

Overview of Chapter 7 (Customs Administration and Trade Facilitation) of the US-Mexico-Canada Agreement

October 2018

Authors: [Gregory Spak](#), [Francisco de Rosenzweig](#), [Dean Barclay](#), [Scott Lincicome](#), [Matt Solomon](#), [Brian Picone](#)

Chapter 7 of the US-Mexico-Canada Agreement (USMCA), “Customs Administration and Trade Facilitation,” parallels the “Customs Procedures” Chapter of the North American Free Trade Agreement (NAFTA) in part, while introducing a range of more detailed provisions modeled off the WTO Trade Facilitation Agreement (TFA) and elements of the Trans-Pacific Partnership (TPP). The Chapter’s key provisions are summarized herein.

Summary of Key Provisions

Express shipments

USMCA Art. 7.8 includes new provisions not seen in the NAFTA, modeled on TPP Art. 5.7, designed to expedite the clearance of express shipments. These procedures include:

- Submission and processing of required customs information, by single submission, prior to the arrival of the shipment (by electronic means, if possible);
- Immediate release of shipments based on “minimum documentation”;
- “Fewer custom formalities” for shipments under USD \$2,500.¹
- No duties/taxes assessed at time of importation, and no formal entry procedures required, for goods below the *de minimis* threshold²:

¹ NAFTA Art. 503 states that Parties shall not require a Certificate of Origin for goods below USD\$1,000. The United States has raised this threshold to USD\$2,500.

² Since NAFTA was originally negotiated, there has been a surge in lower-value cross-border shipments, largely driven by e-commerce. While the United States raised its *de minimis* threshold to USD\$800 in 2016, Canada and Mexico kept their limit relatively low, at C\$20 and USD\$50, respectively, putting a damper on US low-value e-commerce exports.

Thresholds above which customs duties and taxes are levied, and formal entry procedures are required		
	Customs duties	Taxes
United States	USD\$800	USD\$800
Mexico	USD\$117	USD\$50
Canada	C\$150	C\$40 ³

However, a footnote provides that “a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Party’s domestic law is lower than that of the Party,” which would allow the United States to lower its threshold.

The Chapter does not include precise definitions of “minimum documentation” and “fewer custom formalities,” so these terms will likely require elaboration through implementing regulations or country practice.

Other new provisions enhancing efficiency

- Art. 7.7: Release of Goods** – Incorporating elements of TPP Art 5.10 and TFA Art. 7, this Article requires that Parties adopt procedures that provide for the “immediate release of goods upon receipt of the customs declaration and fulfilment of all applicable requirements and procedures,” compared to within 48 hours under TPP. Parties must also adopt procedures providing for the pre-processing of goods, and for goods to be released at the point of arrival without requiring temporary warehousing. The Article further requires the release of goods prior to final determination and payment of any customs duties, taxes, or fees, with conditions (so long as the duties had not been determined prior to, or promptly upon arrival, and the goods are otherwise eligible for release).
- Art. 7.9: Use of Information Technology** – The USMCA requires Parties to employ technology across all processes to increase efficiency. This includes (i) making available all forms/documents required for import/export; (ii) permitting the electronic submission of customs declarations; (iii) permitting the electronic payment of duties, taxes, and fees; and (iv) “endeavor[ing] to allow” an importer to correct multiple import declarations through a single form. This Article is similar to TPP Art 5.6, but is binding, instead of aspirational (*i.e.*, using “shall” instead of “shall endeavor”).
- Art. 7.10: Single Window** – This Article requires Parties to establish or maintain a single window system by December 31, 2018 that “enables the electronic submission through a single entry point of the documentation and data” required for importation, with a view to expanding the system to manage all import, export, and transit transactions. Whereas TFA Art. 7.10 suggests use of information technology in maintaining a single window, the USMCA requires it.
- Art. 7.14: Authorized Economic Operator (AEO)** – This Article, similar to TFA Art. 7.7, encourages further harmonization of AEO programs, which give pre-authorized/“low risk” businesses preferred customs treatment, including reduced frequency of examination. There already exists mutual recognition between Canada’s Partners in Protection (PIP)⁴ and United States’ Customs Trade Partnership Against Terrorism (CTPAT)⁵ programs, and between CTPAT and Mexico’s Operadores Económicos Autorizados (OEA).⁶
- Article 7.25: Border Inspections** – This Article states that Parties shall coordinate amongst their relevant agencies to carry out examinations “to the extent practicable simultaneously within a single location,” to expedite release. Furthermore, as appropriate, the Parties shall coordinate to “develop procedures or facilities, at adjacent ports of entry, for the efficient movement of goods.”

