

**Commercial Customs Operations Advisory
Committee (COAC)
Rapid Response Subcommittee
USMCA
Recommendations & Background**

April 15, 2020

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

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USMCA Recommendations

1) Entry Into Force:

COAC recommends that CBP, the USTR and its USCMA partners should delay USMCA's entry into force until no earlier than January 1, 2021 and provide a transition or implementation period for the year where NAFTA qualifying goods with appropriate certificates of origin will be considered to comply under the USMCA. Now is not the time to implement a trade agreement that contains so many important and meaningful changes that will impact certain industries in a significant financial manner. The trade simply is not, and will not be, ready to shift from NAFTA to USMCA on June 1, 2020.

2) Informed Compliance Flexibility:

COAC recommends that should the USMCA enter into force as scheduled, at the very least, CBP and its USMCA partners should grant enforcement discretion by way of an informed compliance period until the trade has had reasonable time to implement each administration's regulatory and automation requirements.

USMCA Recommendations Background

Background

The United States Mexico Canada Agreement (USMCA) is an updated version of the nearly 25-year-old, trillion-dollar North American Free Trade Agreement (NAFTA). It includes some major changes on the rules of origin for products such as automobiles, revised declaration and documentation requirements as well as new policies on labor and environmental standards, intellectual property protections, digital trade, and many other provisions.

On December 19, the USMCA passed the house with a vote of 385 to 41. About a month later the Senate approved the USMCA, 89 to 10. On January 29, President Trump officially signed the USMCA. Mexico ratified the USMCA on June 19, 2019 and Canada is expected to ratify the trade pact shortly. Administration officials have informally indicated that they are aiming for USMCA to enter into force by mid-year 2020.

Below is a brief synopsis of some of the major changes we expect from USMCA that also raise many questions the COAC would like to resolve by utilizing the Rapid Response Subcommittee as a sound board for these issues as the trade prepares for implementation.

- **Auditing Automobile Origin:** Automobiles must have 75% of their components manufactured in Mexico, the US, or Canada to qualify for zero tariffs (up from 62.5% under NAFTA). Further, automobiles must contain 70% steel and aluminum from North American sources. Additionally, 40% of the value of passenger vehicles and 45% of the value of trucks must be produced in facilities where workers earn at least \$16 an hour by 2023.
- **Implementing Dairy Tariff Rate Quotas:** The dairy provisions provide the U.S. tariff-free access to 3.6% of the \$15.2 billion Canadian dairy market, up from 3.25% under the never ratified TPP. Canada agreed to eliminate Class 7 pricing provisions on certain dairy products.
- **Protecting Intellectual Property Rights:** USMCA includes civil, criminal and other national enforcement for IPR violations, such as copyright enforcement in the digital environment, criminal penalties for trade secret theft and camcording and ex officio authority for customs officials to seize counterfeit trademark and pirated goods. It also provides “safe harbors” to allow legitimate online internet intermediaries to develop their business while providing enforcement against digital copyright infringement and “notice and takedown systems” to address intermediary liability by which rights holders notify online service providers of infringing content to request removal of that content, while allowing alternative systems.
- **Expanding Digital Trade:** The agreement includes new provisions to prohibit customs duties and other measures from impeding the electronic distribution of digital products. It also ensures the cross-border transfer of data and that suppliers are not restricted in using electronic authentication or electronic signatures.
- **Addressing De Minimis:** To facilitate greater cross-border trade, the United States has reached an agreement with Mexico and Canada to raise their de minimis shipment value levels. Canada will raise its de minimis level for the first time in decades, from C\$20 to C\$40 for taxes. Canada will also provide for duty free shipments up to C\$150. Mexico

will continue to provide USD \$50 tax free de minimis and provide duty free shipments up to the equivalent level of USD \$117.

Questions/Concerns

We suggest that through the Rapid Response Subcommittee, COAC and CBP collaborate to address policy and provide guidance on the implementation of USMCA concerning questions such as these, which the trade has raised.

