

BPE Global Hot Topic – May 2020

Trade rolls on- Are you ready for the USMCA?



Concluding years of negotiation, the U.S.-Mexico-Canada Agreement (USMCA) will take effect on July 1, 2020. The USMCA, called Tratado entre México, Estados Unidos y Canada (T-MEC) in Mexico and the Canada-United States-Mexico Agreement (CUSMA) in Canada, replaces the North American Free Trade Agreement (NAFTA) to address critical trade issues. The USMCA also updates the de minimis rules, eliminates the NAFTA Certificate of Origin and eliminates the unique NAFTA country of origin marking rules.¹ The following summarize some key changes of the USMCA:

Certificates of Origin

A paramount change to organizations leveraging NAFTA for duty savings is the elimination of the current NAFTA Certificate of Origin. The replacement under the USMCA will be a certification from the producer, exporter or importer containing the required data elements, certifying that the article(s) meet the rules of origin. The certification is required to be in the importer's possession at the time the USMCA claim to Customs is made. Per Chapter 5 of the USMCA², the Certification must be:

- On the invoice to the shipment or a separate, attached document
- Hard copy or digital (Digital signatures acceptable)
- For single shipments or a blanket certification (not exceeding 12 months) for multiple shipments
- Inclusive of the minimum data elements that the good is originating and meets the requirements:
 - Certification of origin
 - Certifier/exporter/producer/importer information
 - Description and HS Tariff classification of the good to the 6th digit level
 - Origin criteria
 - Authorized signature and date)

U.S. Customs and Border Protection (CBP) has indicated that the USMCA will have a Special Program Indicator (SPI) of "S" in the Harmonized Tariff Schedule of the United States (HTSUS). The SPI will not be listed in the Special column of the HTSUS for unconditionally free tariff items.³

If an importer did not make a claim for preferential tariff treatment at the time of importation, they may make a claim no later than one year from the date of importation to request a refund for duty-free treatment. All importers are required to maintain records claiming preferential tariff treatment for a period of no less than five years from the date of importation.

Country of Origin Marking Rules

With the exception of certain agricultural goods, a good will not need to first qualify to be marked as a good of Canada or Mexico per the Rules of Origin contained in 19CFR Part 102. Only the product specific rules of origin contained in General Note 12 are needed to determine whether a good originates under the USMCA.⁴

De Minimis

¹ Text of Agreement: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>

² USMCA Origin Procedures: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/05_Origin_Procedures.pdf

³ CBP Interim Implementing Instructions: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr/Implementation%20Instructions.pdf>

⁴ General Note 12 of the HTSUS: <https://hts.usitc.gov/current>

The USMCA amends the value of articles imported into Canada and Mexico upon which no duties or taxes are paid to facilitate greater cross-border trade, especially for small and medium sized enterprises. The de minimis thresholds will be:

- United States (\$800USD), no change
- Mexico (\$117 USD for Customs and \$50 USD for taxes)
- Canada (\$150 CAD for Customs and \$40 CAD for taxes)

The de minimis also increases the percentage of non-qualifying content that can be disregarded in origin analysis from seven percent to ten percent of the value of the article.

Automotive Trade

Under new USMCA requirements, passenger vehicles and light trucks must have at least 75 percent North American content, compared to the 62.5 percent requirement under NAFTA. At least 70 percent of the steel and aluminum used in the production of the vehicle must also originate in North America. The USMCA grants a three-year transition period for producers to meet these new rules which can be extended upon petition.

Intellectual Property

The Intellectual Property (IP) Chapter 20 of the Agreement will grant authority for law enforcement officials to stop suspected counterfeit or pirated goods at every phase of entering, exiting, and transiting through the territory of any Party. It will also require express recognition that IP enforcement procedures must be available for the digital environment for trademark and copyright or related rights infringement. The Agreement will require civil and criminal penalties for satellite and cable signal theft and lastly will require broad protection against trade secret theft, including against state-owned enterprises.

The full text of the USMCA outlines several other provisions under the USMCA surrounding the Environment, Labor, Currency and Financial Services. The Agreement will likely see several more changes as it is rolled out and is set to be reviewed by all parties every six years and, unless renewed or revised, will expire in sixteen years.

Like you, we monitor this pandemic and are deeply concerned with the fate of so many. The reality is that trade continues and as always, we are in your corner to help you stay on top of the ever-changing trade landscape. You can follow us on [LinkedIn](#) where we publish topical opinions on the ever-changing rules and regulations governing the landscape of global trade.

BPE Global is a global trade consulting and training firm. Gabrielle Griffith is a Director of BPE Global. You can reach Gabrielle by email at GGriffith@BPEGlobal.com.