

**Appendix B to Tariff Schedule of Canada
(Appendix 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(s) means any good(s) classified under heading 87.03; and

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

2. No Party other than an Appendix Party shall have recourse to dispute settlement under Chapter BBB (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 BBB (Dispute Settlement) for nullification or impairment in the sense of Article BBB.3.1(c) for any matter arising under Article 3 or 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 an 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, during the transition period only, a transitional safeguard measure on originating motor vehicles from the other Appendix Party classified under heading 87.03 in accordance with the provisions set out in Chapter HH (Trade Remedies), with the following procedural modifications:

- (a) In lieu of the definition of transition period provided in Article HH.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 tariff elimination period for the good set out in Annex BB-X (Tariff Elimination Schedule).

- (b) In lieu of Article HH.4.2 (Standards for a Transitional Safeguard Measure), the following shall apply: Neither Appendix Party may 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 authorities of the importing Appendix Party determine, in conformity with the procedures provided for in Article HH.5 (Investigation Procedures and Transparency Requirements), that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of the transitional safeguard measure, including the period of initial application and any extension thereof, shall not exceed five years.

- (c) Articles HH.4.4 and 6 (Standards for a Transitional Safeguard Measure) shall not apply.
- (d) In lieu of Articles HH.7.1 and 2 (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 liberalizing compensation in the form of concessions having 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 such 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 liberalizing compensation within 30 days after the consultations begin, the Appendix Party whose goods are subject to the transitional safeguard measure may suspend the application of substantially equivalent concessions to 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 BBB.1 shall apply, *mutatis mutandis*.¹
2. With respect to any matter described in Article BBB.3² 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 Articles BBB.4 through BBB.20.

¹ For the purposes of this paragraph, the references to “Article BBB.5.1”, “Article BBB.7” and “Article BBB.7.1” 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 BBB (Dispute Settlement).

3. (a) An Appendix Party may request in writing consultations with the other Appendix Party with respect to any matter described in paragraph 2. In a request for consultations, the requesting Appendix Party 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 to all other Parties through the Contact Points designated in accordance with Article AAA.5 (Administrative and Institutional Provisions -- Contact Points).
- (b) The Appendix Party to which a request for consultations is made shall, unless the Appendix Parties agree otherwise, reply to the request in writing within seven days after the date of its receipt. That Appendix Party shall circulate the reply to all other Parties and enter into consultations in good faith.
- (c) Unless the Appendix Parties agree otherwise, they shall enter into consultations within a period of no more than 15 days after the date of receipt of the request for consultations.
- (d) Unless the Appendix Parties agree otherwise, Articles BBB.5.5 through 5.7 and 5.8 shall apply, *mutatis mutandis*³, to the consultations under this paragraph.
4. (a) The Appendix Party that requested consultations pursuant to paragraph 3(a) may request, by means of a written notification addressed to the other Appendix Party, the establishment of a panel if the Appendix Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations.
- (b) At the same time, the complaining Appendix Party shall circulate the request to all other Parties through the contact points designated in accordance with Article AAA.5 (Administrative and Institutional Provisions -- Contact Points).
- (c) Articles BBB.7.3, 7.4 and 7.8 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 within 15 days from the delivery of the request for the establishment of the 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 pursuant to

³ For the purposes of this paragraph, the references to “paragraph 1” in Article BBB.5.5 shall be deemed to read “subparagraph (a)”, and the references to “this Article” in Articles BBB.5.6 and 5.7 shall be deemed to read “this paragraph”.

paragraph 4(a); and

- (ii) make findings and determinations, and any requested recommendations, together with its reasons therefor, as provided for in Article BBB.16.4 as applied pursuant to paragraph 8.
 - (b) If, in its panel request, the complaining Appendix Party has claimed that a measure nullifies or impairs benefits in the sense of Article BBB.3.1(c), the terms of reference shall so indicate.
6. (a) The panel shall comprise three members.
- (b) Unless they agree otherwise, the Appendix Parties shall apply the following procedures in selecting a panel:
- (i) Within 15 days of the delivery of the request for the establishment of a panel, the complaining Appendix Party, on the one hand, and the responding Appendix Party, on the other, shall 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 set out in subparagraph (b)(i), the panellist not yet appointed shall be chosen by the complaining Appendix Party:
 - (A) from the responding Appendix Party's list established under Article BBB.10.11;
 - (B) if the responding Appendix Party has not established a list under Article BBB.10.11, from the roster of panel chairs established pursuant to Article BBB.10.3; or
 - (C) if no roster of panel chairs has been established pursuant to Article BBB.10.3, by random selection from a list of three candidates, who are not nationals of the complaining Appendix Party.
- within 20 days of the delivery of the request for the establishment of a panel under paragraph 4(a).
- (iv) For appointment of the chair of the panel:
 - (A) The Appendix Parties shall endeavour to agree on the appointment of a chair of the panel.

- (B) If the Appendix Parties fail to appoint a chair pursuant to subparagraph (b)(iv)(A) within 15 days of the delivery of the request for the establishment of the panel under paragraph 4(a), the Appendix Parties shall select the third panellist by random selection from the roster established pursuant to Article BBB.10.3 within 20 days of the delivery of the request for the establishment of the panel. The third panellist shall serve as chair.
- (C) If a roster has not been established pursuant to Article BBB.10.3, and subparagraphs (b)(iv)(A) and (B) cannot apply, each Appendix Party may nominate up to three candidates and the third panellist shall be randomly selected from those candidates that have been nominated within 20 days after the date of delivery of the request for the establishment of a panel under paragraph 4(a).
- (D) Unless the Appendix Parties agree otherwise, the chair of the panel shall not be a national of either Appendix Party.
- (v) If a panellist selected under subparagraph (b)(iii) or (iv)(B) is unable to serve on the panel, the Appendix Parties shall meet within five days 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 at such time as the panel is reconvened pursuant to paragraph 13 or Article BBB.20 (Compliance Review) as applied pursuant to paragraph 12, 17 or 18, a replacement panellist shall be appointed within 12 days in accordance with the selection procedures prescribed in subparagraph (b) for the appointment of the original panellist and 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 relevant 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; and
- (vii) Articles BBB.9.3 through 9.6 and 9.9 shall apply, *mutatis mutandis*⁴, to the selection procedures.

