

USMCA – Webinar Agenda

- Where the replacement of NAFTA stands right now and timing of implementation.
- What key changes are in the agreement and how this affects your imports and exports.
 - Rules of Origin
 - Textiles & Apparel - Briefly
 - Autos – Briefly
- How the USMCA poses a few key implications to your Customs compliance program.

USMCA Duration

- Terminates 16 years from date of implementation
- Year #6
 - Begin USMCA review
 - Discuss extension beyond original 16 years

Trade Compliance Experts Mike Lahar & Ania Fuller

The U.S. – Mexico – Canada Trade Agreement

a webinar presented by A.N. Deringer, Inc. 

Key Changes in the Agreement



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What is Different?

- Rules of Origin
 - Most remain the same
 - Certain origin rules have changed – Don't assume!
- New Provisions added
- Separation of Agriculture and SPS Chapters
- New Sections
 - Textiles & Apparel
 - Digital Trade
 - State Owned Enterprises, Small & Medium Enterprises Competitiveness
 - Labor, Environment
 - Etc.

What will Change?

Program Administration Changes

- **Importers** responsible for USMCA claims
- Certification of origin **form** no longer **prescribed**
- NAFTA Marking Rules no longer in place
- Changes in access regarding agricultural products – increases for US in the Canadian dairy market
- Autos - Increased RVC content from 62.5% up to 75% with similarly high content thresholds for core, principal and complementary parts.
- MPF paid at the time of entry will not be refunded for post-importation claims for preference, under the USMCA.

What will Change?

De Minimis Rule Change

- **NAFTA**
 - 7% (in most cases) of the FOB transaction value or, in some cases of the total cost of the goods
- **USMCA**
 - Increased to 10% of FOB value or of total cost for non originating material that does not undergo required tariff shift
 - Different de minimis for textiles & apparel

What will Change?

GRI 3 (b) Rules for Sets

Article 4.17 (textiles) states:

- **Each item** in the set (*classified as a result of the application of rule 3 of the GRI*) must originate
- No more than 10% of the value of entire set may be foreign (*de minimis*)
- NAFTA “essential character” loophole addressed
 - Foreign content is now limited to 10% for the set

What will Change?

Low Value Shipments

- United States: \$800 (one shipment per day – 19 USC Section 321)
- Canada: CAD\$150 for duties, CAD\$40 for taxes
- Mexico: \$117 for duties, \$50 for taxes

What will Change?















New Labor Provisions

- Presumption: Labor violation affects trade and investment
- Rapid Response Mechanism providing for an independent panel investigation
- US and CA can convene panels to hear complaints in MX factories who try to stop unionization
- Prevention of importation of goods produced by forced labor
 - Expands ban on forced labor to include “child labor”
- Protection for migrant workers
- Biannual report to Congress

What will Change? Environmental Provisions

- Requires the Parties to Enforce their Environmental Laws
- Promotes Protection of Coastal and Marine Environments
- Seeks to Improve Air Quality
- Promotes Conservation and Combats Trafficking in Wildlife, Timber, and Fish
- Parties are required to implement rules to fulfill Multilateral Environmental Agreements
- Interagency Monitoring Committee created for Monitoring and Enforcement
- Environment focused “special envoys” in Mexico city to monitor compliance with agreement

