



C.H. ROBINSON

The United States – Mexico – Canada Agreement (USMCA)

June 2020

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From NAFTA to USMCA

The United States – Mexico – Canada Agreement (USMCA)

→ NAFTA Overview

NAFTA was negotiated by President George H.W. Bush, and went into effect under President Clinton in 1994.

The agreement is between the United States, Canada and Mexico, and was initially created to help lower costs of trade and bolster North American trade between the United States, Canada, and Mexico.

The agreement was phased in over 15 years, eliminated almost all duties, and intended to lessen trade barriers between the three countries.

Replaced the U.S. – Canada Free Trade Agreement



→ NAFTA Overview

There were 6 objectives of the NAFTA Treaty:

- Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the parties.
- Promote conditions of fair competition in the NAFTA zone.
- Increase investment opportunities in the territories of the parties.
- Provide adequate and effective protection and enforcement of intellectual property rights in each party's territory.
- Create effective procedures for the implementation and application of this agreement, for its joint administration and for the resolution of disputes.
- Establish a framework for further trilateral, regional, and multilateral cooperation to expand and enhance the benefits of NAFTA.

→ NAFTA Overview

NAFTA Wasn't Perfect..... For Example

- No “sunset clause”
- No provisions to renegotiate the rules of the treaty
- “Labor inequalities”
- “Favored” treatment for goods mostly produced outside the zone (i.e. rules of origin)
- Environmental considerations
- Does not take into account “the digital age”



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USMCA: An Overview & Implementation Process

The United States – Mexico – Canada Agreement (USMCA)

→ USMCA: An Overview

- The United States – Mexico – Canada Agreement (“USMCA”) is the proposed “new NAFTA”, signed on November 30, 2018.
 - In Canada, this agreement is referred to as the Canada – United States – Mexico Agreement (“CUSMA”)
 - In Mexico, this agreement is referred to as Tratado entre México, Estados Unidos y Canadá (“T-MEC”).
- Provides preferential tariff treatment for goods originating in Canada, Mexico, or the United States.
- The USMCA supports a “more balanced, reciprocal trade, leading to freer markets, fairer trade, and robust economic growth in North America.”
 - **Source:** [USTR Announcement, April 24, 2020.](#)
- The full text of this Agreement is available using the following link:
 - [https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.](https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between)



→ Where Are We in the Implementation Process?

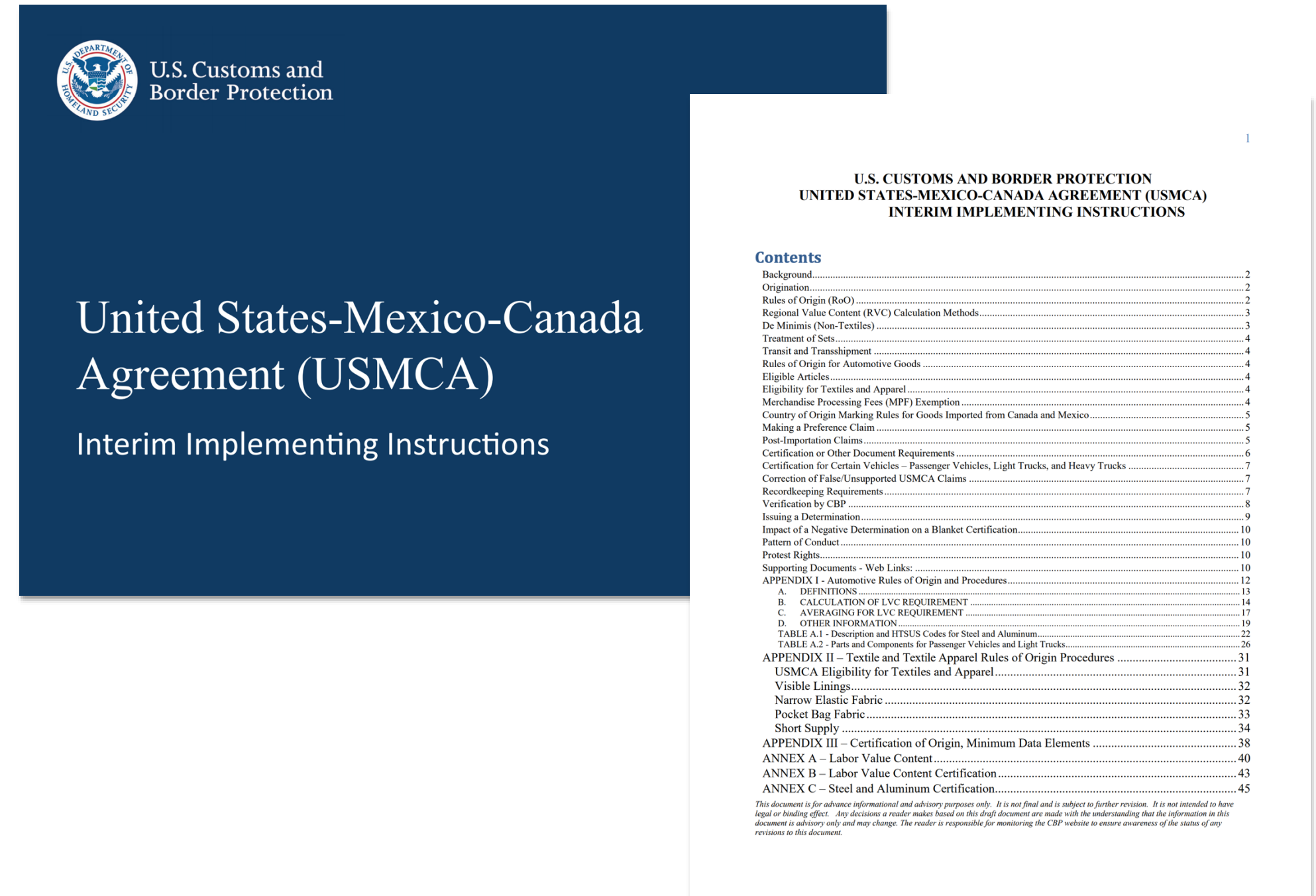


→ USMCA Interim Implementing Instructions

- On April 20, 2020, U.S. Customs published “interim implementing instructions”, which are intended to provide details and early guidance on the new regulations.
 - The instructions are available within the following link:
<https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr/Implementation%20Instructions.pdf>.

