

The United States-Mexico-Canada Agreement (USMCA)

By: David Wemhoff, Chair International Trade and Customs Law Committee

Effective July 1, 2020, the USMCA entered into force, but for merchandise that entered into commerce on June 30 or before, the North American Free Trade Act (NAFTA) rules still apply. The USMCA replaces NAFTA and has many important differences. A total of 34 chapters, four main agreement annexes, and 16 side letters comprise the agreement, and what follows is a brief summary of some of the more prominent aspects of the USMCA with references to the pertinent chapters.

Rules of Origin. The shipment of goods is an essential part of the agreement which is designed to reduce tariffs, and increase market access for those goods that meet the criteria of the Rules of Origin. This hot topic, which is very different from NAFTA, is addressed in Chapters 4 and 5 of the USMCA.

Goods meet the origin criteria if 1) they are wholly obtained or produced entirely in the territory of one or more of the parties, or 2) are entirely produced in the territory of one or more of the parties using non-originating materials, or 3) are entirely produced in the territory of one or more of the parties exclusively from materials originating in that party. The regional value content of the good must be not less than 60% if the transaction value method is used and not less than 50% if the net cost method is used. There are exceptions for textiles and apparel and also for certain non-originating materials. There are also exceptions for automotive goods which require increased regional value content (RVC) of 62.5% up to 75% of the good or item. Additional automotive requirements include certifications that at least 70% of the vehicle manufacturer's annual purchase of steel and aluminum are sourced from North America, and that workers receive minimum pay of US \$ 16 per hour for workers on 40% to 45% of the item or good produced.

NAFTA Certificate of Origin forms are no longer accepted. A new form has not yet been devised, however, the following information (or "nine minimum data elements") must be contained in a written certification as required in Annex 5-A: 1) importer, exporter, or producer Certification of Origin, 2) certifier, 3) exporter, 4) producer, 5) importer, 6) description of and Harmonized System classification of the good, 7) origin criteria, 8) blanket period, and 9) authorized signature with date.

In preparing the Certificate of Origin, producers of goods may rely on the following documents: bills of materials, and an explanation of the production process which includes purchase orders for materials, invoices, payments to suppliers, inventory controls for materials, production records, inventory control of finished goods, purchase orders from customers, invoices and payments received, transport documents to delivery site. Exporters, in preparing a Certificate of Origin may rely on a producer's written representations as well as purchase orders for goods, invoices, payments to suppliers, inventory controls, purchase orders from customers, invoices, payments received, and transport documents to a delivery site.

Certifiers are required to keep certain records justifying their certification, and it is recommended that these records be kept for no less than five years. Finally, the parties to the USMCA may verify the certifications of origin either through a written request or by a visit. Manufacturers, producers, and exporters should be familiar with the time frames associated with a written request from one of the parties. Also, a refusal to allow a visit by representatives of a party to the USMCA will result in automatic denial of origin.

Financial Services. Chapter 17 and related annexes deal with this topic and it is designed to prevent discrimination against financial service suppliers from the United States. Of note, the agreement reduces barriers to the cross-border transfer of data and sets obligations for increasing market access of financial services. This includes a commitment to provide greater cross-border services, portfolio management, investment advice, and e- payment services. Related to this are the implementation of specific procedures for dispute resolution between investors and Mexico.

Trade in Digital Products (Chapter 19). The USMCA ensures that data can travel cross-border while prohibiting customs duties and other discriminatory measures from being applied to digital products that are electronically distributed (e.g., software, e-books, videos, music).

Intellectual Property (Chapter 20). Greater protections are provided innovators and creators from the United States to include full national treatment for copyright protection and related rights, strong patent protection, protection for pharmaceutical and agricultural innovations, and strong standards to protect Trade Secrets.

Labor (Chapter 23). The USMCA includes an Annex on Worker Representation in Collective Bargaining in Mexico which commits Mexico to the creation of legislation providing for the recognition of the right of collective bargaining. The parties agree to maintain labor rights as recognized by the International Labor Organization and to prohibit importing goods produced by forced labor while protecting migrant workers and workers in general exercising their rights. (Of note, and as alluded to above, the USMCA requires that 40 to 45 percent of auto content be made by workers earning at least US\$ 16 per hour).

Environment (Chapter 24). The parties agreed to a comprehensive set of enforceable environmental obligations to include prohibiting some subsidies for fisheries, protecting whales and sea turtles, improving inspection of some wild flora and fauna at ports of entry, improving air quality, preventing and reducing ocean litter, supporting sustainable forest management, combating trade in illegally obtained wildlife, fish and timber, and cooperating on environmental matters.

Currency. Chapter 33, entitled “Macroeconomic Policies and Exchange Rate Matters,” contains provisions that address unfair currency practices by the parties to the agreement. The parties are committed to refrain from competitive devaluations of their currencies while also providing accountability for their practices in connection with currency valuations.

Particular questions may be addressed by email to USMCA@cbp.dhs.gov. Responses are usually within one week.

References and Resources:

Agreement Between the United States of America, the United Mexican States, and Canada 12/13/19 Text as found at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> June 24, 2020.

Emails from Alexis Tercero of the International Trade Administration dated July 2, 2020 and July 9, 2020.

“United States-Mexico-Canada Trade Fact Sheet Modernizing NAFTA into a 21st Century Trade Agreement” Office of the United States Trade Representative, as accessed <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/modernizing#:~:text=Century%20Trade%20Agreement-,UNITED%20STATES%E2%80%93MEXICO%E2%80%93CANADA%20TRADE%20FACT%20SHEET%20Modernizing%20NAFTA%20into,century%2C%20high%2Dstandard%20agreement>, June 24, 2020.

“USMCA and the Automotive Sector. Charting a course in uncharted waters.” *Livingston: Simplify Trade*.

“USMCA Trade Deal,” presentation of June 30, 2020 by Eduardo Diaz of Chevez Ruiz Zamarripa & CIA and by Peter Quinter of Gray Robinson, P.A.

“USMCA vs NAFTA: Major differences between USMCA and NAFTA in key chapters,” International Trade Administration, as accessed <https://www.trade.gov/usmca-vsnafta> June 24, 2020.

“U.S.-Mexico-Canada Agreement (USMCA),” U.S. Customs and Border Protection, as accessed <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA> June 24, 2020.