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## **APPENDIX D – MOTOR VEHICLE TRADE UNITED STATES**

### **Article 1**

1. For the purposes of this Appendix,

**Appendix Party** means either Japan or the United States, as the case may be;

**motor vehicle(s)** means any good(s) classified under headings 87.03 or 87.04;

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

**TBT Agreement** means the WTO Agreement on Technical Barriers to Trade.

The definitions of the terms used in this Appendix contained in Annex 1 of the TBT Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into this Appendix and shall form part of this Appendix *mutatis mutandis*.

2. Articles 2, 3 and 4 apply to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures of central government bodies that may affect trade in motor vehicles between the Appendix Parties, except as provided in paragraphs 4 and 5.

3. All references in this Appendix to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any addition to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

4. This Appendix does not apply to technical specifications prepared by governmental entities for production or consumption requirements of such entities but such specifications are covered by Chapter 15 (Government Procurement).

5. This Appendix does not apply to sanitary and phytosanitary measures but such measures are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

6. No Party other than an Appendix Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Appendix or to dispute settlement under Article 7 for any matter arising under this Agreement. No Appendix Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for nullification or impairment in the sense of Article 28.3.1(c) for any matter arising under Articles 6, 7 or 8 of this Appendix.

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## **Article 2**

1. Except in those urgent circumstances referred to in Articles 2.10 and 5.7 of the TBT Agreement, for any technical regulation or conformity assessment procedure that would require a substantial change in motor vehicle design or technology, each Appendix Party shall provide an interval between the date of publication of the technical regulation or conformity assessment procedure and the date on which compliance with the measure becomes mandatory that is usually not less than 12 months.

2. Each Appendix Party shall ensure that its advisory committees and similar groups established by, or operated under the direction of, an agency of the central level of government to provide to it advice or recommendations<sup>1</sup> by consensus that could result in regulations or other measures that would materially affect the certification, importation, sale, distribution or functioning of motor vehicles, are established and operated in a transparent manner. To that end, each Appendix Party shall ensure that, in accordance with its domestic laws and regulations:

- (a) timely notice of the formation of advisory committees and similar groups is published;
- (b) timely notice of meetings of such advisory committees and similar groups is published;
- (c) meetings of such advisory committees and similar groups are open to the public;
- (d) interested persons have opportunities to appear before or file statements with such advisory committees and similar groups; and
- (e) detailed meeting minutes and other documents made available to or prepared by such advisory committees and similar groups are made available to the public.<sup>2,3</sup>

3. (a) Each Appendix Party shall, no later than the date on which it first supplies information in writing to a non-governmental expert<sup>4</sup> or interested person for

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<sup>1</sup> For the purposes of this paragraph, advisory committees and similar groups do not include any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the central level of government or wholly of full-time, or permanent part-time, officers or employees of the central level of government and elected officials of the sub-central level of government, acting in their official capacities, nor any group that meets with an official where advice is sought from the attendees on an individual basis and not from the group as a whole.

<sup>2</sup> The United States complies with its obligations in this paragraph by establishing and operating advisory committees and similar groups under the Federal Advisory Committee Act of 1972, P.L. 92-463, *codified at* 5 U.S.C. App., and its amendments and implementing regulations.

<sup>3</sup> With regard to advisory committees and similar groups that are not established by, but are operated under the direction of, an agency of the central level of government, Japan satisfies the obligations of subparagraphs (b) to (e) by requiring such advisory committees and similar groups to undertake contractual obligations to act in accordance with those subparagraphs.

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comment,<sup>5</sup> regarding a technical regulation, standard or conformity assessment procedure affecting motor vehicles that it is developing, make the same information publicly available, such as by publishing the information on an official website.

- (b) Following the provision of information under subparagraph (a), the Appendix Party providing such information shall, on request of the other Appendix Party, provide additional available information with respect to the technical regulation, standard or conformity assessment procedure concerned, such as information regarding other regulatory approaches under consideration and analysis of the impact of that regulatory measure and other approaches.<sup>6</sup>
4. (a) Each Appendix Party shall endeavour to periodically<sup>7</sup> conduct post-implementation reviews of its significant regulations setting forth technical regulations, standards or conformity assessment procedures that affect motor vehicles.
- (b) For the purposes of this paragraph,

**post-implementation review** means an examination of the effectiveness of a technical regulation, standard or conformity assessment procedure after it has been implemented, including, as appropriate, an assessment of whether it achieves its stated objectives, the burden it imposes, and its compatibility with other technical regulations, standards, or conformity assessment procedures the Appendix Party has adopted.<sup>8</sup>

### Article 3

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<sup>4</sup> For the purposes of this paragraph, “non-governmental expert” does not include any employee of an independent administrative institution in Japan who has expertise on the technical regulation, standard or conformity assessment procedure affecting motor vehicles that Japan is developing and has legal obligations concerning confidentiality equivalent to those of a government expert.

