. On delivery of the request, the panel is established.”.

C. *In Article 31.8 (Roster and Qualifications of Panelists), replace the text of paragraph 1 with the following text :*

“1. The Parties shall establish, by the date of entry into force of this Agreement, and maintain a roster of up to 30 individuals who are willing to serve as panelists. Each Party shall designate up to 10 individuals. The Parties shall endeavor to achieve consensus on the appointments. If the Parties are unable to achieve consensus by one month after the date of entry into force of this Agreement, the roster shall be comprised of the designated individuals. The roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. If a Party fails to designate its individuals to the roster, the Parties may still request the establishment of panels under Article 31.6 (Establishment of a Panel). The Rules of Procedure, which shall be established by the date of entry into force of this Agreement, shall provide for how to compose a panel in such circumstances. Members of the roster may be reappointed. In the event that an individual is no longer able or willing to serve as a panelist, the relevant Party shall designate a replacement. The Parties shall endeavor to achieve consensus on the appointment. If the Parties are unable to achieve consensus by one month after the date the replacement is designated, the individual shall be added to the roster.”

*D. In Article 31.9 (Panel Composition), amend the texts in paragraphs 1 and 2 to read as follows :*

“1. If there are two disputing Parties, the following procedures shall apply:

1. (a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.
2. (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to decide on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.
3. (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select an individual from the roster who is not a citizen of that

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Party. The complaining Party shall notify the responding Party of the selection no later than the next working day.

1. (d) Within 15 days of selection of the chair, each disputing Party shall select two

panelists who are citizens of the other disputing Party.

2. (e) If a disputing Party fails to select its panelists within that period, those panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

3. (f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Party shall select two individuals from the roster who are citizens of the complaining Party. The complaining Party shall notify the responding Party of the selections no later than the next working day.

2. If there are more than two disputing Parties, the following procedures apply:

1. (a) The panel shall comprise five members, unless the disputing Parties agree to a panel comprised of three members.

2. (b) The disputing Parties shall endeavor to decide on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel and, if the disputing Parties are unable to decide on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of that Party or those Parties.

3. (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is not a citizen of either complaining Party. The complaining Parties shall notify the responding Party of the selection no later than the next working day.

4. (d) Within 15 days of selection of the chair, the responding Party shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party and the complaining Parties shall select two panelists who are citizens of the responding Party.

5. (e) If a disputing Party fails to select a panelist within that period, that panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (d).

6. (f) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure, the complaining Parties, or the complaining Party selected to represent them, shall select an individual from the roster who is a citizen of one of the complaining Parties. The complaining Parties shall notify the

responding Party of the selection no later than the next working day.”

*E. In Article 31.11 (Rules of Procedure for Panels):*

1. (i) *number the existing paragraph as paragraph 1; and*
2. (ii) *insert a paragraph 2 to reads as follows:*

2. The Rules of Procedure shall include rules of evidence, which shall ensure that:

1. (a) the disputing Parties have the right to submit testimony in person or via declaration, affidavit, report, teleconference, or videoconference, and the disputing Parties and the panel the right to test the veracity of such testimony;
2. (b) the disputing Parties have the right to submit anonymous testimony and redacted evidence, in appropriate circumstances;
3. (c) the panel may request, on its own initiative or at the request of a disputing Party, that a Party make available documents or other information relevant to the dispute, and may take a failure to comply with such request into account in its decision; and
4. (d) a panel shall accept the disputing Parties' stipulations in advance of the hearing.

*F. At the end of the chapter, insert Annex 31-A (United States-Mexico Facility- Specific, Rapid Response Labor Mechanism) and Annex 31-B (Canada-Mexico Facility-Specific, Rapid Response Labor Mechanism) to read as follows :*

**“ANNEX 31-A  
FACILITY-SPECIFIC RAPID RESPONSE LABOR MECHANISM**

**Article 31-A.1: Scope and Purpose**

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.

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

#### **Article 31-A.2: Denial of Rights**

The Mechanism shall apply whenever a Party (the “complainant Party”) has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the “respondent Party”) under this Agreement (a “Denial of Rights”).<sup>1</sup>

#### **Article 31-A.3: Lists of Rapid Response Labor Panelists**

1. The Parties shall establish and maintain three lists of Rapid Response Labor Panelists who are willing to commit to being generally available to serve as Labor Panelists for the Mechanism.

