



Professional Perspective

USMCA Import Considerations for Practitioners

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On Oct. 1, 2018, the U.S., Mexico, and Canada finalized a new trade agreement to replace the North American Free Trade Agreement (NAFTA). The [United States-Mexico-Canada Agreement](#) became effective July 1, 2020. The following provides an overview of the major import-related changes in USMCA impacting the trade community and practitioners' tips to prepare for the new rules.

What Is the USMCA?

The purpose of USMCA is to align the trade agreement with the current trade environment. The agreement builds on and modifies the trade policies created in NAFTA, signed in 1994. Despite decades of success, various factors, such as the continuous migration of manufacturing jobs to Mexico, altered the dynamics, prompting a need to renegotiate the terms of NAFTA.

The goals of USMCA and NAFTA are similar: to level restrictive economic measures to better facilitate freer and fairer trade between the developed and developing economies of the North American nations. Since each party ratified the agreement, all three countries began preparing domestic industries and governmental institutions for its implementation date of July 1, 2020.

USMCA is set to expire 16 years after its date of implementation and may be renewed for an equal period of time. Renegotiation will be considered by a joint review no later than six years after its entry into force to determine if renewal would be ideal in the future.

Compliance Resource for the Trade Community

Although [USMCA](#) is made publicly available by the Office of the United States Trade Representative, the text does not provide the practical requirements importers, exporters, and manufacturers must comply with to claim preferential treatment. While most of the trade community relies on the supporting USMCA Uniform Regulations, these will be issued July 1, 2020, when the agreement becomes effective. The uniform regulations will be included in the new Part 182 of Title 19, Code of Federal Regulations 182 (19 C.F.R. 182). Until then, U.S. Customs and Border Protection (CBP) has published [Updated Interim Implementation Instructions](#) via the Cargo Systems Message Service (CSMS # 43062320). The instructions provide a preview of how CBP intends to carry out USMCA and provides early guidance on the new requirements under the USMCA, including information on claiming USMCA preferential treatment, compliance, and other requirements. Note that these implementation instructions are not final and subject to change. The final implementing instructions will be released prior to the date the USMCA enters into force and will provide the Trade and Field with additional details on the USMCA entry, compliance, and other requirements. The Harmonized Tariff Schedule of the United States will be amended effective, July 1, 2020 to include General Note 11 (GN11) with information on the USMCA rules of origin, product specific rules, and other requirements. Additional resources are available at [CBP's USMCA](#) webpage.

Practitioner's Tip

CBP launched an internal USMCA Coordination Center including 10 individuals from trade policy, operations, import specialists, legal, and auditing various backgrounds within CBP. The USMCA Center will ensure, coordinate, and guide the implementation of the USMCA for CBP and stakeholders. Importers should communicate with their assigned [Centers of Excellence and Expertise](#) regarding their specific importations as the USMCA Center works with the CEEs.

USMCA Versus NAFTA

Although pundits and economists debate both the need and the expected impact of USMCA, the agreement is essentially just a renegotiated NAFTA, with much of the original framework remaining intact. The following are key changes that will impact importers:

Eligible Articles

- Tariff items eligible for preferential tariff treatment under USMCA will have a Special Program Indicator (SPI), 'S,' which will be reflected in the special column of the HTSUS (instead of CA and MX).

De Minimis Rule

- USMCA raises the de minimis threshold from 7% to 10%.
- For de minimis shipments, goods valued at \$800 USD or less, may enter duty-free into the U.S.
- The Mexico de minimis level is now \$117 USD for customs and \$50 USD for taxes.
- Canada raised its de minimis level to C\$150 (\$117 USD) for customs, from C\$20 earlier, and C\$40 for taxes.

Practitioner's Tip

These changes will benefit small and medium sized enterprises (SMEs) and e-commerce businesses as their shipments within these values would boost their opportunity to join cross-border trade.