<sup>5</sup> The United States first supplies information to a non-governmental expert or interested person for comment when it publishes a notice in the *Federal Register* requesting comment on a proposed regulation or amendment.

<sup>6</sup> For greater certainty, this paragraph applies with respect to technical regulations, standards and conformity assessment procedures that an Appendix Party is developing through its relevant domestic processes or bodies, including by transposing or incorporating the work of an intergovernmental standardizing body, but does not apply with respect to those which an Appendix Party is developing with the other Appendix Party or non-Appendix Parties in an intergovernmental standardizing body.

<sup>7</sup> **Periodically** means normally at least once no later than ten years after the date a measure is adopted, and as appropriate thereafter.

<sup>8</sup> For greater certainty, this paragraph shall not require an Appendix Party, when conducting a post-implementation review, to assess the compatibility of a technical regulation, standard or conformity assessment procedure with technical regulations, standards or conformity assessment procedures adopted by a local government body.

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1. The Appendix Parties shall cooperate bilaterally, including in their activities under *the Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted and/or Be Used on Wheeled Vehicles* (hereinafter referred to as the “1998 Agreement”), to harmonize standards for motor vehicle environmental performance and safety.

2. Each Appendix Party shall ensure that technical regulations related to motor vehicles are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade, to the extent provided in Article 2.2 of the TBT Agreement. For this purpose, technical regulations related to motor vehicles shall not be more trade-restrictive than necessary to fulfill a legitimate objective taking account of the risks non-fulfillment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; and protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology, or intended end-uses of products.

3. Neither Appendix Party shall prevent or unduly delay the placing on its market of a motor vehicle product on the ground that the product incorporates a new technology or a new feature which has not yet been regulated, unless the Appendix Party finds, based on scientific or technical information, that this new technology or new feature poses a risk for human health or safety, or the environment.<sup>9,10</sup>

4. When an Appendix Party decides to refuse the placing on its market or require the withdrawal from its market of a motor vehicle product on the ground that the product incorporates a new technology or a new feature posing a risk for human health or safety, or the environment, the Appendix Party shall immediately notify the importer of the product of its decision. The notification shall include all relevant scientific or technical information.

5. Each Appendix Party shall adopt or maintain efficient procedures for the temporary importation of motor vehicles incorporating new technologies or new features for purposes of demonstration, display or road testing within its territory. Each Appendix Party shall facilitate the entry of such vehicles into its territory in accordance with these procedures regardless of whether they comply with otherwise applicable standards or technical regulations.<sup>11</sup>

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<sup>9</sup> For greater certainty, scientific or technical information may include evaluations based on the investigation of consumer complaints or accidents, testing or data from manufacturers on performance of the technology in the field.

<sup>10</sup> For greater certainty, nothing in this paragraph prevents an Appendix Party from requiring that a motor vehicle comply with its human health or safety, or environmental requirements that, without regard to whether the product incorporates a new technology or a new feature, generally apply to such a product.

<sup>11</sup> This paragraph shall not prevent an Appendix Party from requiring a motor vehicle imported under such procedures to meet minimum levels of safety and environmental performance commensurate with the use of motor vehicles imported for the above-mentioned purposes.

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6. (a) With respect to requirements of a safety regulation under the Road Transport Vehicle Act (Act NO. 185, 1951) of Japan that the competent authority of Japan identified as of April 1, 2015,<sup>12</sup> where the competent authority of Japan finds that a requirement of the U.S. FMVSS is no less stringent than the requirement under the Road Transport Vehicle Act to which it corresponds, originating motor vehicles from the United States classified under heading 87.03 that comply with such a requirement of the U.S. FMVSS shall be deemed to comply with that requirement under the Road Transport Vehicle Act. Such treatment shall apply unless that requirement under the Road Transport Vehicle Act is modified and, as modified, is substantially more stringent than previously.<sup>13</sup> In that event, Japan shall continue to provide such treatment for a period that is usually not less than 12 months after the date on which the requirement under the Road Transport Vehicle Act is modified.
- (b) Japan shall permit the importation and use of any motor vehicle part necessary to repair or service an originating motor vehicle from the United States classified under heading 87.03 that, at the time of the motor vehicle's initial inspection in Japan, was deemed, pursuant to subparagraph (a), to comply with a requirement under the Road Transport Vehicle Act, provided that the part meets the same specifications of the part originally installed in the motor vehicle at the time of its initial inspection.
- (c) For the purposes of this paragraph,