Topics included are:

- Rules of Origin
- Regional Value Content
- De Minimis
- Certification or Other Document Requirements
- Recordkeeping Requirements
- Etc.



→ How Will the Transition Period from NAFTA to USMCA Work?

- NAFTA rules will remain in effect until the USMCA enters into force.
- For automotive products under headings 8701 through 8708, there is a transitional period for up to three years, and alternative staging regime options (coordinated by the U.S. Trade Representative) for up to five years.
- Additional compliance guidance for the USMCA's automotive rules of origin is pending.
- For all other commodities, USMCA rules will replace NAFTA rules on the date the Agreement enters into force.
- There will be a new Special Program Indicator ("SPI"), which is "**S**", for USMCA claims.
 - NAFTA's SPI Indicator will be accepted for claims on merchandise that are entered prior to the USMCA's entry into force.

Source: [USMCA – Frequently Asked Questions](#), published by CBP.

→ Preparing for the Changes

Understanding the Agreement

- Review frequently updated resources: USTR, FRN, CBP, etc.
- Seek assistance and guidance from external sources, as necessary.

Staying Ahead of Qualification

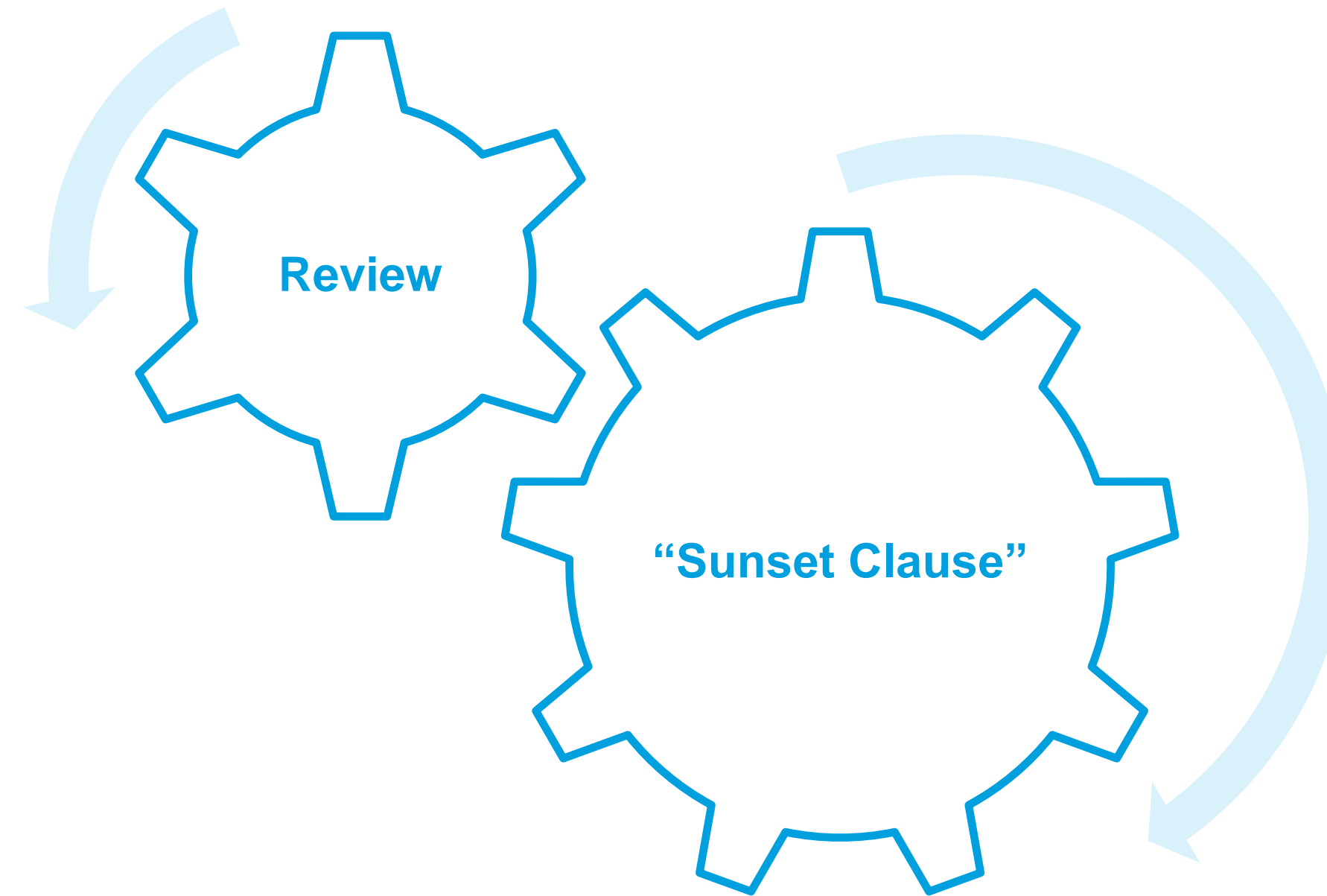
- Ensure Bill of Materials (BOM) and qualifying data from suppliers is up to date.
- Take new “Rules of Origin” into account.
- Ensure duty impact is part of your qualification process.

