

# Overview of Chapter 5 (Origin Procedures) of the US-Mexico-Canada Agreement

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The US-Mexico-Canada Agreement (USMCA) announced on September 30, 2018 contains new procedures for certifying a good as “originating” that differ significantly from those currently in effect under the North American Free Trade Agreement (NAFTA). The USMCA chapter on Origin Procedures generally adopts the model set forth in the Trans-Pacific Partnership (TPP) by allowing importers to complete a certification of origin, which can be provided on an invoice or any other document and need not follow a prescribed format. This is an important departure from the NAFTA, which utilizes a uniform Certificate of Origin that may only be signed by the exporter of the goods. However, most other elements of the NAFTA origin procedures (*e.g.*, recordkeeping requirements and verification procedures) have been retained. We provide below an overview of the new USMCA origin procedures.

## New Method of Certifying Origin

Under the NAFTA, Canada, Mexico and the United States established a uniform Certificate of Origin that is used in all three countries to certify that imported goods qualify for preferential tariff treatment.<sup>1</sup> The USMCA, by contrast, will not utilize such a certificate and will instead follow the model used in the TPP: a certification of origin under the USMCA may be provided on an invoice or any other document (except an invoice or commercial document issued in a non-Party) and need not follow a prescribed format, provided that it contains the “minimum data elements” set forth in Annex 5-A<sup>2</sup> and meets other requirements of the Chapter. For example, the certification must describe the originating good in sufficient detail to enable its identification, and must be provided in the language requested by the importing Party.

As is the case under NAFTA, a certification of origin under the USMCA may apply to a single shipment or to multiple shipments of identical goods within a 12-month period, and must be accepted by a Party’s customs administration for four years after its completion. The USMCA does not modify the threshold value (USD \$1,000) below which a certification of origin is not required, even though some US businesses had advocated an increase in the threshold.

<sup>1</sup> For the United States, the Certificate of Origin is designated as CBP Form 434, available at <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/CBP%20Form%20434.pdf>

<sup>2</sup> The minimum data elements include (1) information about the certifier, exporter, producer, and importer of the good; (2) a description and the Harmonized System (HS) classification of the good to the 6-digit level; (3) the origin criteria under which the good qualifies; and (4) the blanket period (if the certification covers multiple shipments).

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Under the USMCA, each Party has committed to allow a certification of origin to be completed and submitted electronically and signed with an electronic or digital signature. NAFTA did not include this obligation.

## Importers Now Eligible to Complete a Certification of Origin

Under the NAFTA, a Certificate of Origin must be completed and signed by the exporter of the goods.<sup>3</sup> Only importers who possess a valid Certificate of Origin signed by the exporter may claim preferential tariff treatment for originating goods. By contrast, the USMCA (like the TPP) provides that an importer may complete a certification of origin<sup>4</sup> and claim preferential tariff treatment based thereupon, subject to certain requirements. For example, an importing Party may:

- Require the importer to provide documents or other information to support the certification;
- Establish in its law conditions that an importer must meet to complete a certification of origin, and prohibit the importer from providing its own certification if it fails to meet or no longer meets those conditions; or
- Prohibit the importer from: (1) issuing a certification, based on a certification or a written representation completed by the exporter or producer; and (2) making a subsequent claim for preferential tariff treatment based on a certification of origin completed by the exporter or producer.

Canada and the United States will begin allowing importers to complete a certification of origin immediately upon the USMCA's entry into force. However, Mexico will have up to three years and six months after the USMCA's entry into force to implement this requirement.

## Basis of a Certification of Origin

The USMCA provides that a certification of origin may be completed by an importer "on the basis of the importer having information, including documents that demonstrate that the good is originating." The producer or exporter of the good may complete a certification of origin on the same basis. An exporter that is not the producer of the good may also complete the certification of origin on the basis of "reasonable reliance" on the producer's written representation, such as in a certification of origin, that the good is originating. NAFTA similarly allows exporters to complete a Certificate of Origin on the basis of reasonable reliance on information provided by the producer of the good.