**U.S. FMVSS** means Federal Motor Vehicle Safety Standard of the United States; and

**initial inspection** means the inspection that motor vehicles must undergo in order to be used for transport in Japan in accordance with the Road Transport Vehicle Act.

#### **Article 4**

1. Japan shall not adopt any requirement under the Preferential Handling Procedure that is not applied on the date of the entry into force of the Agreement with respect to Japan and the United States and that increases the burden, including the complexity and cost, for importers

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<sup>12</sup> The requirements of a safety regulation under the Road Transport Vehicle Act of Japan that the competent authority of Japan identified as of April 1, 2015, for the purposes of subparagraph (a) are those not based on a regulation adopted under the Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions (hereinafter referred to as "UN Regulation"), a regulation established under the 1998 Agreement (hereinafter referred to as "GTR"), or a U.S. FMVSS.

<sup>13</sup> With respect to any subsequent modifications to those requirements under the Road Transport Vehicle Act of Japan that the competent authority of Japan identified as of April 1, 2015, Japan will consider whether the requirement, as modified, is based on a UN Regulation or GTR and substantially more stringent than the previous requirement as a result.

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under the Preferential Handling Procedure, except for requirements related to new technical regulations or amendments to existing technical regulations that are prepared, adopted, and applied in a manner consistent with Article 3.2 after the above date or for an increase of fees and charges commensurate with the cost of services rendered under the Preferential Handling Procedure.

2. Japan shall ensure that the Preferential Handling Procedure and its relevant regulations are adopted and applied in a manner that does not preclude the eligibility of motor vehicles imported under the Preferential Handling Procedure for any financial incentive measures of central government bodies<sup>14</sup> with respect to motor vehicles.<sup>15</sup>

3. For the purposes of this Article,

**Preferential Handling Procedure** means a simplified conformity assessment procedure conducted exclusively for imported motor vehicles up to a designated number for each type, in accordance with the notification of the Minister of Land, Infrastructure, Transport and Tourism.

## **Article 5**

To the extent that an Appendix Party maintains and applies any laws or regulations at the central level of government with respect to zoning applicable to the establishment of distribution or repair facilities for motor vehicles, it shall ensure such laws or regulations are applied in a transparent and non-discriminatory manner.<sup>16</sup>

## **Article 6**

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 headings 87.03 or 87.04 in accordance with the provisions set out in Chapter 6 (Trade Remedies), with the following procedural modifications:

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

**transition period** means the period beginning on the date of entry into force of this Agreement with respect to Japan and the United States and ending on the date

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<sup>14</sup> For greater certainty, a financial incentive measure of a central government body includes such a measure that is implemented by other entities, including local government bodies.

<sup>15</sup> For greater certainty, this paragraph does not apply with respect to motor vehicles for which documents for the Preferential Handling Procedure are received by the relevant authority prior to the date of entry into force of this Agreement with respect to Japan and the United States.

<sup>16</sup> The United States does not have laws or regulations with respect to zoning described in this paragraph.

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that is 10 years after the end of the tariff elimination period for the good set out in Annex 2-D (Tariff Elimination Schedule).

- (b) In lieu of paragraph 2 of Article 6.4 (Standards for a Transitional Safeguard Measure), the following shall apply:

Neither Appendix Party may apply a transitional safeguard measure for a period exceeding two 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 6.5 (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 four years.

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

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

(i) An Appendix Party applying a transitional safeguard measure shall consult with the other Appendix Party in order to mutually agree on appropriate trade 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.