Communicating Proactively

- Frequently communicate changes (to internal and external stakeholders).
- Ensure all parties involved in supply chain stay abreast of the new requirements.

→ Review and “Sunset Clause”

The Agreement will be reviewed every 6 years, allowing for necessary revisions and amendments, as required.



The Agreement will be set to expire in 16 years, if it is not renewed (or revised) before this time period.



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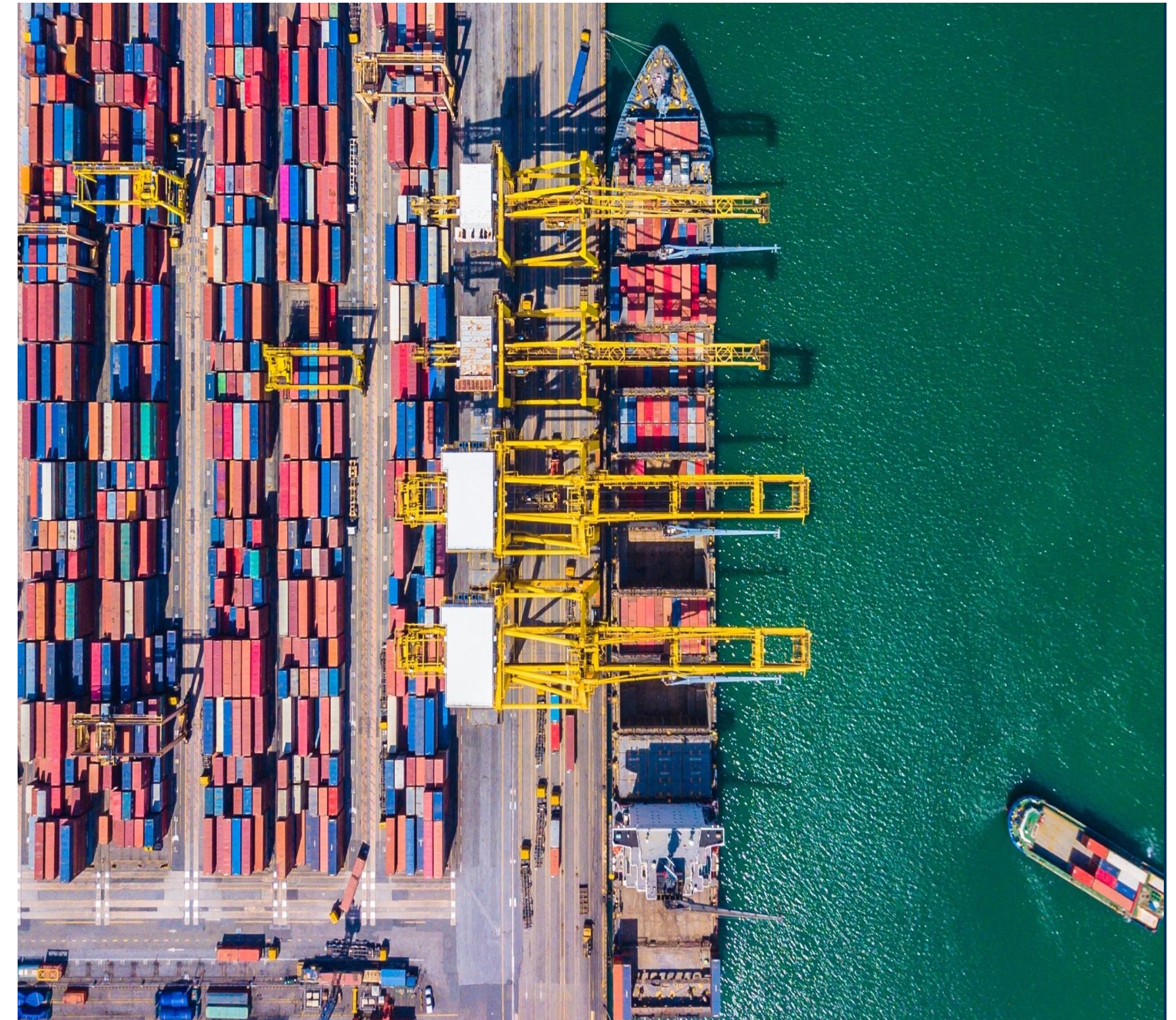
USMCA Major Changes (Import & Export Provisions)

The United States – Mexico – Canada Agreement (USMCA)

Our information is compiled from a number of sources that to the best of our knowledge are accurate and correct. It is always the intent of our company to present accurate information. C.H. Robinson accepts no liability or responsibility for the information published herein. www.chrobinson.com © 2020 C.H. Robinson Worldwide Inc. All Rights Reserved.

→ Significant Import & Export Provisions

- **Automotive Trade**
“North American” content rules revised.
- **Intellectual Property Rights**
Additional safeguard and defense provided.
- **Digital Trade**
Further protection of digital trade in the 21st Century.
- **Textile Apparels**
Revised tariff shift rules with particular modifications.
- **Low Value De Minimis Rules**
Changes for both Canada and Mexico.
- **De Minimis Content**
Changes for all parties.
- **NAFTA Certificate of Origin**
Elimination of CBP Form 434.

