

WELCOME

The Canada-US-Mexico Agreement: What's New in the New NAFTA

Thursday, August 6, 2020

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CUSMA - BACKGROUND

- On July 1, 2020, the new Canada-United States-Mexico Agreement (CUSMA) entered into force.
- In 1994, the United States, Mexico and Canada created the largest free trade region in the world with the North American Free Trade Agreement (NAFTA).
- CUSMA attempts to preserve key elements of the NAFTA trading relationship and incorporate new and updated provisions that seek to address 21st-century trade issues and promote opportunities



CUSMA – AGRICULTURE SECTOR

- Canada will provide new market access for the U.S. in the form of Tariff Rate Quotas (TRQ) for dairy, poultry and egg products.
- Canada will eliminate current milk classes 6 and 7 and calculate component prices for skim milk powder, milk protein concentrates and infant formula based on a U.S. reference price.
- Canada will establish a mechanism to monitor exports of skim milk powder, milk protein concentrate and infant formula. Surcharges will apply if the exports exceed an agreed threshold.
- Canada gains new market access in the form of TRQs for refined sugar and sugar containing products as well as certain dairy products.



CUSMA – AUTOMOTIVE SECTOR

- Automotive Rules of Origin require higher levels of North American Content in order to onshore production and sourcing in North America.
- Specifically, the new agreement includes:
 - An increase in the CUSMA regional value content threshold for cars from 62.5% to 75%.
 - Stronger regional value content requirements for core car parts, such as engines and transmissions;
 - 70% North American steel and aluminum requirements; and
 - A new labor value content provision requiring that 40% of value of passenger car (45% for a light truck) be made of materials, parts and labour produced or carried out by workers in a plant where the average hourly wage is at least US\$16.



CUSMA – AUTOMOTIVE SECTOR (CON'T)

- CUSMA hopefully will generate increased automotive production in North America (including Canada) as well as sourcing opportunities for Canadian parts producers.
- Canada secured an exemption from potential Section 232 measures in a side letter to the agreement. This is particularly important in light of the investigation under Section 232 of the U.S. *Trade Expansion Act of 1962* to determine whether imports of automobiles and auto parts pose a threat to U.S. national security.
- The side letter guarantees an exemption from Section 232 measures for 2.6 million Canadian automobiles annually. Light trucks do not count towards this amount and are fully exempt from U.S. Section 232 measures. The side letter also guarantees an exemption from Section 232 measures for US\$32.4 billion worth of Canadian auto parts annually. This is well beyond current export levels to the U.S. by Canada.



CUSMA – TEXTILE & APPAREL

- The chapter on textiles and apparel (Chapter 6) preserves the existing market access to goods traded amongst the CUSMA countries, including access to tariff preference levels that many producers use. Import permits issued by Global Affairs Canada are required for clothing and textile goods that are eligible for tariff preference level treatment under the CUSMA upon entry into Canada, similar to the process under the NAFTA.
- Certificates of Eligibility (COE) are required for exports of clothing and textile goods that are eligible for tariff preference level treatment under the CUSMA upon entry into the US or Mexico. A shipment-specific Certificate of Eligibility is required for each shipment. To obtain a COE, the exporter in Canada must first apply for an Export and Import Permits Act (EIPA) file number with Global Affairs Canada.



CUSMA – DE MINIMIS FOR DUTIES & TAXES

- CUSMA Article 7.8(1)(f) sets de minimis threshold for courier shipments from the US or Mexico of at least \$150 for customs duties, and \$40 for taxes. The higher thresholds apply to goods of any origin that have entered the commerce of the US or Mexico. Canada's commitment only applies to imports from the US or Mexico and only by courier.
- Goods do not need to originate from a CUSMA party to benefit from de minimis, but rather be shipped from the US or Mexico, where they must have entered into commerce prior to being shipped to Canada. If the country into which the goods last entered commerce is neither the US nor Mexico, these shipments would not be entitled to the de minimis benefits of the CUSMA.



CUSMA – DE MINIMIS FOR DUTIES & TAXES

- A shipment value must not exceed \$3,300 to meet the low-value shipment (LVS) threshold.
- LVS allows goods to benefit from simplified report, release, accounting and documentation requirements and these benefits apply regardless of the origin of manufacture or country of export.
- Since CUSMA came into effect, the CBSA applies the LVS threshold consistently across all commercial programs, regardless of the mode, stream of importation, or free trade agreement under which a preferential tariff treatment is claimed. It is not limited to the Courier Low Value Shipment Program.



CUSMA – GOVERNMENT PROCUREMENT

- Canada and the U.S. will retain access to each other's procurement markets, including at the sub-federal level, through their obligations under the World Trade Organization's Agreement on Government Procurement (GPA).
- The government procurement obligations between Mexico and Canada will be provided under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).