2. By the date of entry into force of this Agreement, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non- nationals of either Mexico or the United States. If a Party fails to designate its individuals, the Parties may still request the establishment of panels under Article 31-A.5 (Requests for Establishment of Rapid Response Labor Panel). The Rules of Procedure shall provide for how to compose a panel in such circumstances. Thereafter, at most six months from the date of entry into force of this Agreement, the Parties shall expand each list to at least five

individuals each.

3. The Labor Panelists shall be appointed for a minimum of four years or until the Parties constitute new lists. Labor Panelists may be reappointed.

1. Each Labor Panelist shall have:

1. (a) expertise and experience in labor law and practice, and with the application of standards and rights as recognized by the International Labor Organization;
2. (b) be selected on the basis of objectivity, reliability, and sound judgment;
3. (c) be independent of, and not affiliated with or take instructions from, a Party; and

(d) comply with the Code of Conduct established by the Commission for dispute settlement under this chapter.

1. If a list falls below five individuals within the four-year term, the

relevant Party shall promptly appoint replacements. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

1 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).

6. At the conclusion of the first four year term, and every four years thereafter, the Labor Panelists shall submit a report to the Parties commenting on the functioning of the Mechanism. The Parties shall make the report public.

7. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 30.2. The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

#### **Article 31-A.4: Requests for Review and Remediation**

1. If a Party has a domestic process for determining whether to invoke this mechanism and that process has started regarding a Covered Facility in the other Party, that Party shall notify the other Party within five business days of initiating such process.<sup>2</sup>

2. 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 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.

3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights.

4. If the respondent Party chooses to conduct its review, it shall report in writing the results of

the review and any remediation to the complainant Party at the end of the 45-day period.

5. If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party's determination and immediately may request a panel verification and determination pursuant to Article 31-A.5.

6. If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights

2 The United States intends to establish such a domestic process under which the United States government will strive to complete initial reviews of complaints received by the government about a Covered Facility in the other Party in 30 days.

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without interrupting trade.

7. If the Parties agree on a course of remediation, the respondent Party shall undertake the remediation by the date agreed to by the Parties and no remedy may be imposed by the complainant Party until the expiration of the agreed upon period.

8. If, after the agreed-upon date for remediation, the Parties disagree as to whether the Denial of Rights has been remediated, the complainant Party may provide written notice to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receiving such notice, request a determination from a panel as to whether the Denial of Rights persists pursuant to Article



31-A.5. The complainant Party may not impose remedies until the Panel makes its determination.

9. If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article 31-A.5.

10. At any point during the 10-day consultation period, the complainant Party may request that the panel be established, and the panel may proceed to confirm the petition. However, the panel may not issue a request for verification until the 10-day period expires.

#### **Article 31-A.5: Requests for Establishment of Rapid Response Labor Panel**

1. If, after the conditions precedent for the establishment of a panel under Article 31-A.4 are met, the complainant Party continues to have a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, that Party may submit to the Secretariat a petition:

1. (a) requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights; or

2. (b) requesting the establishment of a panel to determine whether there has been a Denial of Rights.

1. The Secretariat shall transmit the petition to the respondent Party.

2. The Secretariat shall within three business days from the date of the

request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.

#### **Article 31-A.6: Confirmation of Petition**

A panel established under Article 31-A.5 shall have five business days after it is constituted to confirm that the petition:

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1. (a) identifies a Covered Facility;
2. (b) identifies the respondent Party's laws relevant to the alleged Denial of Rights; and
3. (c) states the basis for the complainant Party's good faith belief that there is a Denial of Rights.

#### **Article 31-A.7: Verification**

1. Upon confirmation that the petition contains the relevant information, the panel shall issue a request for verification to the respondent Party. The panel shall formulate an appropriate request for verification, based on the circumstances and the nature of the allegations in the complainant Party's petition and any other submissions from the Parties.

2. In cases in which the respondent Party has concluded under Article 31- A.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.

3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition a document establishing the results of the respondent Party's investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.

4. In cases in which the respondent Party has determined under Article 31-A.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party's submission.

5. The respondent Party shall transmit a copy of the complainant Party's petition to the owner of the Covered Facility at issue.

6. The respondent Party shall reply within seven business days whether it consents to the verification request. If the respondent Party does not respond within that time it will be deemed to have refused the request.

7. If the respondent Party agrees to the verification, the panel shall conduct the verification within 30 days after receipt of the request by the

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respondent Party. Observers from both Parties may accompany the panel in any on-site verification if both Parties so request.