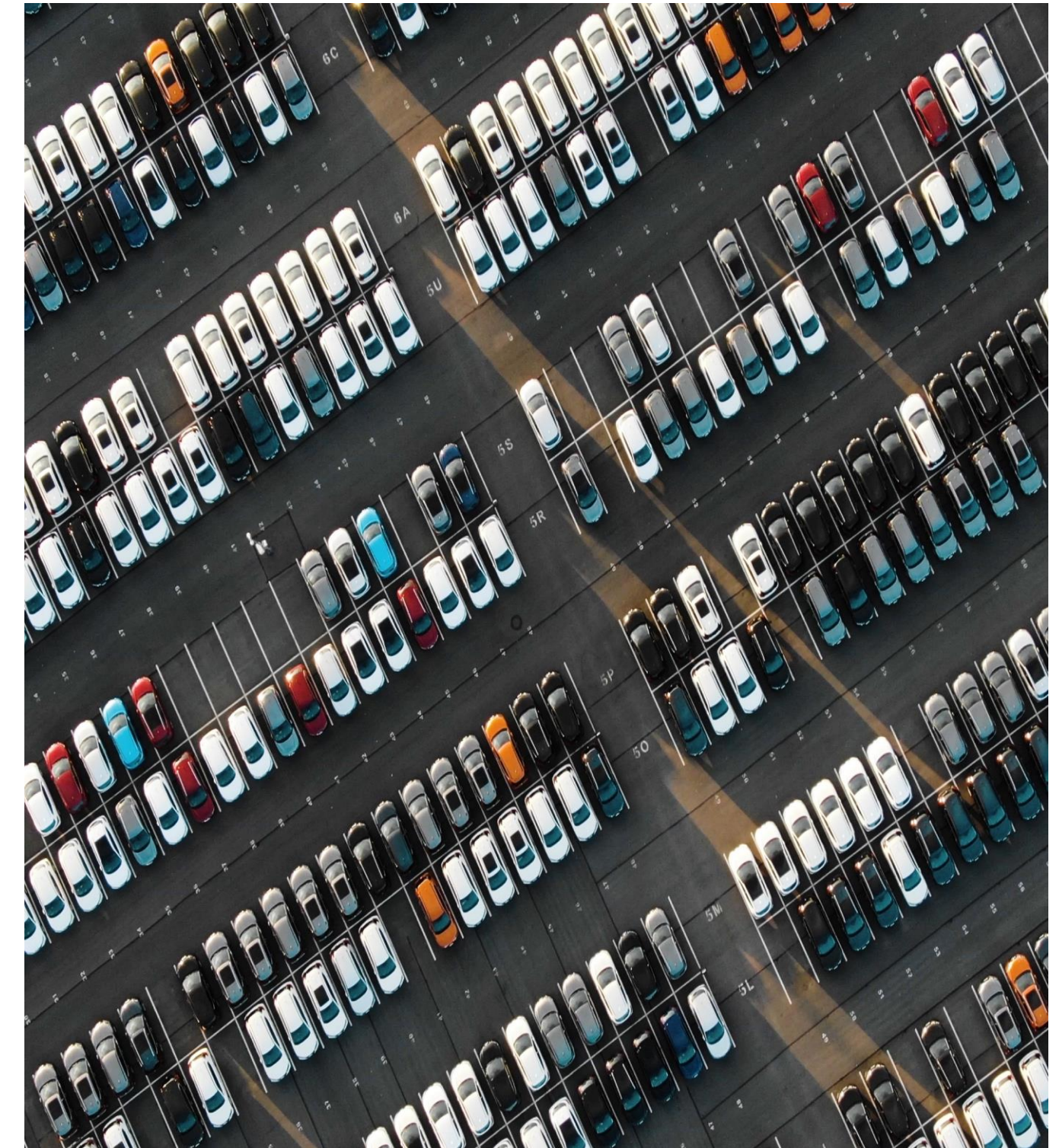


→ USMCA & Automotive Trade:

Under the USMCA, the following changes will affect automobiles

- Increased Regional Value Content
- Steel and aluminum requirements
- Labor Value Content
- Requirements for Components Produced Separately

There will be a 3-year transition period for producers to meet such new RVC rule requirements. **HOWEVER.....**



Source: USMCA – Frequently Asked Questions, published by CBP.

→ Procedures for Submission of Petitions:

Passenger Vehicles/Light Trucks to Use Alternative Staging Regime

- For a limited period, a North American producer of passenger vehicles and light trucks (vehicle producer) **may request an alternative to the standard staging regime for the rules of origin for automotive goods** under the USMCA.
- To be assured of consideration, a vehicle producer must submit a petition with a **draft alternative staging plan no later than July 1, 2020.**
- A vehicle producer must submit a petition with its final alternative staging plan **no later than August 31, 2020.**
- New staging plans, if approved by the USTR, allows companies a **five year period to transition to the USMCA's regional content rules.**

Source: [Federal Register Notice – Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks To Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods](#), dated April 21, 2020