Marking Rule

- For goods imported into the U.S. from Canada and Mexico, USMCA partially adopts NAFTA's Marking rules codified in 19 C.F.R. 102 by eliminating NAFTA's qualifying goods requirement.
- Under USMCA, a good imported into the U.S. does not need to first qualify to be marked with a country of origin of Canada or Mexico (as was the case in NAFTA) in order to receive preferential tariff treatment under USMCA.
- For goods imported into the U.S. the country of origin marking of the good must be in accordance with CBP's country of origin marking regulations found in 19 C.F.R 134(b); which provides, in part, "country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin."
- For customs purposes a "substantial transformation" means that the good underwent a fundamental change likely as a result of processing or manufacturing in the country claiming origin. A fundamental change typically occurs in form, appearance, nature, or character, which adds to the product's value an amount or percentage that is significant in comparison to the value which the good (or its components or materials) had when exported from the country in which it was first made or grown. Usually a new article of commerce with a different name is found to result from any process that customs decides has brought about a "substantial transformation" in the pre-existing components.

Certificate of Origin

Unlike NAFTA, USMCA does not require a specific certificate of origin form. Rather, the importer may self-certify by presenting specific data elements, in any format (including an invoice). Here are the required elements:

1. Name, address, and contact info of producer, exporter, or importer.
2. Certifier's name, title, company and contact information.
3. Description of product(s) and HTS classification to at least 6 digits. The description must be sufficiently detailed to verify that it covers the articles in the shipment.
4. The origin criteria under which product qualifies.
5. If single shipment, the invoice number of the goods.
6. If a blanket certification, the blanket period.
7. Signature, date, and certification statement.

Practitioner's Tip

An importer may submit an importer, exporter, or producer certification. The importer is responsible for exercising reasonable care concerning the accuracy of all documentation submitted to CBP. The CBP Form 434 will no longer be accepted for claims of preferential treatment under USMCA. Blanket periods can be up to one year.

Making a Preference Claim

- Under USMCA, importers can claim preferential tariff treatment on qualifying goods entered for consumption or withdrawn from warehouse for consumption, using the new special program indicator 'S.'
- When the filer transmits the 'S' SPI to indicate a USMCA claim, the filer is certifying the goods comply with all rules of origin and recordkeeping requirements including, as applicable, Labor Value Content (LVC) certification and Steel & Aluminum Certifications (Annex B).
- Further, the Automated Commercial Environment (ACE) will accept the new SPI for entries entered or withdrawn from warehouse:
- Via ABI on Entry Summary (CBPF 7501).
- Via Non-ABI on Entry Summary (CBPF 7501).
- Via a post-importation claim (19 U.S.C. 1520(d)) filed within 1 year of importation as specified under "Post-Importation Claims," below.

No Override Provision in USMCA

Unlike NAFTA, which includes a Preference Override in 19 C.F.R. 102.19, USMCA does not provide an override provision.

Post-Importation Claims

If a claim for preference was not made at the time of importation and the goods qualify as originating, USMCA permits importers to make a post-importation preference claim to request a refund of excess duties. The importer may make a post-importation claim within one year of importation in accordance with 19 U.S.C. 1520(d). The claim must include:

- A declaration stating that the good qualified as an originating good at the time of importation and the number and date of the entry or entries covering the good.
- A copy of a certification containing the required data elements (Annex 5-A) (see Appendix I) demonstrating that the good originated at or before importation.
- A statement indicating whether the entry summary or equivalent documentation was provided to any other person.
- A statement indicating whether a protest, petition, or request for re-liquidation has been filed relating to the good and identification of such filing(s).

Importers may avail themselves of the use of the ACE Reconciliation Prototype to submit post importation preference claims pursuant to 19 U.S.C. 1520(d). All reconciliation entries must follow the reconciliation process and be accepted. If CBP finds that the certification is illegible, incomplete, or contains incorrect information or that the post-importation claim otherwise does not comply with the requirements, the post-importation claim will be denied with a statement specifying the deficiencies. Corrections are allowed on 1520(d) claims, unless the claim has been reviewed and decided, up to the one-year expiration period.

Merchandise Processing Fees Refunds

USMCA does not authorize refunds of MPF for post-importation claims for preference under USMCA.

Practitioner's Tip

The importer should ensure they make a claim for preferential tariff treatment at the time of entry because an importer cannot later obtain a refund for MPF through a post summary correction (PSC), Protest, or through reconciliation.