Certificates of Origin & Origin Declarations

- What happens when under the new USMCA, a formal certificate no longer exists, but a “free from” certificate is acceptable? Would CBP, CBSA and Mexico Aduanas work together on general guidelines or an informed compliance publication that sets forth uniform examples of recommended templates that importers and exporters can use to identify qualifying USMCA products crossing the borders?
- Assuming USMCA will become official in the next four (4) months, what happens with items under current NAFTA certificates applicable for the same year that USMCA enters into force? How do importers manage this? What is CBP’s expectation?
- Will 2020 blanket certificates (e.g., Jan- Dec 2020) which were already issued for NAFTA not need to be re-qualified for the remainder of the year so in essence the trade would not have to double qualify in 2020? Can the trade expect an agreement among the three countries, to continue to accept blanket certs until a date certain?
- The revised agreement eliminates the need for the formal or standard certificate, but it also requires importers claiming preference to prove eligibility as part of the compliance due diligence process or during an audit. Will the Customs agencies between the member countries set forth rules and guidance on “acceptable” eligibility documentation, at least for reference purposes, to guide traders?
- For smaller importers that may not have implemented more sophisticated EDI systems or importer/broker databases, often the instruction for the broker is to claim NAFTA if a ‘certificate’ is included in the entry packet (this may not be the best approach, but it is a reality on today cross-border operations). Will the Customs agencies provide general recommendations on what document or template can be accepted and what supporting information will be required in the form of implementation instructions (or otherwise) issued some time prior to entry into force?

Informed Compliance, Responsibilities, Audit & Enforcement

- How will record keeping be addressed when within a current year a party claimed NAFTA and then USMCA? Will importers be required to maintain dual record keeping systems?
- How will current NAFTA rulings be addressed? Will a current NAFTA ruling require a new ruling under USMCA? Will CBP consider grandfathering current NAFTA rulings under the USMCA, as appropriate, to minimize the need for guidance?
- What is the timetable under which the USMCA Parties will issue the Uniform Regulations for USCMA? In HR 5430 it states: “interim or initial regulations to implement the Uniform Regs shall be prescribed not later than the date USMCA enters into force.” Further it provides that, “regulations shall be prescribed within 1 year after the date on which the USMCA enters into force.”
- It seems CBP has unique and complex issues that it is addressing with the auto industry, but what about other industries that the USMCA impacts?
- Will CBP issue a comprehensive web page, publication or otherwise as well as an USMCA “hotline” or email address to provide guidance to the trade as it did when it implemented NAFTA?

- What is the difference between NAFTA and USMCA now that that USMCA is called an importer's agreement (responsibility) where NAFTA is considered an exporter's agreement (responsibility)? What sort of guidance and or definition will CBP provide to clarify the responsibilities of the parties?
- What should importers be prepared to do for a CBP audit when some of their goods qualified under NAFTA and now the same products qualify under USMCA in the same year? How should importers prepare if they are audited by CBP?
- How does CBP and their Mexican and Canadian counterparts intend to manage the gray area on enforcement? If importers and exporters are expected to comply, but do not yet have the rules for compliance, what is CBP's expectation?
- Will there be an USMCA refund recovery mechanism like 520(d) and reconciliation?

Auto Industry

- How is USMCA eligibility communicated? Are OEM's required to submit all new vehicle USMCA certifications to CBP at least ten (10) days prior to the entry into force date?
- What happens to the current automobile NAFTA certificates on file with the three governments? Do they become invalid, and if so when? If yes, will duty begin accruing for all vehicle shipments if a new USMCA certificate is not on file? Will there be a grace period to avoid industry disruption?
- The vehicle certification process takes a minimum of four (4) months (in addition to several months of internal work) to prepare for the process. Suppliers have indicated they will not provide USMCA responses until the Uniform Regulations have been issued. Therefore, OEM's are at risk of not being able to certify their vehicles. When will the implementing regulations be finalized and will it allow all parties the time necessary to update their systems to implement the new rules, educate their supplier base, solicit origin information from their suppliers, perform the vehicle qualification calculations, and submit the signed documents in time for Day 1 of entry into force?
- The auto rules of origin have a core parts requirement that doesn't include HTS codes. How will CBP perform an audit of the core parts and their non-originating status if there are no HTS codes to follow? The core parts can be described using many different descriptions that are unique to the automaker. How will CBP address this?
- When will CBP begin USMCA validations/audits for autos and what guidance will the automotive industry have prior to audits? Will CBP take an "informed compliance" approach at least initially?