Advance rulings

As under NAFTA Art. 509, USMCA Art. 7.5 sets out procedures for the issuance of advance rulings on a range of customs matters, providing greater certainty for traders as to how their goods will be treated at the

³ Approximately USD\$115 and USD\$31, respectively.

⁴ Click [here](#) for an overview of the PIP program.

⁵ Click [here](#) for an overview of the CTPAT program.

⁶ Click [here](#) for an overview of the OEA program (in Spanish).

border. While the thrust of Article 7.5 is similar to that of its predecessor, it is more limited in substantive scope (*i.e.*, what issues may be subject to an advance ruling), and includes small procedural changes.

Largely mimicking TPP Art. 5.3, the USMCA invites requests for advance rulings on four issues: (i) tariff classification; (ii) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement; (iii) the origin of the good, including whether it qualifies as an originating good; and (iv) whether a good is subject to a quota or a tariff-rate quota; in addition to other matters. The NAFTA, on the other hand, enumerates nine categories of inquiry, including duty-free re-entry of goods and satisfaction of origin marking requirements. However, both the USMCA and the NAFTA include a catchall provision, allowing advance ruling on “other matters as the Parties may agree.”

As for procedure, the USMCA requires that a responding Party must issue the ruling “in no case later than 120 days after it has obtained all necessary information,” which is similar to the NAFTA procedures,⁷ and faster than the 150-day deadline under the TPP. One difference is that, under the USMCA, a Party may request “a sample of the good for which the advance ruling was requested.”

Transparency

The USMCA includes new provisions meant to enhance the transparency of customs processes, both by requiring Parties to proactively share customs rules and the reasoning behind rulings, and by encouraging the use of information technology to ensure access to information. These provisions include:

- **Art. 7.2: Online Publication** – NAFTA Art. 1802 requires that Parties publish “laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available.” The USMCA expands this requirement, committing Parties to posting online eight categories of information, including a range of informational resources and contact information. These provisions are more in line with TFA Art. 1.2 and TPP Arts. 5.11 and 26.2.
- **Art. 7.3: Communication with Traders** – This Article requires that Parties “establish to maintain a mechanism to regularly communicate with traders within its territory on its procedures related to the importation, exportation, and transit of goods,” so that traders can identify emerging issues. While NAFTA Art. 1802 requires that Parties, to the extent possible, “provide interested persons and Parties a reasonable opportunity to comment on such proposed measures,” the mechanism established under the USMCA appears as an ongoing, open channel of communication, not necessarily tied to the consideration of a specific measure. Article 7.3 does not define the precise “mechanism” to be used, presumably leaving this up to the Parties.
- **Art. 7.4: Enquiry Points** – The NAFTA establishes points of enquiry for issue-specific matters (*i.e.*, SPS (Art. 719) and financial services (Art. 1411)), but not for general customs matters. This Article is in line with TFA Art. 3 and TPP Art. 5.11.
- **Art 7.11: Transparency, Predictability and Consistency in Customs Procedures** – Similar to TFA Art. 10.1-2 and TPP Art. 5.1, this Article requires that Parties apply their customs procedures in a transparent, predictable, and consistent manner, while allowing for differentiation of treatment based on type of good, means of transport, risk management, and other considerations.
- **Art. 7.19: Standards of Conduct** – This Article establishes a channel for traders and other stakeholders to submit complaints regarding “improper or corrupt” behaviour, including officials’ use of their public service position for private gain, including any monetary benefit.