IPR

NAFTA	USMCA
Incomplete national treatment for copyright and related rights.	 Full national treatment for copyright and related rights.
Copyright term of life of author+ 50 years or publication +50 years.	 Copyright term of life of author +70 years or publication +75 years.
No copyright safe harbor system to deter online piracy.	 Establishes appropriate copyright safe harbors to deter online piracy.
No explicit requirement to apply enforcement obligations to the digital environment.	 Requires application of enforcement measures to the digital environment.
Minimum 10 year protection for industrial designs.	 Minimum 15 year protection for industrial designs.
No patent term extension for unreasonable patent office and regulatory delays.	 Mandates patent term extension for unreasonable patent office and regulatory delays.
Does not require criminal procedures and penalties for camcording.	 Requires criminal procedures and penalties for camcording.
Weaker and general trade secret protection.	 Strong civil and criminal trade secret protections, including against misappropriation by state-owned enterprises.
5 years of data protection for ag. chemicals.	 10 years of data protection for agricultural chemicals.
Minimal protections against nontransparent GI systems.	 Strongest due process and transparency requirements for GI protection systems in any FTA.
No explicit protections against circumvention of technological protection measures.	 Requires protection against circumvention of technological protection measures.
No mandatory ex officio authority for customs officials to stop suspected counterfeit goods.	 Requires ex officio authority for customs officials to stop suspected counterfeit goods.
Does not require criminal penalties and civil remedies for cable theft.	 Requires criminal penalties and civil remedies be available for both satellite and cable theft.
No detailed provisions expressing a shared understanding on IP Chapter and public health.	 Reaffirms Doha Declaration on TRIPS and Public Health.

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What's Unchanged?



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What's Unchanged?

- Direct Shipment Required
- No MPF on originating goods
- Repairs / Alterations are duty free
- No penalties with prior disclosures
- No change to duty deferral / drawback restrictions
- Origin Certification Required – no prescribed form!
- Post Entry Claims – 1 year after date of import
- Full accumulation among Parties for originating goods

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Rules of Origin



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Rules of Origin

- Aligns rules with more recent trade agreements such as the TPP
- Substantial Transformation just as with any other c/o determination (eliminates NAFTA marking rules)

Article 4.2 “Originating Goods”

- (a)** wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 4.3 (Wholly Obtained or Produced Goods)
- (b)** produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all applicable requirements of Annex 4-B (Product-Specific Rules of Origin)
- (c)** produced entirely in the territory of one or more of the Parties exclusively from originating materials
- (d)** Goods that fail tariff shift for specified reasons, but satisfy RVC (except for good provided for in Chapter 61 to 63)

RVC

The USMCA provides that RVC may be calculated using the same methods (either net cost or transaction value) permitted under NAFTA. A new rule in the USMCA stipulates that, where a non-originating material is used in the production of a good, the following may be counted as originating content for purposes of calculating RVC under either method:

- The value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and
- The value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.

This provision also was included in the TPP, and will provide additional flexibility for traders seeking to satisfy RVC requirements under the USMCA

Recovered Materials – New Rule

- Recovered Materials qualify as originating if used in the production of, and if incorporated into, a “remanufactured good”
 - **Recovered material:** material in the form of one or more individual parts that results from disassembly of a used good into individual parts, and the cleaning, inspecting, testing or other processing of those parts.
 - **Remanufactured good:** a good classified in Chapters 84-90 or under heading 9402 (with some exceptions) that is entirely or partially composed of recovered materials, has a similar life expectancy and performs the same as or similar to a good when new, and has a factory warranty similar to that applicable to a new good.

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Rule of Origin Textiles and Apparel



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Textiles and Apparel

- Revised Rules Incentivize the Use of Regional Inputs
 - New requirements to source sewing thread, narrow elastic fabrics, pocketing, and coated fabrics from within North America
- Restructured Tariff Preference Levels (TPLs)
 - Restructures and rebalances NAFTA TPL
 - Reduces some TPLs for U.S. imports from Canada and Mexico
 - Increases TPLs for U.S. exports to Canada of apparel and other finished textile goods
- Updated Rules of Origin
 - Revised rules allow manufacturers to use textile inputs not generally available in North America (e.g., rayon fibers and visible lining fabric) and increases the de minimis percentage of non-originating inputs allowed in qualifying goods from 7 to 10 percent.
- New Customs Enforcement Provisions
 - Strong, new textile specific enforcement procedures will help to prevent circumvention and fraud.

What is Changed?