8. If the respondent Party agrees to the verification but there is interference with the verification or the panel is otherwise unable to conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter, the panel may take the Party's conduct into account in making its determination.

9. If the respondent Party refuses the request for a verification or does not respond within the

period provided for in paragraph 6, the complainant Party may request that the panel make a determination as to whether there is a Denial of Rights.

10. If the complainant Party makes a petition under Article 31-A.5.1(b), the panel, at its discretion, may request a verification if it considers that a verification is necessary to assist them in making their determination and follow the procedures set out as for a verification request made under this Article.

### **Article 31-A.8: Panel Process and Determination**

1. The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights within:

(a) 30 days after conducting a verification; or

(b) 30 days after it is constituted if there has not been a verification.

2. Before making its determination, the panel shall provide both Parties an opportunity to be heard.

3. In making its determination, the panel shall take the respondent Party's refusal to allow a verification into account.

4. If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights. The panel shall also provide its views on the severity of any denial of rights and, to the extent possible, identify the person or persons responsible for the Denial of Rights.

5. The panel's determination shall be in writing and shall be made public.

#### **Article 31-A.9: Consultations and Remediation**

After receipt of a determination by a panel that there has been a Denial of Rights, the complainant Party may impose remedies after providing written notice to the respondent Party at least 5 business days in advance. A respondent Party can request that consultations be held during that 5 day period.

#### **Article 31-A.10: Remedies**

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1. Once the conditions precedent to the imposition of remedies have been met, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. The complainant Party shall select a remedy pursuant to paragraph 2 that is proportional to the severity of the Denial of Rights and shall take the panel's views on the severity of the Denial of Rights into account when selecting such remedies.

2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.

3. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods; or the imposition of penalties on such goods or services.

4. In cases where a Covered Facility or a Covered Facility owned or controlled by the same

person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination on at least two occasions, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods.

5. After the imposition of remedies, the Parties shall continue to consult on an ongoing basis in order to ensure the prompt remediation of the Denial of Rights and the removal of remedies.

6. If, as a result of those ongoing consultations, the Parties reach agreement that the Denial of Rights has been remediated, the complainant Party shall remove all remedies immediately. If the Parties are in disagreement as to whether the Denial of Rights has been remediated, the respondent Party may request an opportunity to demonstrate to the panel that it has taken action to remediate the Denial of Rights. The panel shall make a new determination within 30 days after receipt of the respondent Party's request, consistent with the procedures set out in Article 31-A.8. The complainant Party may request a new verification consistent with the procedures set out in Article 31-A.7.

7. If the panel determines that the Denial of Rights has not been remediated, the respondent Party may not request another determination for 180 days, and any remedies shall remain in place until the Parties agree that remediation has occurred or a panel determines that the Denial of Rights has been remediated.

#### **Article 31-A.11: Good Faith Use of the Mechanism**

If one Party considers that the other has not acted in good faith in its use of this Mechanism, either with regard to an invocation of the Mechanism itself or an imposition of remedies that are excessive in light of the severity of the Denial of Rights found by the panel, that Party may have recourse to the dispute settlement mechanism under Chapter 31. If a dispute settlement panel finds that a Party did not act in good faith in its use of this Mechanism, within 45 days from receipt of the final panel report under Article 31.17.5 (Panel Report), the Parties shall endeavor to agree to the resolution of the dispute. If

the Parties are unable to resolve the dispute, the complainant Party may elect either to prevent the responding Party from using this Mechanism for a period of two years or another remedy permitted under Chapter 31.

#### **Article 31-A.12: Expansion of Claims**

In recognition of the importance of ensuring full compliance with the Labor Chapter; the commitment of the Parties to trade only in goods produced in compliance with such Chapter; if one of the Parties is found to have breached its obligations under Article 23.3 (Labor Rights) or Article 23.5 (Enforcement of Labor Laws) by a panel established under Article 31.6 (Establishment of a Panel), the complainant Party in that case may use this Mechanism with regard to the relevant law or laws at issue in that dispute for a period of two years or until the conclusion of the next joint review under Article 34.7 (Review and Term Extension), whichever is later.

#### **Article 31-A.13: Review of Priority Sectors**

The Parties shall review the list of priority sectors on an annual basis and determine whether to add any sectors to the list.