Customs compliance

- **Article 7.26: Regional and Bilateral Cooperation on Enforcement** – This Article draws on Section 3 from TPP Art. 5.2, which states that Parties shall endeavour to provide other Parties with advance notice of significant administrative or legal changes “likely to substantially affect” the agreement or the enforcement of trade laws of a Party. The Article requires that Parties take appropriate legislative, administrative, or judicial actions to enhance coordination in addressing customs offices, and to, whenever practicable, provide information to assist another Party in addressing such offenses. Elsewhere in the

⁷ 19 CFR 181.99

agreement (Article 10.5: Duty Evasion Cooperation), a Party may request that another Party conduct a duty evasion verification, to be completed within 30 days of the request.

- **Article 7.28: Customs Compliance Verification Requests** – While the NAFTA sets procedures for origin verifications, the procedure is slightly different under the USMCA, in that the presumption is that the verification visit will be conducted by the requested party.

Other new provisions

- **Article 7.12: Risk Management** – Similar to TPP Art. 5.9 and TFA Art. 7.4, this Article obligates Parties to maintain a risk management system to “focus its inspection activities on high-risk goods,” and simplify the handling of low-risk goods.
- **Article 7.13: Post-Clearance Audit** – This Article requires Parties to adopt a post-clearance audit system in a risk-based manner. It is similar to requirements under TFA Art. 7.5, but refers to “quasi-judicial” proceedings, and requires Parties to inform the trader with respect to laws. The scope, frequency, and procedure for such audits are not defined.
- **Article 7.16: Administrative Guidance** – Introduces a mechanism by which a customs office can request guidance from a central authority on a transaction. Guidance may be requested by the office or by traders.
- **Article 7.17: Transit** – Similar to TFA Art. 11, the USMCA specifies freedom of transit through a Party’s territory, if the transit is beginning and terminating beyond the frontier of the Party across whose territory the traffic passes.
- **Article 7.18: Penalties** – The USMCA specifies that “clerical or minor error[s]” do not constitute a breach of laws, regulations, or requirements, and includes a new anti-corruption clause – “No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.”
- **Article 7.21: Customs Brokers** – The USMCA levels the playing field between self-filers and customs brokers. This Article is similar to TFA Art. 10.6, but prohibits Parties from limiting the number of ports at which brokers can operate. Mexico currently requires the use of customs brokers.
- **Article 7.22: Trade Facilitation Committee** – Establishes a new Committee, comparable to the NAFTA Committee on Trade in Goods, but with greater specificity of mandate (single windows, AEO, etc.).
- **Article 7.27: Exchange of Specific Confidential Information** – The NAFTA limits disclosure of confidential information collected during investigation, but this Article is more detailed/robust.
- **Article 7.30: Sub-Committee on Customs Enforcement** – Establishes a new Sub-Committee, with some overlap with the NAFTA’s Customs Subgroup under the Working Group on Rules of Origin.

Outlook

Overall, the customs procedures envisioned under the USMCA build upon those under the NAFTA, while incorporating new elements from the TFA and the TPP related to transparency and efficiency. The USMCA’s Customs Chapter establishes novel cooperative/consultative mechanisms that reflect the United States’ priorities on anti-circumvention and duty evasion.

Reaction to the Customs chapter has been mixed. Though some have praised the *de minimis* threshold increase, others have argued that because the agreement allows a Party to reduce its threshold to match that of another Party (see Art 7.8 above), it is possible that the United States’ level could actually decrease. Moreover, some critics have raised concerns as to whether the novel consultative/enforcement provisions could, depending on their interpretation and implementation, infringe on national sovereignty.

Please let us know if you have any questions.

White & Case LLP
Brian Picone
International Trade Analyst
Washington, DC
brian.picone@whitecase.com

White & Case, S.C.
Torre del Bosque - PH
Blvd. Manuel Avila Camacho #24
11000 Ciudad de México
Mexico

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.