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## Article 7

1. For the purposes of this Article, the definitions set out in Article 28.1 shall apply, *mutatis mutandis*.<sup>17</sup>
2. With respect to any matter described in Article 28.3<sup>18</sup> 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 28.4 through 28.20.
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 Parties through the Contact Points designated in accordance with Article 27.5 (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 28.5.5 through 5.7 and 5.8 shall apply, *mutatis mutandis*<sup>19</sup>, 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 Parties through the contact points designated in accordance with Article 27.5 (Administrative and Institutional Provisions -- Contact Points).

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<sup>17</sup> For the purposes of this paragraph, the references to “Article 28.5.1”, “Article 28.7” and “Article 28.7.1” shall be deemed to read “paragraph 3”, “paragraph 4” and “paragraph 4(a)”, respectively.

<sup>18</sup> For greater certainty, no Appendix Party shall have recourse to dispute settlement under this Article for any matter for which it shall not have recourse to dispute settlement under Chapter 28 (Dispute Settlement).

<sup>19</sup> For the purposes of this paragraph, the references to “paragraph 1” in Article 28.5.5 shall be deemed to read “subparagraph (a)”, and the references to “this Article” in Articles 28.5.6 and 5.7 shall be deemed to read “this paragraph”.

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- (c) Articles 28.7.3, 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 paragraph 4(a); and
    - (ii) make findings and determinations, and any requested recommendations, together with its reasons therefor, as provided for in Article 28.16.4 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 28.3.1(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 28.10.11; or
      - (B) if the responding Appendix Party has not established a list under Article 28.10.11, from the roster of panel chairs established pursuant to Article 28.10.3; or
      - (C) if no roster of panel chairs has been established pursuant to Article

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28.10.3, by random selection from a list of three candidates, who are not nationals of the complaining Appendix Party, nominated by 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 28.10.3 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 28.10.3, 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 subparagraphs (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 10(b), 12 or 17, 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

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- (vii) Articles 28.9.3 through 9.6 and 9.9 shall apply, *mutatis mutandis*<sup>20</sup>, to the selection procedures.

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

8. Unless the Appendix Parties agree otherwise, Articles 28.4 (Choice of Forum), 28.6 (Good Offices, Conciliation and Mediation), 28.11 (Functions of Panels), 28.14 (Role of Experts), 28.15 (Suspension or Termination of Proceedings), 28.16 (Initial Report) and 28.17 (Final Report) shall apply, *mutatis mutandis*<sup>21</sup>, to panel proceedings under this Article, except that:

- (a) with respect to Article 28.16.3, the panel shall present to the Appendix Parties an initial report within 120 days after the last panellist is appointed;
- (b) with respect to Article 28.16.4, 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 28.16.7, 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 28.17.1, 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 seven days thereafter, subject to the protection of confidential information.

9. Unless the Appendix Parties agree otherwise, Articles 28.18.1 and 18.2 shall apply, *mutatis mutandis*<sup>22</sup>, to the implementation of the final report.

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

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<sup>20</sup> For the purposes of this paragraph, the references to “paragraph 2(d)(i)-(iii) and (v)” in Articles 28.9.4 through 9.6 shall be deemed to read “subparagraph (b)(iv)(A) and (C)”, and the reference to “this Article” in Article 28.9.9 shall be deemed to read “this paragraph”.

<sup>21</sup> For the purposes of this paragraph, the reference to “Article 28.7 (Establishment of a Panel)” in Article 28.6.4 shall be deemed to read “paragraph 4” and the references to “this Chapter” in Articles 28.11.2 and 15.1 shall be deemed to read “this Article”.

<sup>22</sup> For the purposes of this paragraph, the reference to “this Chapter” in Article 28.18.1 shall be deemed to read “this Article”.

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

the complaining Appendix Party may suspend the application to the responding Appendix Party of benefits or take action in accordance with paragraphs 11 through 17.

- (b) 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 subparagraph (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 28.18.3 through 18.7, 28.19 (Non-Implementation-Compensation and Suspension of Benefits) and 28.20 (Compliance Review) shall apply, *mutatis mutandis*.