→ USMCA & Intellectual Property










Halting of pirated goods

Intellectual Property

Trade Secrets

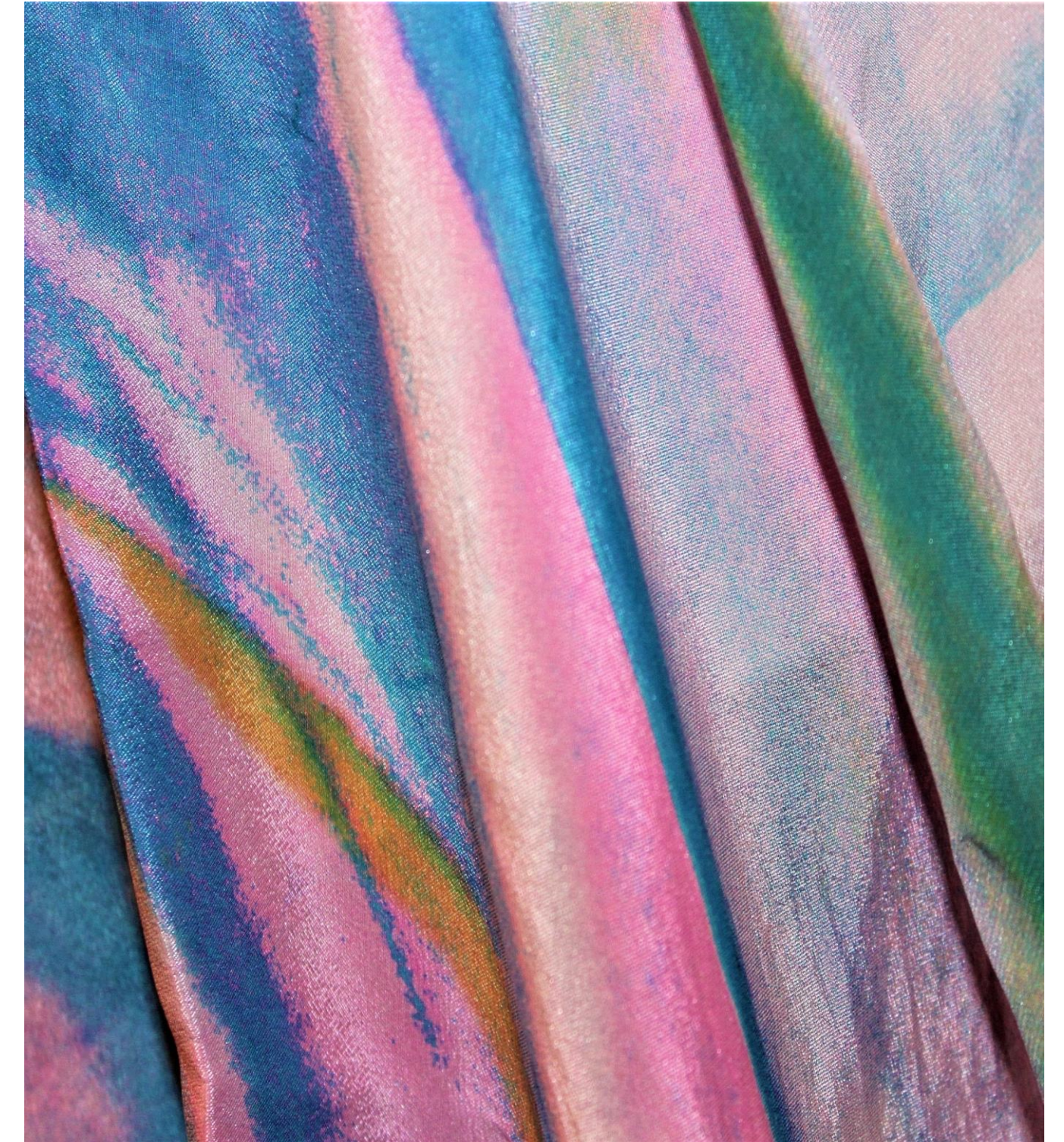


→ USMCA & Digital Trade

NAFTA	USMCA
<p>No rules for digital trade.</p>	<p> Prohibits the application of customs duties and other discriminatory measures to digital products distributed electronically, such as e-books, videos, music, software, and games.</p>
	<p> Ensures that data can be transferred across borders.</p>
	<p> Facilitates digital transactions by permitting the use of electronic authentication and electronic signatures, while protecting consumers' and businesses' confidential information and guaranteeing that enforceable consumer protections are applied to the digital marketplace.</p>
	<p> Cracks down on data localization measures used to restrict where data can be stored and processed, enhancing and protecting the global digital ecosystem.</p>
	<p> Promotes collaboration in addressing cybersecurity challenges.</p>
	<p> Protects against forced disclosure of proprietary computer source code and algorithms.</p>
	<p> Promotes open access to government-generated public data.</p>
	<p> Enhances the viability of internet platforms that depend on interaction with users by limiting civil liability for third-party content, except regarding intellectual property enforcement.</p>
	<p> Guarantees enforceable consumer protections, including for privacy and unsolicited communication, apply to the digital marketplace.</p>

→ USMCA & Textile Apparels

- HTS Chapters 61 and 62.
- Non-North American Textile Inputs
- Increases in De Minimis Percentage
- Requirement on certain North American inputs for apparel production



Source: [USMCA – Frequently Asked Questions](#), published by CBP.

→ Low Value De Minimis Rules

Canada

Has raised their de minimis shipment values from CAD \$20 to CAD \$40 for taxes.

Will also provide for duty free shipments up to CAD \$150.

