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Trade & Compliance

Consulting, Advice, Training & Services

- ★ In & Out-sourced trade operations
- ★ Import & Export Polices and Procedures
- ★ Audit & Disclosure
- ★ HTS, Origin, Value, FTA, CTPAT, ECCN, ITAR, Sections 232 & 301, AD/CVD, and more
- ★ Broker/Forwarder Management & Oversight
- ★ Training in all areas

21 April 2020

USMCA v NAFTA

a practical comparison

Part 1: USMCA Intro

Part 2: Standards & Practices

Part 3: Q & A

USMCA Intro

United States · Mexico · Canada Agreement

- [Full Text of the USMCA](#)

- The NAFTA Agreement was used as the starting point for renegotiation; strengthening, modernizing, and otherwise updating many of the existing provisions.

Known by many names:

- Informally as “NAFTA 2.0” or “New NAFTA”
- USMCA in U.S.
- CUSMA in Canada (ACEUM in French)
- T-MEC in Mexico
Tratado entre Mexico, Estados Unidos y Canada
- Canada was the last to ratify, on 03 April 2020
- USMCA is intended to replace NAFTA



Article 34.1

With respect to claims for preferential tariff treatment made under NAFTA 1994, the Parties shall make appropriate arrangements to grant these claims in accordance with NAFTA 1994 after entry into force of this Agreement.

The provisions of Chapter Five of NAFTA 1994 will continue to apply through those arrangements, but only to goods for which preferential tariff treatment was claimed in accordance with NAFTA 1994, and will remain applicable for the period provided for in Article 505 (Records) of that Agreement.

- [Chapter 34 USMCA · Final Provisions](#)
- [H.R. 5430 – USMCA Implementation Act](#)

Effective

Article 34.5

- 1st day of the 3rd month following the last notification
- *Delayed until earliest July 1st due to Coronavirus complications*
- *Awaiting further advice*

Expiry

Article 34.6

- Terminate 16 years after the date of its entry into force, unless each party wishes to continue the agreement for a new 16-year term

Renewal

Article 34.7

- On the 6th anniversary of each renewal each party will confirm it wishes to extend the Agreement for another 16 years.
- If not all parties wish to renew, there will be a joint review annually through the term of the Agreement.

- [Protocol to Replace NAFTA with USMCA](#)
- [Chapter 34 USMCA · Final Provisions](#)

USMCA - Impacted Areas

The negotiation process was highly politicized. Many of the focal points at the federal & administrative levels have industry-specific impacts.

Specific Industries:

- SMEs (Small and Medium Enterprises)
- Agriculture
- Automotive
- Textiles and Apparel
- Telecommunications

Key developments in several sectors, including:

- Intellectual Property
- Digital Trade
- De minimis provision
- Investment and Financial Services
- Environment

US - MX

- [Section 232](#)
- [Auto Safety Standards](#)
- [Cheeses](#)
- [Distilled Spirits](#)
- [Rasmar Convention](#)
- [Article 23.6](#)
- [Environmental Cooperation](#)

US – CA

- [Section 232](#)
- [Wine](#)
- [Natural Water Resources](#)
- [Energy](#)
- [R&D Expenditures](#)

USMCA vs. NAFTA

Standards & Practices

Part 1 Rules of Origin

Part 2 Origin Procedures

- Chapter 4 · Rules of Origin
 - Annex 4-B Product-Specific Rules of Origin
 - 4.12 De Minimis
 - Annex 4-A Exceptions to Article 4.12
 - Section VI & VII Chemicals & Plastics

- Not included in this session:
 - 4.5 – 4.7, 4.11 Value & Accumulation
 - 4.8, 4.9 Intermediate and Indirect Materials
 - 4.17 Sets of Goods, Kits, or Composite Goods
 - Appendix · Automotive Goods

Product-Specific Rules of Origin

- Regional Value Content (RVC) calculation *methods* have not changed
- RVC *thresholds* may change significantly for your products
 - Ex. NAFTA Heading 4005: 60% TV or 50% NC method
 - USMCA Heading 4005: 35% TV or 25% NC method
- Notes at Section, Heading, and Tariff-Item levels may apply; read the entirety of the provision for your products in order to interpret the special circumstances identified
- Automotive rules have changed dramatically

- Increased the de minimis threshold from 7% to 10%

The value of all non-originating materials used in the production that do not undergo an applicable tariff shift according to the product-specific rule is not more than 10% of the transaction value or the total cost of the good, provided all other requirements are met.