Labor Laws

- NAFTA, USMCA's predecessor, did not include a labor chapter. However, NAFTA was accompanied by a side agreement that focused on labor. USMCA contains labor provisions that are significantly stronger than NAFTA side agreement.
- USMCA permits inspections of factories and facilities that are not living up to the obligations of the labor provisions.
- Among other requirements, USMCA requires Mexico to:
- Adopt worker rights laws related to the International Labor Organization's (ILO) 1998 Declaration on Fundamental Principles and the Rights at Work.
- Prohibit imports of goods made by forced labor.
- Regularly have facilities in Mexico inspected or otherwise monitored both by Mexican authorities and [labor attachés](#) from the U.S.
- Establish a Rapid Response Mechanism to address concerns at specific facilities.

The Rapid Response Mechanism is a novel and powerful tool that has never before been included in a free trade agreement. Under the RRM, an independent, three-person panel of U.S., Mexican, and third-country nationality can investigate alleged violations. If a violation is found but not remedied, the U.S. or Mexico can revoke preferential tariff treatment. The RRM is expected to be a particularly effective tool because it can be exercised quickly (as the name suggests), the panelists are few in number, and its scope of authority is limited to issues of collective bargaining and free association.

The U.S. [implementing legislation](#) for the USMCA also requires the establishment of a 12-member independent labor-expert board, tasked with monitoring and evaluating the implementing of Mexico's labor reform and compliance with its labor obligations. The board was established by [Executive Order](#) on April 28, 2020. The board members are selected by the U.S. Trade Representative's Labor Advisory Committee (which get to select four members) and House Speaker, House Minority, Senate Majority Leader, and Senate Minority Leader (each of whom select two members). As of June 18, two board members have been appointed, and the remaining ten members are expected to be appointed by the agreement enforcement date.

Automotive and Automotive Part Imports

- USMCA increases the Regional Value Content requirement for most vehicles to 75% (up from 62.5% under NAFTA).

Practitioner's Tip

RVC Calculation Methods are included in CBP's Implementing Instructions.

- Requires manufacturers to source at least 70% North American steel and aluminum.

Practitioner's Tip

CBP's Implementing Instructions provides a list of steel and aluminum tariff subheadings that are covered by this requirement.

- New Criterion: Labor Value Content—40% to 45% of automobile content produced in a member country must be made by workers earning at least \$16 per hour for a possible boost to manufacturing in the U.S. where wages are higher than Mexico.
- U.S. Department of Labor will assess the wage practices of the manufacturing facilities involved in the production of such vehicles and their components.

Practitioner's Tip

CBP implementing instructions provide information on LVCs, with specifications related to the U.S. Department of Labor's treatment of these components available in Annexes A and B. Additionally, the U.S. Department of Labor will issue regulations related to high-wage components of the LVC requirements.

- Allows the U.S. auto industry to remain globally competitive by ensuring each country will not be affected by auto tariffs unless exports top 2.6 million units annually, which represents their current exports plus growth of at least 40%.

Practitioner's Tip

For automotive products under headings 87.01 through 87.08, there is a transitional period for up to three years for compliance, and alternative staging regime options (coordinated by the U.S. Trade Representative) for up to five years.

Dairy Farmers Access to Markets

- NAFTA originally eliminated tariffs on most agricultural products traded among the three countries but USMCA keeps those tariffs at zero.
- Approximately 3.6% of Canada's dairy market will now be opened to U.S. milk producers.

Digital Era Adjustments

Unlike NAFTA, USMCA now addresses digital trade. The [new rules](#) prohibit:

- Customs duties on importing or exporting digital products transmitted electronically (although internal taxes, such as sales taxes, and other fees would be allowed).
- Rules that require a business located in a particular country to locate its servers and storage devices in that particular country.
- Rules that restrict the cross-border flow of information, provided it is conducted for business purposes.
- Rules that would require a business to provide its source code (or algorithms) as a condition to import, distribute or sell its software in a member country.

Environmental Protections

- The agreement allocates \$600 million to address environmental problems in the region and removes the requirement of proving a violation affects trade to make regulations easier to enforce.
- The environmental chapter of this agreement focuses on obligations to combat trafficking in wildlife, timber, and fish; to strengthen law enforcement networks to stem such trafficking; and to address pressing environmental issues such as air quality and marine litter.