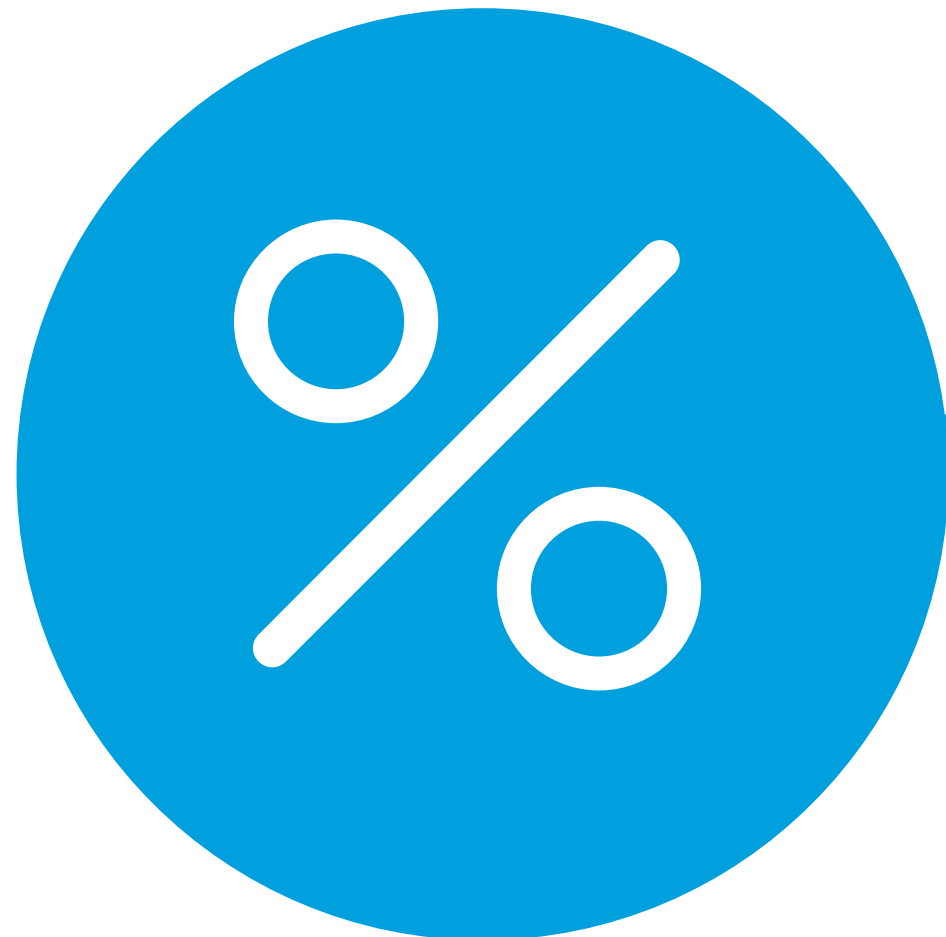
Mexico

Will continue to provide USD \$50 tax free de minimis.

Will also provide duty free shipments up to the equivalent of USD \$117.

Source: USTR – USMCA Fact Sheet Modernizing NAFTA into a 21st Century Trade Agreement

→ De Minimis Content Rules Under USMCA



De Minimis for origination is the *non-qualifying* content threshold that may be discounted for when performing a Country of Origin Analysis or Determination.

(Under a tariff shift, non-qualifying content that can be discounted for has *increased* to **10%** (from 7%) of the article's value.)

→ Is a formal Certificate of Origin Required under the USMCA?

The USMCA does not require a specific certificate of origin unlike NAFTA.

However a certification is required from either the producer, exporter or importer, validating the goods meet the rules of origin is required at time of entry.

AND.....

MINIMUM DATA ELEMENTS
1. Whether the Certifier is the Producer, Exporter or Importer
2. Provide name, title, address and contact information for the Certifier
3. Provide name, title, address and contact information for the Exporter
4. Provide name, title, address and contact information for the Producer (can be “Various” or “Available Upon Request”)
5. Provide name, title, address and contact information for the Importer (if known)
6. Description & HTS Classification (6-digit) of the Good
7. Origin criteria qualifying the Good (A, B, C, D)
8. Blanket Period If for a single shipment, the invoice number of the shipment If for blanket period, the period which is covered (up to 12 months)
9. Authorized Signature and Date with Certification

→ Certification Requirement under the USMCA

A Formal Declaration:

“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.”

→ Certification Requirement under the USMCA

Where?

Certification can be within the **commercial invoice** or it can be an **additional document**, certifying the goods.

How?

Certifications are accepted in either **hard copy** or **digital copy**, with digital signatures allowed.

When?

Certification can cover just one **single shipment**, or can cover items for a **blanket period** (up to 12 months).

→ Post-Importation Claims Under the USMCA

- Post-Importation Preference Claims
- Post Importation Claims-Merchandise Processing Fee (“MPF”) paid on entries **will not be refunded**
- The importer may make a post-importation claim **within one year** of importation:
 - A declaration stating that the good qualified as an originating good **at the time** of importation
 - 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) 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; and
 - 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).

Source: USMCA – Interim Implementation Instructions

→ Recordkeeping Requirements

- An at least 5 year record retention policy.
 - Importation Documents;
 - Qualification documents and certificates
 - Shipment documentation (BOL, Airway Bills)
- The importer must render these records for examination and inspection upon request.
- Additional requirements for Vehicle Producers:
 - Labor Value Content
 - Steel and Aluminum Purchasing Records



→ Certification Enforcement under the USMCA

Validation

Questionnaires may be sent to importers or producers by each country's Customs officials to validate certifications. On-Site visits can also be requested for further verification.