De Minimis Rule - Textiles

- ❑ NAFTA – 7% by weight of fiber /yarn in component that determines classification
- ❑ USMCA
 - **Chapter 50-60 or heading 96.19**
 - 10% of the total weight of non originating materials of which
 - Elastomeric content may not exceed 7% of the total weight of the good
 - **Chapter 61-63**
 - 7% allowance – relative to total weight of the product
 - 10% allowance – relative to total weight of component that determines classification

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Rule of Origin Autos and Parts



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Rules of Origin - Autos

- Elevates Regional Value Content (RVC)
 - 75% North American content for passenger vehicles & light trucks and 70% for trucks (up from 62.5%)
 - Similarly high content threshold for core, principal, and complementary parts
- “Core parts” have to originate
- Labor Value Content Rule (LVC)
 - 30% @\$16 per hour
 - Increases to 40% in 2023
- Requirements for Use of Steel and Aluminum
 - 70% North American steel, aluminum and glass
- 5 year transition period for up to 10% of the total passenger vehicle
- 7 year transition for heavy trucks

Rules of Origin – Autos Effective 2023

- **Core Parts** (passenger vehicles and light trucks) – RVC will increase to 85% (transaction method) and 75% (net cot method)
- **Principal Parts** (passenger vehicles and light trucks) - RVC will increase to 80% (transaction method) and 70% (net cot method)
- **Complementary Parts** (passenger vehicles and light trucks) - RVC will increase to 75% (transaction method) and 65% (net cot method)

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Key Implications for Your Customs Compliance Program