Foreign-Trade Zones (FTZs)

- To what extent will CBP support the three central goals of the U.S. FTZ program to encourage the location of manufacturing operations in the United States, support and retain American jobs, and promote U.S. exports?
- NAFTA severely hindered FTZ goals by restricting through unwarranted and unfair tariff treatment the ability to export to Canada and Mexico from a U.S. FTZ free of U.S. duty. What can CBP do to address this restriction, carried over into the USMCA and implementing legislation, that has created a serious cost disadvantage for U.S.-based manufacturers vis-à-vis competitors in Canada and Mexico, which eliminates a key benefit of the FTZ program?
- Is there a way to address the FTZ issues and maintain consistency with the USMCA by enacting a new tariff line under Chapter 98 of the HTSUS providing that exports from U.S. FTZs to Canada and Mexico will be subject to a duty rate of zero?

Relationship to Other Trade Agreements

- How will CBP work with other agencies and possibly Congress to address NAFTA provisions referenced in other trade agreements that will not carry over to USMCA?

HTSUS examples include:

- Reference to General Note 12 in CAFTA footwear rule, General Note 29, Chapter 64
- Reference to General Note 12 in Automotive Products Trade Act (APTA) General Note 5
- Reference to General Note 12 in CBTPA, General Note 17
- Nylon filament yarn reference to countries that are party to an agreement with the US establishing a free trade area which entered into force before January 1, 1995
- CAFTA in General Note 29
- Peru FTA in General Note 32
- Reference to General Note 12 in AGOA short supply HTSUS 9819.11.21
- Reference to General Note 12 in CBTPA nylon filament yarn language (9820 Note 3(d))
- Reference to General Note 12 in Haiti HOPE (9820 Note 6(f)(iii) value provision)
- Reference to General Note 12 in Haiti HOPE (9820 Note 6(p)(i) short supply provision)
- Reference to General Note 12 in CBTPA short supply HTSUS 9820.11.24

Statutory examples include:

- 19 U.S.C. §3203(b)(3)(B)(vi)(IV)
 - (IV) Special origin rule - An article otherwise eligible for preferential treatment under clause (i) or (iii) shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.
- CBTPA - 19 USC 2703(b)(2)(A)(v)(I) Short supply under Annex 401 to the NAFTA
- CBTPA - 19 USC 2703(b)(2)(A)(vii)(IV) nylon filament yarn reference to a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.
- AGOA – 19 USC 3721(b)(5)(A) Short supply under Annex 401 to the NAFTA
- Haiti HOPE – 19 USC 2703a(b)(vii) Short supply under Annex 401 to the NAFTA

Timeline for Implementation

- Members of the COAC that have been in touch with the USTR about the sequence for implementation of USMCA recognize that CBP is in control of the regulations and believe the timeline is as follows:
 1. USMCA will go into effect
 2. Interim and/or uniform regs will be proposed/implemented
 3. Country regulations will be proposed/implemented a year after effectivenessCan CBP confirm this is the process and provide an anticipated timeline regarding implementation?
- What does “effectiveness” mean to CBP in this context? Under TPA, the US must “certify” that CA and MX fulfilled their obligations under the USMCA even before the effective date. This could bring about further discussions or negotiations on MX and US on labor issues, etc. before USMCA goes into effect, which would impact regulatory rulemaking and the release of the uniform regulations. In the meantime, it appears the trade would have effectiveness without rules. What is CBP’s approach to address this?

Conclusion

COAC intends for this initial white paper to begin to demonstrate the numerous, critical unanswered questions from the trade, that need to be addressed by beginning a dialogue to prepare for USMCA implementation later this year. Additional questions will continue to arise, calling for the proactive engagement of the Rapid Response Subcommittee as a sounding board for discussion of these issues to prepare the Trade for the implementation of USMCA. This COAC work could also lead to the development of recommendations as well as implementation guidance, including an FAQ, for the trade created in collaboration between the Trade and CBP.