11. If a final report that contains a determination described in paragraph 10(a) is presented to the Appendix Parties under paragraph 8(d) on or after the date on which customs duties imposed by the complaining Appendix Party on originating motor vehicles from the responding Appendix Party classified under heading 87.03, Harmonized Tariff Schedule of the United States ("HTSUS") 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 have begun to be reduced in accordance with Annex 2-D, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i), the complaining Appendix Party may increase the rate of customs duty on those motor vehicles:

- (a) to a level not to exceed the prevailing most-favored-nation applied rate of customs duty on those motor vehicles, for a period of up to 90 days after the release of the final report under paragraph 8(d); and,
- (b) thereafter, to a level not to exceed the prevailing most-favored-nation applied rate of customs duty on those motor vehicles, less 50 percent of the difference between that rate and the rate of customs duty on those motor vehicles set out in Annex 2-D, as adjusted to take into account any delay of implementation of the

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tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i),

provided that the complaining Appendix Party shall not suspend the application to the responding Appendix Party of benefits under this paragraph following a determination by the panel under paragraph 13.

12. (a) At any time after release of a final report that contains a determination described in paragraph 10(a), the complaining Appendix Party may provide written notice to the responding Appendix Party that it intends to suspend the application to the responding Appendix Party of benefits, or to take action under paragraph 14(a)(i). The notice shall specify the level of benefits that the complaining Appendix Party proposes to suspend under paragraph 14(a)(ii) or (b), or the level of benefits for the purposes of taking action under paragraph 14(a)(i). The complaining Appendix Party may request that the panel be reconvened to determine the level of benefits up to which it may suspend under paragraph 14(a)(ii) or (b), or the level of benefits for the purposes of taking action under paragraph 14(a)(i), at any time after it provides a notice under this paragraph.
- (b) If the responding Appendix Party considers that the level of benefits proposed to be suspended or that has been suspended under paragraph 14(a)(ii) or (b), or the level of benefits for the purposes of taking action under paragraph 14(a)(i), is manifestly excessive, or that it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist, it may request that the panel be reconvened to consider the matter.
- (c) Regardless of whether the complaining Appendix Party has provided a notice under subparagraph (a), the responding Appendix Party may request that the panel be reconvened to determine the level of benefits under paragraph 13:
  - (i) if the complaining Appendix Party has increased the rate of customs duty under paragraph 11; or
  - (ii) for the purposes of the determination of the length of time by which the complaining Appendix Party may delay implementation of the tariff elimination period under paragraph 14(a)(i).
- (d) An Appendix Party shall deliver any request to reconvene the panel in writing to the other Appendix Party.

13. Unless the Appendix Parties agree otherwise, the panel shall reconvene as soon as possible after delivery of a request under paragraph 12 and shall present to the Appendix Parties its determination of the level of benefits that the complaining Appendix Party may suspend within 90 days after it reconvenes. The panel shall determine the level of benefits that the complaining Appendix Party may suspend under paragraph 14(a)(ii) or (b), or the level of benefits for the purposes of taking action under paragraph 14(a)(i), as the sum of:

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- (a) the level of benefits of equivalent effect, as set out in Article 28.19.5; and
- (b) the level of benefits referred to in subparagraph (a) multiplied by the ratio of the average of the total value of annual imports of originating motor vehicles from the responding Appendix Party classified under heading 87.03 into the complaining Appendix Party in the most recent four years to the average of the total value of annual imports of originating motor vehicles from the complaining Appendix Party classified under heading 87.03 into the responding Appendix Party in the most recent four years, to the extent that the sum of this amount and the level of benefits referred to in subparagraph (a) does not exceed the amount that is the sum of 3.75 percent of the average of the total value of annual imports of originating motor vehicles from Japan classified under heading 87.03 into the United States in the most recent four years and 37.5 percent of the average of the total value of annual imports of originating motor vehicles from Japan classified under HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 and HTSUS 8704.90.00 into the United States in the most recent four years.

14. Following a determination by the panel under paragraph 13, the complaining Party may:

- (a) (i) if a final report that contains a determination described in paragraph 10(a) is presented to the Appendix Parties under paragraph 8(d) prior to the date on which customs duties imposed by the complaining Appendix Party on originating motor vehicles from the responding Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 will begin to be reduced in accordance with Annex 2-D, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to this subparagraph<sup>23</sup>, delay

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<sup>23</sup> If, as of the date immediately preceding the day on which customs duties imposed by the complaining Appendix Party on originating motor vehicles from the responding Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 will begin to be reduced in accordance with Annex 2-D, taking into account any delay of the tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i), a final report that contains a determination described in paragraph 10(a) has been presented to the Appendix Parties under paragraph 8(d), but the panel has not determined that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment and a mutually satisfactory solution has not been reached, and the determination by the panel under paragraph 13 is issued subsequent to that date, the complaining Appendix Party may:

- (a) for a period of up to 90 days from the date on which the first reduction in the rate of customs duty imposed by the complaining Appendix Party on originating motor vehicles from the responding Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.00, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 would otherwise have occurred, increase the rate of customs duty on those motor vehicles to a level not to exceed the prevailing most-favored-nation applied rate of customs duty on those motor vehicles;
- (b) if the date on which the panel issues its determination under paragraph 13 is more than 90 days after the date on which the first reduction in the rate of customs duty imposed by the complaining Appendix Party on those

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implementation of the tariff elimination period<sup>24</sup> of originating motor vehicles from the responding Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00, in accordance with the following<sup>25</sup>:

- (A) the length of time by which the complaining Appendix Party may delay implementation of the tariff elimination period shall be the product of the period of non-conformity or nullification or impairment and the level of benefits determined by the panel under paragraph 13, divided by the amount that is the sum of 3.75 percent of the average of the total value of annual imports of originating motor vehicles from Japan classified under heading 87.03 into the United States in the most recent four years and 37.5 percent of the average of the total value of annual imports of originating motor vehicles from Japan classified under HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 and HTSUS 8704.90.00 into the United States in the most recent four years; and

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motor vehicles would otherwise have occurred, beginning on the date that is 90 days after that date, increase the rate of customs duty on those motor vehicles as set out in paragraph 11(b); and

- (c) following a determination by the panel under paragraph 13, suspend the application of benefits as set out in paragraph 14(a)(ii).

<sup>24</sup> In delaying implementation of the tariff elimination period, the complaining Appendix Party may delay each scheduled reduction in the tariff, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to this subparagraph, by the length of time determined under this subparagraph.

<sup>25</sup> If, as of the date immediately preceding the day on which customs duties imposed by the complaining Appendix Party on originating motor vehicles from the responding Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 will begin to be reduced in accordance with Annex 2-D, taking into account any delay of the tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i), the panel has determined the level of benefits under paragraph 13, but the panel has not determined that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment and a mutually satisfactory solution has not been reached, the complaining Appendix Party may:

- (a) delay implementation of the tariff elimination period in accordance with paragraph 14(a)(i), except that the period of non-conformity or nullification or impairment shall be considered to end on the date immediately preceding the day on which customs duties imposed by the complaining Appendix Party on those originating motor vehicles would otherwise have begun to be reduced in accordance with Annex 2-D, taking into account any delay of the tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i); and
- (b) (i) for a period of up to 90 days thereafter, increase the rate of customs duty on those motor vehicles to a level not to exceed the prevailing most-favored-nation applied rate of customs duty on those motor vehicles; and
- (ii) thereafter suspend the application of benefits as set out in paragraph 14(a)(ii).

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(B) for the purposes of this subparagraph, the period of non-conformity or nullification or impairment shall be the period beginning on the date on which the final report that contains a determination described in paragraph 10(a) is presented to the Parties under paragraph 8(d), and ending on the date on which the panel determines that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment or a mutually satisfactory solution is reached, provided that, if the date on which the panel issues its determination under paragraph 13 is more than 90 days after the date on which the panel reconvenes, the number of days by which the issuance of that determination exceeded 90 days shall not be included in the period of non-conformity or nullification or impairment,

or

(ii) if a final report that contains a determination described in paragraph 10(a) is presented to the Appendix Parties under paragraph 8(d) on or after the date on which customs duties imposed by the complaining Appendix Party on originating motor vehicles from the responding Appendix Party classified under heading 87.03, HTSUS 87.04.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 have begun to be reduced in accordance with Annex 2-D, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to subparagraph (a)(i), unless the panel has determined that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment, suspend the application of benefits to the responding Appendix Party with respect to those motor vehicles up to the level determined by the panel under paragraph 13, provided that, to the extent that the level of benefits determined by the panel under paragraph 13(a) exceeds the level of benefits that may be suspended with respect to those motor vehicles, the complaining Appendix Party may increase the rate of customs duty on originating goods from the responding Appendix Party other than those motor vehicles to a level not exceeding the prevailing most-favored-nation applied rate of customs duty on such goods;

or

(b) if the prevailing most-favored-nation applied rate of customs duty imposed by the complaining Appendix Party on motor vehicles classified under headings 87.03 and 87.04 is zero, unless the panel has determined that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment, suspend the application to the responding Appendix Party of benefits with respect to originating goods from the responding Appendix Party up to the level determined by the panel under paragraph 13; and