## Obligations of Importers Claiming Preferential Tariff Treatment

The obligations of importers claiming preferential tariff treatment under the USMCA are generally the same as those provided for under the NAFTA. The importer must state that the good is originating (based on a valid certification of origin) as part of the import documentation, and must have the certification in its possession at the time the statement is made. If no claim for preferential tariff treatment is made at the time of importation, importers may request preferential tariff treatment no later than one year after the date on which the good was imported.

However, the USMCA authorizes a Party to impose the following additional obligations on importers, which were not provided for in the NAFTA:

- The USMCA expressly authorizes a Party to request that importers demonstrate that goods have been shipped in accordance with Article 4.17 of the Agreement (Rules of Origin – Transit and Transshipment). Specifically, a Party may request that the importer (1) provide documentation indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and, if the good was shipped outside the territories of the Parties; and (2) provide documents demonstrating that the good

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<sup>3</sup> Where the exporter is not the producer, the exporter can complete the Certificate on the basis of:

- knowledge that the good originates;
- reasonable reliance on the producer's written representation that the good originates; or
- a completed and signed Certificate of Origin for the good voluntarily provided to the exporter by the producer.

<sup>4</sup> As indicated above, the USMCA certification of origin (unlike the Certificate of Origin required under NAFTA) need not follow a prescribed format and can be provided on an invoice or another document, provided it contains the required data elements.

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remained under customs control while outside the territories of the Parties. A similar requirement was included in the TPP.

- Similarly, if the claim for preferential tariff treatment is based on a certification of origin completed by a producer that is not the exporter of the good, the importer must demonstrate on the request of the importing Party that the good did not undergo further production or any other operation other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the importing Party.

## Administration and Enforcement

The USMCA largely retains the administrative and enforcement provisions of the NAFTA with respect to origin procedures. The key provisions are as follows:

- **Recordkeeping.** The USMCA generally retains the recordkeeping requirements set forth in the NAFTA. Importers claiming preferential tariff treatment must maintain records pertaining to the importation for five years (or longer, if required by their country). Exporters or producers that complete a certification of origin must maintain records relating to the relevant good for five years (or longer, if required by their country).
- **Verification.** The NAFTA authorizes an importing Party's customs authorities to conduct verifications of an exporter or producer to determine whether goods qualify as originating as certified by the Certificate of Origin. The USMCA preserves this authority (and expands it to allow customs authorities to direct written requests and questionnaires to the importer of the goods at issue). The USMCA also makes changes to the procedures for verifications (e.g., it adds a requirement that the verifying Party provide its written determination within 120 days after it has received all of the necessary information, with a possible extension of 90 days in exceptional circumstances).
- **Advance Rulings.** Like the NAFTA, the USMCA provides that a Party must, on request, provide for the issuance of a written advance ruling on whether a good qualifies as originating under the Agreement.
- **Reviews and Appeals.** Like the NAFTA, the USMCA requires a Party to grant substantially the same rights of review and appeal of determinations of origin and advance rulings as it provides to importers in its territory to an exporter or producer: (1) that completes a certification of origin for a good that has been the subject of a determination of origin under the Agreement; or (2) that has received an advance ruling on origin under the Agreement.

## Outlook

The USMCA origin procedures have generally been well received by the US business community. In particular, companies have cited the elimination of the standard Certificate of Origin, the ability for importers to complete a certification, and the express requirement to allow electronic filing as improvements to the existing NAFTA process. However, some in the business community – including the Industry Trade Advisory Committee representing small businesses – have expressed frustration that the USMCA does not increase the transaction value below which a certification of origin is not required above the current level of USD \$1,000.

Prior to the USMCA's entry into force, the Parties will adopt uniform regulations regarding the interpretation, application, and administration of the chapter on origin procedures, as well as Chapter 4 (Rules of Origin) and Chapter 6 (Textiles and Apparel). These regulations will provide additional details on the requirements for determining origin and claiming preferential tariff treatment under the USMCA, and should be reviewed carefully by companies planning to utilize USMCA tariff preferences.

Please let us know if you have any questions.

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