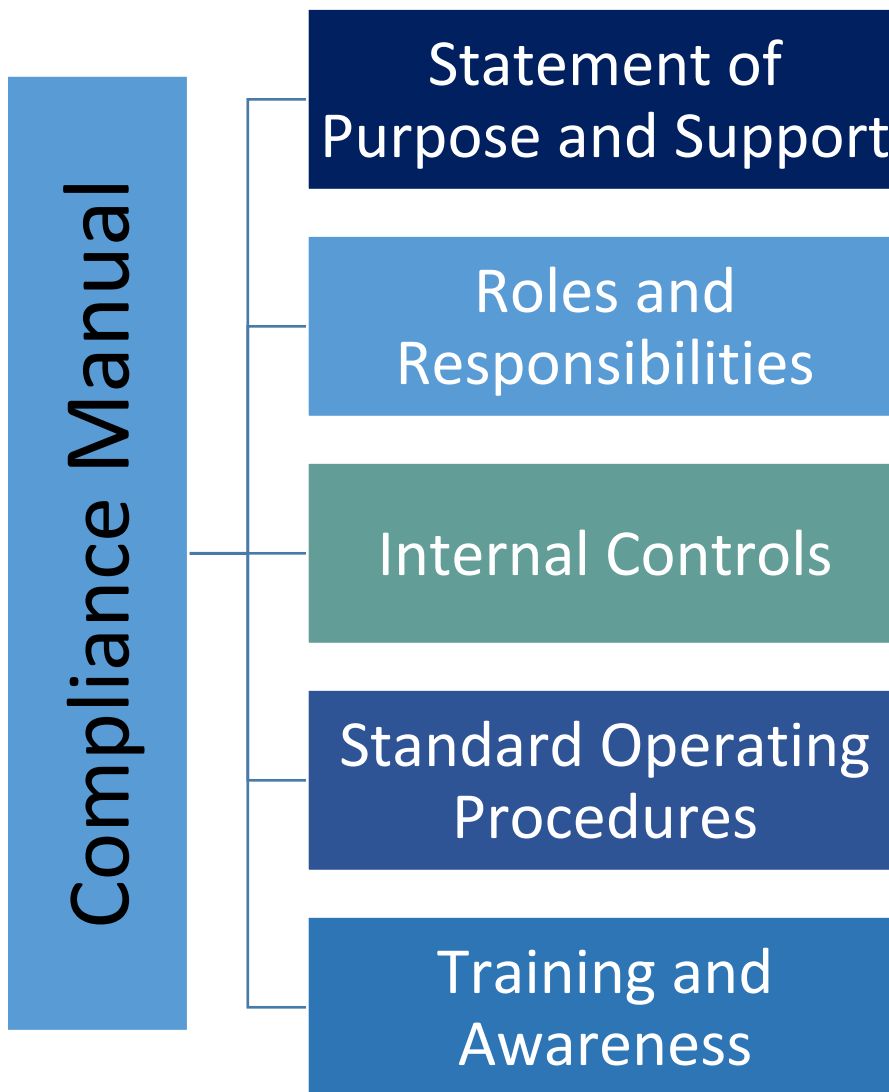


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Import Compliance Program



Compliance Manual



USMCA Compliance

- Understand what changed with USMCA and impact to your imports
- Conduct Eligibility Analysis
- Document the Analysis
- Understand Documentation / Certification Requirements

The time to understand changes is NOW

USMCA Eligibility Analytics

- What are the USMCA Rules for your product?
- Have thresholds changed for your product?
- How? What are the new thresholds?
- Where does your product come from?
 - Do you know the origin for **all components**?
 - Do you know the **% of total value** for each component?
- Does your product still qualify?
- Can you prove it? Can you provide documentation trail?

Compliance / Records

- Requirement to maintain detailed records supporting USMCA claims
- Maintain documentation confirming eligibility analysis
- Requirement to obtain and maintain USMCA certificates prior to making claim and when completing a USMCA certificate for an export shipment
- Certifying company must maintain detailed records to validate any USMCA claims
- Should think about adding a labor component to current policies and procedures
- Keep NAFTA records

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Origin Procedures



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Origin Procedures

Article 5.2 Claims for Preferential Tariff Treatment

Certification of Origin: Still Required!

- Need NOT follow a prescribed format
- Contain a set of minimum data elements per Annex 5-A)
- May be provided on an invoice or any other document
- Describes the originating goods in sufficient detail to enable identification
- Meets the requirements as set out in the Uniform Regulations
- Certification of origin may be completed in English, French or Spanish
- Certification of origin may be completed electronically with an electronic or digital signature
- Must be in importer's possession at the time claim is made

Origin Procedures

Article 5.2 - 1 Claims for Preferential Tariff Treatment

Importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the:

- Exporter
- Producer or
- Importer

for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good.

Certification of Origin – Annex 5-A Minimum Data Elements

- Certifier (certifier's name and contact information)
 - Importer, Exporter, or Producer
- Exporter (exporter's name and contact information)
- Producer (producer's name and contact information – place of production of the goods)
- Importer (name and contact information if known)
- Description and HS Tariff Classification (to the 6-digit level) of the Good and invoice number related to the exportation
- Origin Criteria under which the good qualifies (Article 4.2 Originating Goods)
- Blanket Period (up to 12 months)
- Authorized signature and Date

Certification of Origin –Minimum Data Elements

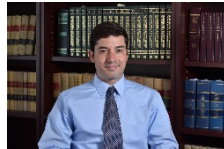
The certification must be signed and dated by the certifier and accompanied by the following statement:

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.

Takeaways

- The new Agreement comes into force on **July 1st**
- No specific format or form is required but a **certification** with the 10 required data elements needs to exist at the time the claim is made.
- **RVC levels** have changed and may affect your FTA eligibility under USMCA.
- **De minimis** levels have changed and in some cases increased.
- **Now is the time to act** – get ready for the change!
 - Understand Rules of Origin Changes affecting your products – plan ahead!
 - Conduct Eligibility analysis (USMCA analysis needs to be completed prior to claim, just like NAFTA)
 - Determine Origin Certification Process / format
 - Determine whether any sourcing changes in your supply chain have to be made / are feasible
 - What about new provisions (Labor, Environmental)? How do they affect you and what process changes do you have to implement?

Questions?



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