Biologic Drugs

USMCA does not have a provision for the protection of biologic drugs, meaning the U.S. has retained the long-standing ability to provide 12 years of exclusivity for biologics.

Treatment of Sets

Unlike NAFTA, goods, including textile or apparel goods, that are classified as sets are only considered as originating goods if each good in the set is originating, and both the set and the goods meet all other applicable requirements, or the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set and the goods meet all other applicable requirements.

New Enforcement Mechanisms

- USMCA contains new provisions to combat AD/CVD evasion, commitments to interdict transshipped intellectual property rights (IPR) infringing goods, prohibitions on the importation of goods sourced from forced labor, and requirements to prevent illegal taking of wild flora and fauna (including timber).
- New enforcement tools expand confidential trade data sharing; increase joint analysis, investigations, and operations; and facilitate facility verification visits to assess production capacity.
- An importer will not be subject to penalties under 19 U.S.C. 1592 for making an incorrect claim that a good qualifies as a USMCA originating good if the importer, in accordance with regulations prescribed by the Secretary of the Treasury, makes a corrected declaration within 30 days of discovery and pays any duties and MPF owed with respect to that good.

Practitioner's Tip

Consider filing a prior disclosure with CBP, which would, when accepted, eliminate any 19 U.S.C. 1592 penalties if the 30-day window closes.

- USMCA will require comprehensive enforcement provisions such as civil and criminal penalties for satellite and cable signal theft, broad protection against trade secret theft, and express recognition that intellectual property enforcement procedures must be available for the digital environment for trademark and copyright, amongst others. These are the strongest standards of protection for trade secrets of any prior free trade agreement, with added focus on trade secrets, which had not had the spotlight before.
- USMCA did not resolve the current 25% tariffs on Canadian steel and aluminum exports to the United States or the retaliatory tariffs that each country placed on them. However, the United States agreed that no tariff applied under Section 232 could be imposed against Canada or Mexico for at least 60 days. This agreement was made to provide time for negotiations between the two nations prior to imposing that tariffs.

How to Prepare for USMCA

USMCA [issue-specific fact sheets](#) and [state fact sheets](#) go into further detail per topic covered in the agreement and provide relevant information for each U.S. state.

Practitioner's Tip

Become familiar with the rules regulating your specific commodity and pay special attention to impacts in sourcing, recordkeeping, and entry processes.

Under USMCA it is easier for various goods to qualify for preferential tariff treatment based on the new rules of origin. Importers are recommended to review USMCA's rules of origin in detail to determine whether their goods are eligible for preferential tariff treatment under the new rules, and if necessary, consider sourcing alternatives to meet the requirements. When considering alternative sources ensure the product retains the country of origin marking of Mexico, Canada, or the U.S.

Practitioner's Tip

Consider obtaining a Binding Ruling from CBP to confirm your products are eligible for USMCA preferential tariff treatment. Note, all CBP Binding Rulings issued for the NAFTA preferential tariff treatment are no longer applicable and cannot be relied upon. Now is the time to get an updated ruling reflecting USMCA rules of origin.

Similar to NAFTA, recordkeeping rules under USMCA must be maintained for a period of no less than five years from date of entry and must be rendered for examination and inspection upon request.

Practitioner's Tip

Importers are permitted to solely maintain records electronically. Importers should consider having a backup, and maintaining all files electronically organized by entry number. Each entry record should include all records required by 19 C.F.R. Appendix to Part 163 - Interim (a)(1)(A) List.

Practitioner's Tip

An importer is responsible to exercise reasonable care when importing to ensure all documentation submitted to CBP is accurate. Importers should revisit their current standard operating procedures to include the applicable new rules from sourcing, record keeping, and CBP entry process. Company policies should include employee training as well as disciplinary action and remedial measures taken to ensure any errors that happened will not reoccur.

For the latest information on USMCA implementation, U.S. companies should visit the U.S. Customs & Border Protection's recently launched [USMCA Center](#) for the Final Implementation Instructions, 19 C.F.R. 182, as well as updated to the HTSUS and General Note 11 for compliance guidance.

Contact your customs counsel to assist you in analyzing your current practices to adapt to the required USMCA changes and avoid disruptions in your supply chain.