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- (i) if a final report that contains a determination described in paragraph 10(a) is presented to the Appendix Parties under paragraph 8(d) prior to the date on which customs duties imposed by the responding Appendix Party on originating motor vehicles from the complaining Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 will begin to be reduced in accordance with Annex 2-D, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to subparagraph (a)(i), for a period of up to 90 days after the date on which the panel issues its determination under paragraph 13, suspend the application to the responding Appendix Party of benefits with respect to originating goods from the responding Appendix Party up to the level that is one-fourth of the annual level of benefits determined by the panel under paragraph 13;

or

- (ii) if a final report that contains a determination described in paragraph 10(a) is presented to the Appendix Parties under paragraph 8(d) on or after the date on which customs duties imposed by the responding Appendix Party on originating motor vehicles from the complaining Appendix Party classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 have begun to be reduced in accordance with Annex 2-D, taking into account any delay of the implementation period as a result of previous action taken pursuant to subparagraph (a)(i):
  - (A) for a period of up to 90 days after the date on which the panel issues its determination under paragraph 13, suspend the application to the responding Appendix Party of benefits with respect to originating goods from the responding Appendix Party up to one-fourth of the amount that is the sum of 3.75 percent of the average of the total value of annual imports of originating motor vehicles from Japan classified under heading 87.03 into the United States and 37.5 percent of the average of the total value of annual imports of originating motor vehicles from Japan classified under HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 and HTSUS 8704.90.00 into the United States in the most recent four years; and
  - (B) if the date on which the panel issues its determination under paragraph 13 is more than 90 days after the date on which the panel reconvenes, beginning on the date that is 90 days after the

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panel issues its determination, for the number of days by which the issuance of that determination exceeded 90 days, suspend the application to the responding Appendix Party of benefits with respect to originating goods from the responding Appendix Party up to a level that shall not exceed one half of the level described under subparagraph (A),

provided that the increased rate of customs duty applied to any good shall not exceed the prevailing most-favored-nation applied rate of customs duty on that good.

15. Suspension of benefits under paragraph 11 or 14(a)(ii) or (b) 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.

16. (a) The complaining Appendix Party shall provide written notice to the responding Appendix Party of any increase in the rate of customs duty pursuant to paragraph 11, 14(a)(ii) or 14(b) no later than the date on which the increase in the rate of customs duty takes effect.

(b) The complaining Appendix Party shall provide written notice to the responding Appendix Party of the length of any delay of the implementation of the tariff elimination period pursuant to paragraph 14(a)(i) no later than the date immediately preceding the day on which the first reduction in the rate of customs duty on originating motor vehicles referred to in that paragraph would have otherwise occurred.

17. (a) Without prejudice to the procedures in paragraphs 11 through 14, if the responding Appendix Party considers that it has eliminated the non-conformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing written notice to the complaining Appendix Party. The panel shall issue its report on the matter within 90 days after the responding Appendix Party provides notice.

(b) If the panel decides that the responding Appendix Party has eliminated the non-conformity or the nullification or impairment, the complaining Appendix Party shall promptly reinstate any benefits<sup>26</sup> suspended under paragraph 11 or 14(a)(ii) or (b).

18. The procedures set out in this Article shall apply beginning on January 1 of the second year after the date of entry into force of this Agreement with respect to Japan and the United States and ending on the date that is five years after the date on which customs duties on originating motor vehicles from Japan classified under heading 87.03, HTSUS 8704.21.00,

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<sup>26</sup> For greater certainty, for the purposes of this Article, an Appendix Party shall reinstate benefits by reducing the rate of customs duty to the rate that would have been in effect if the suspension of benefits had never been applied.

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HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 and 8704.90.00 into the United States have been eliminated in accordance with Annex 2-D, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i), provided that the procedures shall apply to any dispute for which the final report of the panel under paragraph 8(d) was presented prior to that date.<sup>27</sup>

19. The Appendix Parties shall review, on request from either Appendix Party, the operation and effectiveness of this Article five years after the date of entry into force of this Agreement with respect to Japan and the United States, and at such interval as the Appendix Parties decide thereafter.

## Article 8

1. An Appendix Party may request in writing to initiate a process for consultations with the other Appendix Party with respect to any non-tariff measure that relates to motor vehicles that the other Appendix Party is considering proposing or has proposed, regardless of whether the other Appendix Party has published the non-tariff measure for comment.