- All non-originating values must be counted prior to calculating RVC; if all values are below 10%, the de minimis rule may be used
- Exceptions to the rule may be in force for Chapters 1 thru 27; consult Annex 4-A for your HTS
 - Do not ignore rule 4-A(k) – Any non-originating material that do not change at the subheading level may not be counted

Section VI & VII - Chemicals & Plastics Star USA

- New rules at the top of sections VI & VII
- Satisfying any of the rules results in presumption of originating good; if the rule is not met, you proceed to the particular tariff item rules
- Adjust recordkeeping practices to accommodate these rules

Rules include:

1. Chemical Reaction Rule
2. Purification Rule
3. Mixtures and Blends Rule
4. Change in Particle Size Rule
5. Standards Materials rule
6. Isomer Separation Rule
7. Separation Prohibition Rule
8. Biotechnological Process Rule

- Chapter 5 - Origin Procedures
 - 5.2, 5.3, 5.5 Claims for Preferential Tariff Treatment & Certificates of Origin
 - Annex 5-A Minimum Data Elements
- Not included in this session:
 - 5.4, 5.6 Obligations for Importers and Exporters
 - 5.7 Errors or Discrepancies
 - 5.8 Record Keeping
 - 5.9 Denial of Claims
 - 5.11 Refunds after Importation

Claims for Preferential Treatment



- Importer's claims must be based on a certification of origin completed by the exporter, producer, or importer
 - Importers have special proof requirements enumerated in 5.2(2)a-d
- No prescribed format
- Must contain data elements in Annex 5-A
- Must describe the goods in sufficient detail to identify them
- May be provided on an invoice or *any other document*
- May not be shown on an invoice or other commercial document issued to an entity in a non-USMCA country
- Any language may be used, but Importers may be required to show a translated copy to Customs upon request
- **Electronic certificates with digital signatures are valid**

Minimum Data Elements (1 of 3)

- **Identifications:**
 - Indication of whether the certifier is the exporter, producer, or importer
 - Certifier's name, title, address, phone, and email
 - Exporter's name, address, email, phone
 - If different from certifier
 - Not required if it is a producer's statement
 - Producer's name, address, email, phone
 - If different from exporter
 - Use "Various" (for multiple producers), or provide a list
 - Use "Available upon request by the importing authorities" to remain confidential
 - Importer's name, address, email, and phone, if known.

Minimum Data Elements (2 of 3)



- Products
 - Description and HTS Classification to 6 digits
 - Include the invoice number for shipment-specific certifications
 - Origin Criteria, from 4.2 (Originating Goods)
 - (a) Wholly Obtained
 - (b) Produced entirely using non-originating materials that satisfy the rules
 - (c) Produced entirely of originating materials
 - (d)
 - (i) produced in one or more territories
 - (ii) goods cannot be subdivided based on the rules provided, but was imported unassembled and classified as an assembled good
 - (iii) RVC is not less than 60% TV / 50% NC
 - Blanket Period, up to 12 months
 - Authorized Signature and Date

Minimum Data Elements (3 of 3)



- Products (2 of 2)

- Must include the following statement, verbatim:

I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.

Q & A

- [Full Text of the USMCA](#)

Pre-submitted Questions

- Will there be a new form?
 - There will not be a prescribed form/format for claims, however in most cases it will likely be easier to provide a separate document instead of altering an existing document.
 - Importers should expect an administrative/training hurdle on looking for the necessary data elements. Certifications that are presented without the required data elements are considered invalid. Importers will only have **FIVE DAYS** to replace a certification that is invalid. (Article 5.7)
- Who is liable for the claim?
 - The importer first; depending on the basis of the claim (i.e. certification from an exporter), that responsibility passes up the chain. Article 5.4, 5.6, and 5.8
- Are the formulas for qualifying still the same?
 - The RVC methods for calculation are the same, but the thresholds may be different. Except for automotive, they should not be lower than 60% TV or 50% NC

Pre-submitted Questions

- Current NAFTA has fields for HS, Origin, Preference Criterion, and Net Cost. Do these fields remain?
 - HS and Preference Criteria (now called Origin Criteria) are explicitly required. Origin should also be included for other import reasons.
 - The RVC method is not identified as a requirement.
- Can importers still request statements from exporters or producers?
 - Importers are still required to produce evidence to substantiate a claim. In practice, that will generally be a certification provided by the exporter/producer



THANK YOU!

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Contact us if you are interested in Star USA's certification templates, or would like more support with your USMCA preparedness and transition plan

Submit CES Credit Requests to
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