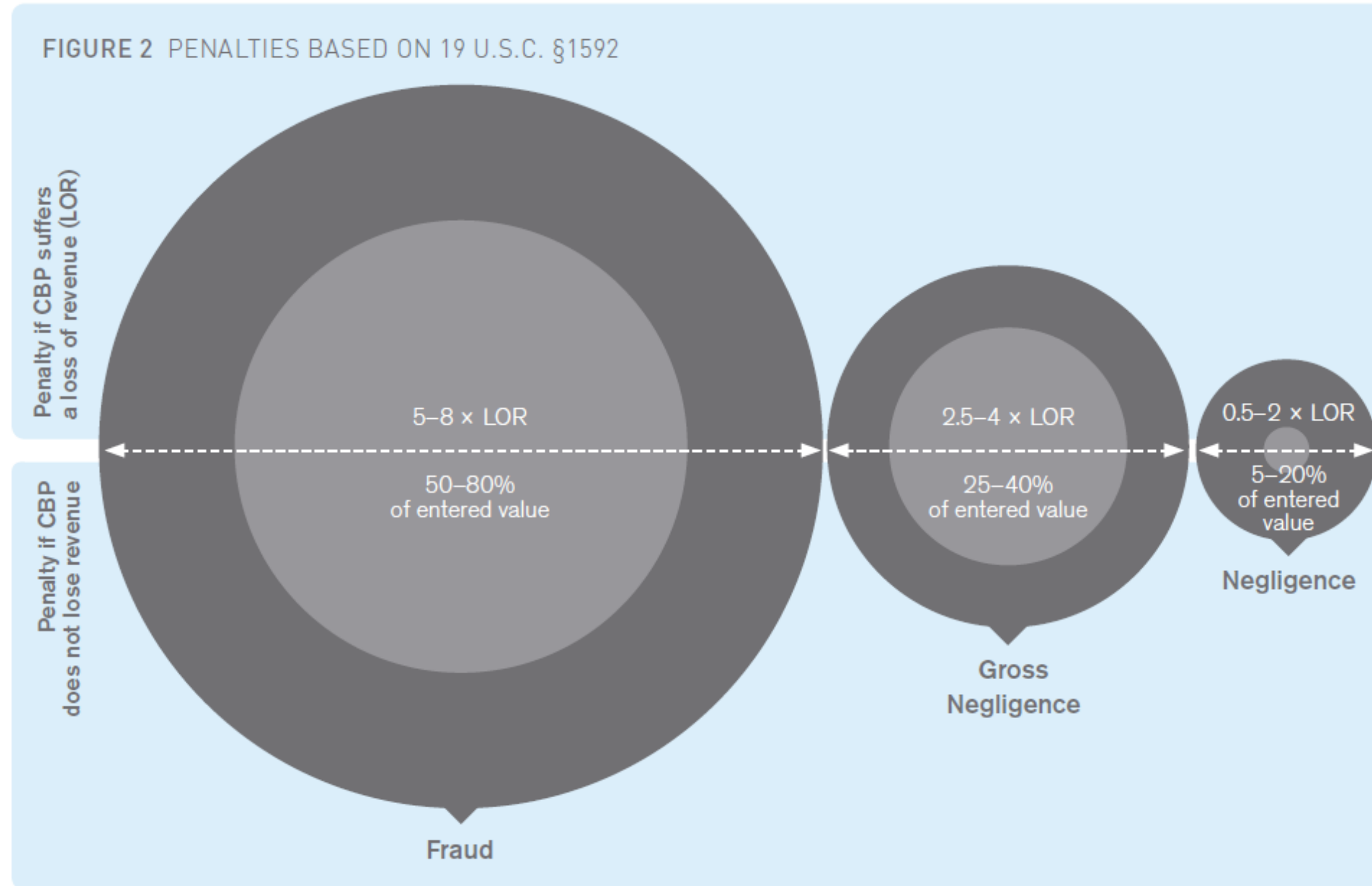
Enforcement

Each country may take necessary actions, should false or incorrect statements be found during investigation. These actions can be administrative, civil or criminal.

Penalty Action

False statements or certifications are penalizable under *Section 592 of the Tariff Act*
Penalty actions can be taken for Negligence, Gross Negligence or Fraud.