#### **Article 31-A.14: Cooperation to Promote Compliance**

Each Party shall cooperate with, and support efforts by, Covered Facilities to operate in a way to avoid a determination of a Denial of Rights.

#### **Article 31-A.15: Definitions**

For the purposes of this Annex:

**Covered Facility** means a facility in the territory of a Party that:

1. (i) produces a good or supplies a service traded between the Parties; or
2. (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party,

and is a facility in a Priority Sector;

**Party or Parties** means Mexico and the United States singly or collectively;

**Priority Sector** means a sector that produces manufactured goods,<sup>3</sup> supplies services, or involves mining.

<sup>3</sup> For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement.

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## **ANNEX 31-B**

### **CANADA-MEXICO FACILITY-SPECIFIC RAPID RESPONSE LABOR MECHANISM**

#### **Article 31-B.1: Scope and Purpose**

1. Canada 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-B.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 Canada.

### **Article 31-B.2: Denial of Rights**

The Mechanism shall apply whenever a Party (the “complainant Party”) has a good faith basis belief that workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations of the other Party (the “respondent Party”) under this Agreement (a “Denial of Rights”).<sup>1</sup>

### **Article 31-B.3: Lists of Rapid Response Labor Panelists**

1. The Parties shall establish and maintain three lists of Rapid Response Labor Panelists who are willing to commit to being generally available to serve as Labor Panelists for the Mechanism.

2. By the date of entry into force of this Agreement, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non-nationals of either Mexico or Canada. If a Party fails to designate its individuals, the Parties may still request the establishment of panels under Article 31-B.5

(Requests for Establishment of Rapid Response Labor Panel). The Rules of Procedure shall provide for how to compose a panel in such circumstances. Thereafter, at most six months from the date of entry into force of this Agreement, the Parties shall expand each list to at least five individuals each.

3. The Labor Panelists shall be appointed for a minimum of four years or until the Parties constitute new lists. Labor Panelists may be reappointed.

4. Each Labor Panelist shall have:

1 With respect to Canada, 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 Canada Industrial 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).

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1. (a) expertise and experience in labor law and practice, and with the application of standards and rights as recognized by the International Labor Organization;  
2. (b) be selected on the basis of objectivity, reliability, and sound judgment;  
3. (c) be independent of, and not affiliated with or take instructions from, a Party; and  
4. (d) comply with the Code of Conduct established by the Commission for dispute settlement under this chapter.

5. If a list falls below five individuals within the four-year term, the relevant Party shall promptly appoint replacements. With respect to the joint list, the Parties shall appoint replacements by consensus within 30 days from the date the list has fallen below the required number.

6. At the conclusion of the first four year term, and every four years thereafter, the Labor Panelists shall submit a report to the Parties commenting on the functioning of the Mechanism. The Parties shall make the report public.

7. The Parties shall address the compensation of Labor Panelists in the Rules of Procedure established in accordance with Article 30.2. The Parties shall also provide for reasonable expenses, including logistical support and personnel as appropriate, associated with verification efforts and the drafting of determinations.

#### **Article 31-B.4: Requests for Review and Remediation**

1. If a Party has a domestic process for determining whether to invoke this mechanism and that process has started regarding a Covered Facility in the other Party, that Party shall notify the other Party within five business days of initiating such process.<sup>2</sup>

2. 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 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-B.5.

3. Upon delivering the request to the respondent Party, the complainant Party may delay final settlement of customs accounts related to entries of goods from the Covered Facility. Settlement of such accounts must resume immediately upon an agreement by the Parties that there is no Denial of Rights or a finding by a panel that there is no Denial of Rights.<sup>3</sup>

2 Canada intends to establish such a domestic process under which the Canadian government will strive to complete initial reviews of complaints received by the government about a Covered Facility in the other Party in 30 days.

3 For Canada, this paragraph will be applied with the necessary changes to conform with Canadian law. 21

4. If the respondent Party chooses to conduct its review, it shall report in writing the results of the review and any remediation to the complainant Party at the end of the 45-day period.

5. If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party's determination and immediately may request a panel verification and determination pursuant to Article 31-B.5.

6. If the respondent Party has determined there is a Denial of Rights, the Parties shall consult in good faith for a period of 10 days and shall endeavor to agree upon a course of remediation that will remediate the Denial of Rights without interrupting trade.

7. If the Parties agree on a course of remediation, the respondent Party shall undertake the remediation by the date agreed to by the Parties and no remedy may be imposed by the complainant Party until the expiration of the agreed upon period.