2. The process for consultations shall take place within a period of no more than 10 days after the date of receipt of a request under paragraph 1, unless the Appendix Parties agree otherwise. The Appendix Party to which such a request is made shall afford the requesting Appendix Party an opportunity to raise issues and to make inquiries, provide the requesting Appendix Party with information to the extent possible, and hear the views of the requesting Appendix Party on the non-tariff measure referred to in paragraph 1.

3. If a request under paragraph 1 concerns a proposed non-tariff measure that is open for comment, the Appendix Party to which the request is made shall refrain from implementing the proposed non-tariff measure during the comment period, except where urgent problems of safety, health, environmental protection or national security arise.

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<sup>27</sup> If, prior to the date on which customs duties on originating motor vehicles from Japan classified under heading 87.03, HTSUS 8704.21.00, HTSUS 8704.22.50, HTSUS 8704.23.00, HTSUS 8704.31.00, HTSUS 8704.32.00 or HTSUS 8704.90.00 into the United States will begin to be reduced in accordance with Annex 2-D, taking into account any delay of implementation of the tariff elimination period as a result of previous action taken pursuant to paragraph 14(a)(i), a panel established on request of the United States under paragraph 4 does not determine in its final report that any non-conformity or nullification or impairment exists with respect to the matter, the procedures provided for in Articles 28.18.3 through 28.19 (Non-Implementation-Compensation and Suspension of Benefits) and 28.20 (Compliance Review) shall apply, *mutatis mutandis*, in lieu of the procedures set out in paragraphs 10 through 17, with respect to any matter for which an Appendix Party requests the establishment of a panel under paragraph 4 during the period beginning on:

- (a) January 1 of the 15th year after the date of entry into force of this Agreement with respect to Japan and the United States; or
- (b) if that final report has not been presented on or before January 1 of the 15th year after the date of entry into force of this Agreement with respect to Japan and the United States, the date on which that final report is presented;

and ending on the date on which customs duties on those originating motor vehicles begin to be reduced.

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4. If a non-tariff measure as to which a request has been made under paragraph 1 is adopted, and the requesting Appendix Party considers that, as described in Article 28.3.1(b), the measure is inconsistent with the obligations of this Agreement, or that the measure nullifies or impairs benefits in the sense of Article 28.3.1(c), the requesting Appendix Party may so notify the other Appendix Party in writing. The notification shall include identification of the measure at issue and an indication of the legal basis for the complaint. The Appendix Party that made the notification may request the establishment of a panel pursuant to Article 7.4 at any time after the date that is 14 days following the date of receipt of the notification<sup>28</sup>, provided that, on the request of either Appendix Party, the Appendix Parties shall enter into consultations with respect to the matter within 14 days following the date of receipt of the notification.

5. If the Appendix Parties hold consultations under paragraph 4, either Appendix Party may request additional consultations within 14 days after the date of receipt of the notification under paragraph 4. If such a request is made, the Appendix Parties shall hold additional consultations promptly thereafter. In that event, the Appendix Party that made the notification may request the establishment of a panel pursuant to Article 7.4 at any time after the date that is 30 days following the date of receipt of the notification.

6. Article 28.5.5 through 5.7 and 5.8 shall apply, *mutatis mutandis*<sup>29</sup>, to consultations under paragraphs 4 and 5.

## **Article 9<sup>30</sup>**

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;
- (c) exchange information on post-implementation reviews described in Article 2.4;

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<sup>28</sup> An Appendix Party that has made a notification under this paragraph may request the establishment of a panel as provided in this paragraph and paragraph 5 without requesting consultations pursuant to Article 7.3(a).

<sup>29</sup>For the purposes of this paragraph, the reference to “paragraph 1” in Article 28.5.5 shall be deemed to read “ paragraph 4” and the references to “this Article” in Articles 28.5.6 and 5.7 shall be deemed to read “paragraphs 4 and 5”.

<sup>30</sup> No Appendix Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) or Article 7 for any matter arising under this Article.

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- (d) 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;
- (e) 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;
- (f) 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
- (g) address other issues, if the Appendix Parties agree.

2. The Committee shall meet upon request by either Appendix Party and, unless the Appendix Parties otherwise decide, no less than once a year. Meetings shall take place in such locations and through such means as the Appendix Parties decide.