→ The Cost of Non-Compliance





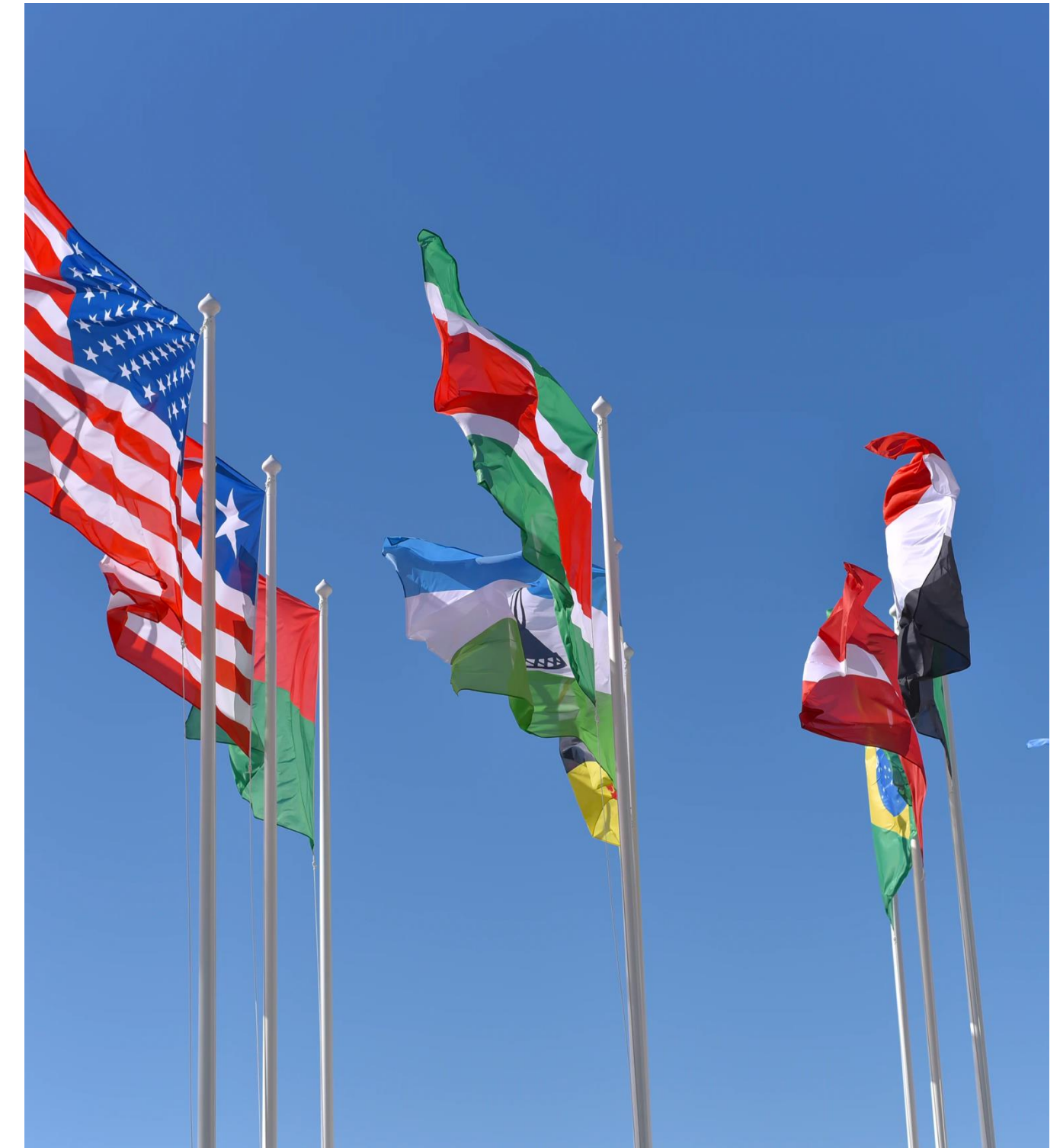
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The Rules of Origin Under the USMCA

The United States – Mexico – Canada Agreement (USMCA)

→ Rules of Origin Under the USMCA

- The current Rules of Origin for NAFTA reside under *General Note 12* in the USHTS.
- Under the USMCA, the Rules of Origin will reside under *General Note 11*.
- It is important to note that changes will need to be diligently reviewed to determine if the Rules of Origin have changed under General Note 11 vs General Note 12.
 - If the Rules of Origin have changed, Importers, Exporters and Producers will need to ensure a new analysis is thoroughly conducted to determine the eligibility under the USMCA.
- **READ THE RULES OF ORIGINATION!**



→ An Originating Good Under the USMCA

- **In general**, goods are said to be “originating” if:
- They are **wholly obtained or produced** in the territory of one of the USMCA countries;
- They are **produced entirely** in the territory of one of the USMCA countries from **originating materials**;
- They are **produced entirely** in the territory of one of the USMCA countries, **using non-originating materials**, provided the good satisfies all applicable requirements (Annex 4-B);
- **Except for** a good provided for in Chapter 61 to 63, HTSUS:
 - The good is **produced entirely** in the territory of one or more of the Parties;
 - One or more of the **non-originating materials** provided for as parts under the Harmonized System used in the production of the good cannot satisfy the requirements set out in Annex 4-B (Product-Specific Rules of Origin) because both the good and its materials are classified in the same subheading or same heading that is not further subdivided into subheadings or, the good was imported into the territory of a Party in an **unassembled** or a **disassembled** form but was classified as an assembled good pursuant to rule 2(a) of the General Rules of Interpretation of the Harmonized System; and
 - Meets a **Regional Value Content threshold** of not less than 60% if the **Transaction Value Method** is used or not less than 50% if the **Net Cost Method** is used (not including RVC for autos).
- The good satisfies **all other applicable** origin requirements.

Source: [USMCA Agreement](#), dated December 13, 2019.

→ Regional Value Content (“RVC”) Calculation Methods

For most goods, the USMCA provides for two Regional Value Content (RVC) calculation methods:

Transactional Value Method

- **$RVC = (TV - VNM) / TV \times 100$**
 - **RVC** = Regional Value Content, expressed as a percentage
 - **TV** = Transaction Value of the Good, adjusted to exclude any costs incurred in the international shipment of the good
 - **VNM** = Value of Non-Originating Materials, including materials of undetermined origin used by the producer in the production of the good

The Net Cost Method

- **$RVC = (NC - VNM) / NC \times 100$**
 - **RVC** = Regional Value Content, expressed as a percentage
 - **NC** = Net Cost of the good
 - **VNM** = Value of Non-Originating Materials, including materials of undetermined origin used by the producer in the production of the good



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Your Marching Orders

The United States – Mexico – Canada Agreement (USMCA)

→ T-Minus “X” Days and Counting

- Prior to July 1, 2020 you have a lot to do!
- Take a deep breath this is like many other FTAs you need to learn the framework and move forward.
- If you intend on completing USMCA Certifications a qualification process must be undertaken.
 - Correct HTS to the 6th digit of finished goods.
 - One step down BOM with Country of Origins and HTS Classifications
 - Underlying certifications for domestically (or within the region) sourced inputs to your finished goods.
 - Possibly values for all inputs if a RVC needs to be calculated.
 - Development and implementation of a USMCA Certificate
 - Setting up a recordkeeping and auditing process
- And just because NAFTA ends doesn't mean you are still out of the woods with that program!



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If you have further questions please
reach out to our Trade Policy Group

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or your C.H Robinson Representative

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freight under
management

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Thank you