8. If, after the agreed-upon date for remediation, the Parties disagree as to whether the Denial of Rights has been remediated, the complainant Party may provide written notice to the respondent Party of its intention to impose remedies at least 15 days prior to imposing remedies. The respondent Party may, within 10 days of receiving such notice, request a determination from a panel as to whether the Denial of Rights persists pursuant to Article 31-B.5. The complainant Party may not impose remedies until the Panel makes its determination.

9. If the Parties cannot agree on a course of remediation at the end of the 10-day period, the complainant Party may request a panel verification and determination pursuant to Article

31-B.5.

10. At any point during the 10-day consultation period, the complainant Party may request that the panel be established, and the panel may proceed to confirm the petition. However, the panel may not issue a request for verification until the 10-day period expires.

#### **Article 31-B.5: Requests for Establishment of Rapid Response Labor Panel**

1. If, after the conditions precedent for the establishment of a panel under Article 31-B.4 are met, the complainant Party continues to have a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility, that Party may submit to the Secretariat a petition:

1. (a) requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility's compliance with the law in question and determine whether there has been a Denial of Rights; or
2. (b) requesting the establishment of a panel to determine whether there has been a Denial of Rights.

1. The Secretariat shall transmit the petition to the respondent Party.
2. The Secretariat shall within three business days from the date of the request for

establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.

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#### **Article 31-B.6: Confirmation of Petition**

A panel established under Article 31-B.5 shall have five business days after it is constituted to

confirm that the petition:

1. (a) identifies a Covered Facility;
2. (b) identifies the respondent Party's laws relevant to the alleged Denial of Rights; and
3. (c) states the basis for the complainant Party's good faith belief that there is a Denial of Rights.

#### **Article 31-B.7: Verification**

1. Upon confirmation that the petition contains the relevant information, the panel shall issue a request for verification to the respondent Party. The panel shall formulate an appropriate request for verification, based on the circumstances and the nature of the allegations in the complainant Party's petition and any other submissions from the Parties.

2. In cases in which the respondent Party has concluded under Article 31-B.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.

3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition a document establishing the results of the respondent Party's investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31- B.4. The complainant Party may respond to the respondent Party's submission.

4. In cases in which the respondent Party has determined under Article 31-B.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, the panel shall request the respondent Party to submit, within 10 business days of the request a

document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-B.4. The complainant Party may respond to the respondent Party's submission.

5. The respondent Party shall transmit a copy of the complainant Party's petition to the owner of the Covered Facility at issue.

6. The respondent Party shall reply within seven business days whether it consents to the verification request. If the respondent Party does not respond within that time it will be deemed to have refused the request.

7. If the respondent Party agrees to the verification, the panel shall conduct the verification within 30 days after receipt of the request by the respondent Party. Observers

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from both Parties may accompany the panel in any on-site verification if both Parties so request.

8. If the respondent Party agrees to the verification but there is interference with the verification or the panel is otherwise unable to conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter, the panel may take the Party's conduct into account in making its determination.

9. If the respondent Party refuses the request for a verification or does not respond within the period provided for in paragraph 6, the complainant Party may request that the panel make a determination as to whether there is a Denial of Rights.

10. If the complainant Party makes a petition under Article 31-B.5.1(b), the panel, at its discretion, may request a verification if it considers that a verification is necessary to assist them in making their determination and follow the procedures set out as for a verification request

made under this Article.

#### **Article 31-B.8: Panel Process and Determination**

1. The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights within:

(a) 30 days after conducting a verification; or

(b) 30 days after it is constituted if there has not been a verification.

2. Before making its determination, the panel shall provide both Parties an opportunity to be heard.

3. In making its determination, the panel shall take the respondent Party's refusal to allow a verification into account.

4. If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights. The panel shall also provide its views on the severity of any denial of rights and, to the extent possible, identify the person or persons responsible for the Denial of Rights.

5. The panel's determination shall be in writing and shall be made public.

#### **Article 31-B.9: Consultations and Remediation**



After receipt of a determination by a panel that there has been a Denial of Rights, the complainant Party may impose remedies after providing written notice to the respondent Party at least 5 business days in advance. A respondent Party can request that consultations be held during that 5 day period.