7. All panellists shall meet the requirements set out in Article BBB.10.1. An individual may not serve as a panellist for a dispute in which he or she has participated under

⁴ For the purposes of this paragraph, the references to “paragraph 2(d)(i)-(iii) and (v)” in Articles BBB.9.4 through 9.6 shall be deemed to read “subparagraph (b)(iv)(A) and (C)”, and the reference to “this Article” in Article BBB.9.9 shall be deemed to read “this paragraph”.

Article BBB.6 (Good Offices, Conciliation, and Mediation) as applied pursuant to paragraph 8.

8. Unless the Appendix Parties agree otherwise, Articles BBB.4 (Choice of Forum), BBB.6 (Good Offices, Conciliation and Mediation), BBB.11 (Functions of Panels), BBB.14 (Role of Experts), BBB.15 (Suspension or Termination of Proceedings), BBB.16 (Initial Report) and BBB.17 (Final Report) shall apply, *mutatis mutandis*⁵, to panel proceedings under this Article, except that:
 - (a) with respect to Article BBB.16.3, the panel shall present to the Appendix Parties an initial report within 100 days after the last panellist is appointed;
 - (b) with respect to Article BBB.16.4, 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 BBB.16.7, each Appendix Party may submit written comments to the panel on its initial report within 10 days of the presentation of the report or within such other period as the Appendix Parties may agree; and
 - (d) with respect to Article BBB.17.1, the panel shall present a final report to the Appendix Parties, including any separate opinions on matters not unanimously agreed, within 20 days of presentation of the initial report. The Appendix Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.
9. Unless the Appendix Parties agree otherwise, Articles BBB.18.1 and 18.2 shall apply, *mutatis mutandis*⁶, 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) a measure at issue is inconsistent with an Appendix Party's obligations under this Agreement;
 - (B) an Appendix Party has otherwise failed to carry out its obligations under this Agreement; or
 - (C) an Appendix Party's measure is causing nullification or impairment in the sense of Article BBB.3.1(c); and

⁵ For the purposes of this paragraph, the reference to "Article BBB.7 (Establishment of a Panel)" in Article BBB.6.4 shall be deemed to read "paragraph 4", and the references to "this Chapter" in Articles BBB.11.2 and 15.1 shall be deemed to read "this Article".

⁶ For the purposes of this paragraph, the reference to "this Chapter" in Article BBB.18.1 shall be deemed to read "this Article".

- (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 comply immediately.
- (c) Unless the Appendix Parties agree otherwise, the reasonable period of time shall be:
 - (i) 6 months from the presentation of the panel's final report to the Appendix Parties under Article BBB.17.1 (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 panel's final report.

- 11. (a) The responding Appendix Party shall, if so requested by the complaining Appendix Party, enter into negotiations with the complaining Appendix Party within 15 days of receipt of such request, with a view to developing mutually acceptable compensation, in circumstances where:
 - (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 the application to the responding Appendix Party of benefits in accordance with subparagraph (c) if the Appendix Parties have:
 - (i) been unable to agree on compensation within 30 days after the period for developing such 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 written notice to the responding Appendix Party that it intends to suspend the application to the responding Appendix Party of 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 suspend the application to the responding Appendix Party of benefits in accordance with paragraph 14 or 15 after the date on which it provides the notice.
 - (d) Compensation and the 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 such time as the responding Appendix Party has eliminated the non-conformity or the nullification or impairment, or 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 Articles BBB.18.3 through 18.7, BBB.19 (Non-Implementation-Compensation and Suspension of Benefits) and BBB.20 (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, within 30 days after the complaining Appendix Party provides notice 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 delivery of the request and shall present its determination to the Appendix Parties within 90 days after delivery of the request.
- (b) If the panel determines that the level of benefits proposed to be suspended 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 BBB.19.5; and
- (ii) if the prevailing most-favoured-nation applied rate of customs duty of the complaining Appendix Party on motor vehicles classified under heading 87.03 is zero, 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 the date on which:

- (a) 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 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 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 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 of the complaining Appendix Party on motor vehicles under heading 87.03 is zero, 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 Party of benefits under this paragraph.
- 17. Unless the Appendix Parties agree otherwise, Article BBB.20 (Compliance Review) shall apply, *mutatis mutandis*⁷, 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 Articles BBB.18.3 through 18.7, BBB.19 (Non-Implementation-Compensation and Suspension of Benefits) and BBB.20 (Compliance Review) shall apply, *mutatis mutandis*, in lieu of the procedures provided for in paragraphs 10 through 17.

Article 5⁸

- 1. The Appendix Parties hereby establish a special bilateral Committee on Motor Vehicles (hereinafter referred to as the “Committee”), comprising the representatives of the relevant authorities of each Appendix Party. The Committee shall:
 - (a) monitor implementation of the obligations of this Agreement with respect to motor vehicles;
 - (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;

⁷ For the purposes of this paragraph, the references to “Article 19 (Non-Implementation-Compensation and Suspension of Benefits)” in Article BBB.20 shall be deemed to read “paragraphs 11 and 13 through 16”.

⁸ No Appendix Party shall have recourse to dispute settlement under Chapter BBB (Dispute Settlement) or Article 4 for any matter arising under this Article.

- (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.