CUSMA – INTELLECTUAL PROPERTY

- The modernized agreement will require changes to Canada’s current IP legal and policy framework in certain areas, such as requiring parties to provide a general term of copyright protection of “life plus 70 years” for works of authorship (Canada currently has a term of “life plus 50 years”)
- The agreement also requires parties to provide patent term adjustment to compensate patent applicants for “unreasonable” delays in the processing of patent applications. Canada has transition periods of 2.5 years and 4.5 years, respectively, following the entry into force of the agreement to implement these obligations.
- Under the December 2019 Protocol amending the CUSMA, parties agreed to amend or delete certain provisions dealing with patents and pharmaceutical IP. Notably, parties agreed to remove the obligation to provide 10 years of data protection for biologics, meaning CUSMA will not require Canada to make changes to its domestic regime in this area.



CERTIFICATION-ARTICLE 5.2

- The new CUSMA Agreement **does not** contain a specified Document like the previous NAFTA Certificate of Origin. Certification has no prescribed format, only requires a set of minimum data elements that indicates that the item is an originating good.
- Privately produced forms can be used if they contain the minimum data elements as described in CUSMA.
- Certification can be done on a shipment by shipment basis or on an annual basis.
- Each party shall allow a certification of origin to be completed and submitted electronically and shall accept an electronic or digital signature.



CERTIFICATION-DATA ELEMENTS

- Identification and address of the Certifier
- Exporter
- Producer
- Importer
- Description of the good
- Origin Criteria
- Country of Origin
- Blanket Period
- Authorized Signature



Certificate of Origin

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Canada–United States–Mexico Agreement (CUSMA/USMCA)

Please note: the CUSMA/USMCA Trade Deal is **not yet in effect**. It is not mandatory for importers to file this form, yet. Negotiation of the CUSMA/USMCA has concluded and the three participating countries signed the new agreement on November 30, 2018. Ratification of the deal is expected soon. This form, or a similar version, will be required when the agreement comes into effect.

CERTIFICATION OF ORIGIN

1. CERTIFIER NAME AND ADDRESS

TELEPHONE EMAIL

TAX ID NUMBER

2. EXPORTER NAME AND ADDRESS

TELEPHONE EMAIL

TAX ID NUMBER

3. PRODUCER NAME AND ADDRESS

TELEPHONE EMAIL

TAX ID NUMBER

4. IMPORTER NAME AND ADDRESS:

TELEPHONE EMAIL

TAX ID NUMBER

5. DESCRIPTION OF GOOD(S)

6. HS TARIFF CLASSIFICATION

7. ORIGIN CRITERION

8. COUNTRY OF ORIGIN

9. BLANKET PERIOD (MM/DD/YY)

FROM

TO

10. 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. This certification consists of _____ page(s), including all attachments.

CERTIFIER'S SIGNATURE

COMPANY NAME

CERTIFIER'S NAME (PRINT OR TYPE)

CERTIFIER'S TITLE

DATE (MM/DD/YY)

CERTIFIER TYPE (IMPORTER, EXPORTER, PRODUCER)

CLAIMS AND RECORDKEEPING

- Under CUSMA Canada will accept claims up to 4 years from date of import.
- No change for US which is 1 year from date of import or Mexico where it remains at 3.5 years from date of import.
- An importer claiming preferential tariff treatment for a good imported into its territory shall maintain, for a period of no less than 5 years from the date of the importation all relevant documentation that served as the basis for the claim.
- An exporter or a producer in its territory that completes a certification or origin for a good exported from its territory shall maintain, for a period of no less than 5 years from the date of the exportation all relevant documentation that served as the basis for the certification.



CUSMA – CUSTOMS VERIFICATIONS

- Article 7.27 of CUSMA indicates the following with respect to verifications:
 - 1. A Party may request another Party to conduct a verification in that Party's territory to assist the requesting Party to determine whether a customs offence is occurring or has occurred by obtaining information, including documents, from an exporter or producer. The requesting Party shall make the request in writing. The requested Party shall respond to the request promptly and in no case later than 30 days after the date it receives the request. The response will include whether it will conduct the verification. If the Party does not intend to conduct the verification, the response will indicate the basis for refusal. If a Party will conduct the verification, the response will indicate the intended timing and other relevant details.



CUSMA – CUSTOMS VERIFICATIONS (CON'T)

- Article 7.27 of CUSMA indicates the following with respect to verifications:
 - 3. In the case of a site visit by the requested Party, the requesting Party may, through officials it designates and subject to the consent of a legally responsible person for the location visited, accompany the requested Party. Accompanying the requested Party does not create any legal authority for the designated officials of the requesting Party. The designated officials of the requesting Party shall fulfill the conditions and procedures mutually agreed between the relevant Parties for the visit. Nothing in this Agreement requires the requested Party to allow or facilitate the participation of the designated officials of the requesting Party.
- CBSA officer may be conducting origin verifications on behalf of U.S. Customs. Canadian producers and exporters should be aware of U.S. audit priorities.



CUSMA – DISPUTE RESOLUTION

- The state-to-state dispute settlement mechanism places emphasis on resolving disagreements through cooperative means (such as consultations).
- If these cooperative means fail, the chapter provides for the creation of arbitral panels, consisting of independent candidates having appropriate qualifications, to assess whether a party has violated its obligations.
- If an arbitral panel finds that a party has failed to implement its obligations under the Agreement, that party must remove the violation. If the violation is not removed, the winning party is automatically entitled to suspend benefits of equivalent effect (such as increased import duties).





Questions?

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