#### **Article 31-B.10: Remedies**

1. Once the conditions precedent to the imposition of remedies have been met, the complainant Party may impose remedies that are the most appropriate to remedy the Denial of Rights. The complainant Party shall select a remedy pursuant to paragraph 2 that is proportional to the severity of the Denial of Rights and shall take the panel's views on the severity of the Denial of Rights into account when selecting such remedies.

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2. Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.

3. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination, remedies may include suspension of preferential tariff treatment for such goods; or the imposition of penalties on such goods or services.

4. In cases where a Covered Facility or a Covered Facility owned or controlled by the same person producing the same or related goods or providing the same or related services has received a prior Denial of Rights determination on at least two occasions, remedies may include suspension of preferential tariff treatment for such goods; the imposition of penalties on such goods or services; or the denial of entry of such goods.

5. After the imposition of remedies, the Parties shall continue to consult on an ongoing basis in

order to ensure the prompt remediation of the Denial of Rights and the removal of remedies.

6. If, as a result of those ongoing consultations, the Parties reach agreement that the Denial of Rights has been remediated, the complainant Party shall remove all remedies immediately. If the Parties are in disagreement as to whether the Denial of Rights has been remediated, the respondent Party may request an opportunity to demonstrate to the panel that it has taken action to remediate the Denial of Rights. The panel shall make a new determination within 30 days after receipt of the respondent Party's request, consistent with the procedures set out in Article 31-B.8. The complainant Party may request a new verification consistent with the procedures set out in Article 31-B.7.

7. If the panel determines that the Denial of Rights has not been remediated, the respondent Party may not request another determination for 180 days, and any remedies shall remain in place until the Parties agree that remediation has occurred or a panel determines that the Denial of Rights has been remediated.

#### **Article 31-B.11: Good Faith Use of the Mechanism**

If one Party considers that the other has not acted in good faith in its use of this Mechanism, either with regard to an invocation of the Mechanism itself or an imposition of remedies that are excessive in light of the severity of the Denial of Rights found by the panel, that Party may have recourse to the dispute settlement mechanism under Chapter 31. If a dispute settlement panel finds that a Party did not act in good faith in its use of this Mechanism, within 45 days from receipt of the final panel report under Article 31.17.5 (Panel Report), the Parties shall endeavor to agree to the resolution of the dispute. If the Parties are unable to resolve the dispute, the complainant Party may elect either to prevent the responding Party from using this Mechanism for a period of two years or another remedy permitted under Chapter 31.

#### **Article 31-B.12: Expansion of Claims**

In recognition of the importance of ensuring full compliance with the Labor Chapter; the commitment of the Parties to trade only in goods produced in compliance with such Chapter; if one of the Parties is found to have breached its obligations under Article 23.3 (Labor Rights) or Article 23.5 (Enforcement of Labor Laws) by a panel established under

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Article 31.6 (Establishment of a Panel), the complainant Party in that case may use this Mechanism with regard to the relevant law or laws at issue in that dispute for a period of two years or until the conclusion of the next joint review under Article 34.7 (Review and Term Extension), whichever is later.

### **Article 31-B.13: Review of Priority Sectors**

The Parties shall review the list of priority sectors on an annual basis and determine whether to add any sectors to the list.

### **Article 31-B.14: Cooperation to Promote Compliance**

Each Party shall cooperate with, and support efforts by, Covered Facilities to operate in a way to avoid a determination of a Denial of Rights.

### **Article 31-B.15: Definitions**

For the purposes of this Annex:

**Covered Facility** means a facility in the territory of a Party that:

1. (i) produces a good or supplies a service traded between the Parties; or
2. (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party,

and is a facility in a Priority Sector;

**Party or Parties** means Mexico and Canada singly or collectively;

**Priority Sector** means a sector that produces manufactured goods,<sup>4</sup> supplies services, or involves mining.”.

This Protocol shall enter into force on the date on which the Agreement enters into force. The English, French, and Spanish texts of this Protocol are equally authentic.

4 For greater certainty, manufactured goods include, but are not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement.

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**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

**DONE** in triplicate at  
Mexico City, Mexico, on December 10, 2019.

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**Robert E. Lighthizer**  
**United States Trade Representative**  
**FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

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**Chrystia Freeland**  
**Deputy Prime Minister and Minister of Intergovernmental Affairs FOR THE**  
**GOVERNMENT OF CANADA**

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**Jesús Seade Kuri**  
**Under Secretary for North America and Chief Trade Negotiator for North America FOR**  
**THE GOVERNMENT OF THE UNITED MEXICAN STATES**