

LEARN ABOUT THE IMPACT AND
THE RECOMMENDATIONS
FOR THE
CHEMICAL SECTOR

UPDATE JUNE 2020

Chemical Sector.

The United States - Mexico - Canada Agreement (USMCA) represents an agreement in principle that concludes the renegotiation of NAFTA, which began in August 2017. Although the USMCA has been described as a new trade agreement to replace the North American Free Trade Agreement (NAFTA), many of its chapters cover virtually the same issues, many of the provisions remain unchanged.

Although the focus has been on changes in the rules of origin for the automotive sector because this sector generates a large part of Mexican exports to the United States (U.S.), other branches of manufacturing activity also have changes aimed at increasing the regional content in their manufacturing.

It establishes significant changes in the rules governing trade between the three countries, changes that involve an adjustment in the supply chains of several industries, including automotive, agriculture, textiles and clothing, alcoholic beverages, medical devices, and chemicals. As long as the regional content is met, products can be traded free of quotas and tariffs between the three partners.

The USMCA is an agreement comprising 34 chapters, 13 annexes and 13 parallel letters, which contain details of the new rules. It is expected to enter into force on July 1, 2020. In the meantime, NAFTA will continue to apply to trade between the three countries.

Among the important changes established by the USMCA, is the increase in the required level of regional content of cars and auto parts to export duty-free cars to the U.S. Canada also made concessions, by opening up part of its dairy market to U.S. imports. In the oil and gas industry, Canada will no longer be subject to the proportionality provisions in the energy chapter of NAFTA.

Overall, the USMCA appears to meet the objectives set by the U.S. government. Most importantly, it puts an end to the uncertainty caused by the ongoing negotiations. If ratified, the agreement will maintain the three linked economies for at least the next 16 years.

The specific Rules of Origin for chemicals are contained in Chapter 4: USMCA Rules of Origin and Product Specific Rules of Origin. It is important to note that not all of the Specific Rules of Origin were updated; however, according to the Ministry of Economy, at the request of the Mexican industry the rules for chemicals were modernized.

New compliance alternatives were included that recognize various chemical processes to confer origin, such as: chemical reaction, purification, mixing, change in particle size, standardization of materials, separation of isomers and biotechnological processes.

It should be noted that the chemical industries of the three countries, from the beginning, jointly expressed their interest in modifying the Rules of Origin of the chemical sector, as well as in maintaining duty-free trade for chemical products. Maintaining a risk-based and science-based approach to chemical regulation adopted in the US Toxic Substances Control Act, and the Canadian Chemical Management Plan.

According to the American Chemistry Council (ACC), the USMCA facilitates the three countries working together to establish a more efficient and effective regulatory environment that supports a risk-based approach to protecting human health and the environment while supporting innovation and economic growth.

This was an approach that the industry wanted and is expected to facilitate the qualification of chemicals under the agreement. The industry conducted a study under NAFTA and found that only about half of the chemical transactions received duty-free treatment under NAFTA because the documentation discouraged the claim for treatment.

Chapter 12: Sectoral Annexes contains Annex 12 - A on chemicals, which seeks to promote regulatory compatibility and cooperation; to establish risk communication measures, labelling, information on use, storage; to strengthen cooperation regarding the UN Globally Harmonized System of Classification and Labelling of Chemicals.

The USMCA was signed on November 30, 2018, in Buenos Aires, Argentina, by the then President of Mexico, Enrique Peña Nieto; the Prime Minister of Canada, Justin Trudeau; and the President of the United States, Donald Trump. Once it enters into force, it will replace the North American Free Trade Agreement (NAFTA).

June 19, 2019, the full Senate of the Republic approved, with 114 votes in favor; 4 against, and 3 abstentions, the United States - Mexico - Canada Agreement (USMCA).

In response to the demands of the Democrats in the U.S. House of Representatives and the American unions, the Protocol of Amendment was negotiated:

- a. protection of the environment;
- b. data protection for biological medicines;
- c. protection of labor rights; and
- d. monitoring and enforcement.

On December 10, 2019, the signing of the Protocol of Amendment to the United States - Mexico - Canada Agreement (USMCA) took place in Mexico City. This protocol reforms some of the disciplines originally agreed in the USMCA, including a provision recently proposed by the U.S., on rules of origin for the automotive and steel sectors.

The US was the last partner to notify its counterparts that it had completed the internal procedures necessary for the entry into force of the USMCA on 24 April 2020. Canada and Mexico did the same earlier this month.

The Protocol amending the USMCA provides that the agreement will enter into force on the first day of the third month after the last partner notifies the completion of its internal procedures. This deadline was set for July 1.

USMCA

Chapter 4: Rules of Origin and Product Specific Rules of Origin consists of:

- Article 4.1: Definitions
 - Article 4.2: Originating Goods
 - Article 4.3: Goods Fully Obtained or Produced
 - Article 4.4: Treatment of Recovered Materials Used in the Production of Remanufactured Goods
 - Article 4.5: Regional Value Content
 - Article 4.6: Value of Materials Used in Production
 - Article 4.7: Additional Adjustments to the Value of Materials
 - Article 4.8: Intermediate Materials
 - Article 4.9: Indirect Materials
 - Article 4.10: Automotive Goods
 - Article 4.11: Accumulation
 - Article 4.12: De Minimis
 - Article 4.13: Goods or Fungible Materials
 - Article 4.14: Accessories, Spare Parts, Tools and Instructional Materials or Other Information
 - Article 4.15: Packaging Materials and Retail Packaging
 - Article 4.16: Packing Materials and Shipping Containers
 - Article 4.17: Sets of Goods
 - Article 4.18: Transit and Transshipment
 - Article 4.19: Non-Origin Transactions
 - Annex 4-A: Exceptions to Article 4.12 De Minimis
 - Annex 4-B: Product Specific Rules of Origin
 - Appendix to Annex 4-B: Provisions Relating to the Rules of Origin Specific to Automotive Goods.
- 🚩 Article 4.19: Non-Origin Transactions
- Each Party shall provide that a good is not considered to be an originating good solely because:
 - (a) simple dilution with water or another substance that does not materially alter the characteristics of the goods; or
 - (b) any production or pricing practice for which it can be shown on the basis of sufficient evidence that it is intended to circumvent this Chapter.

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Annex 4-B: Product Specific Rules of Origin:

Section VI Products of the chemical or allied industries (Chapter 28 to 38)

Note 1:

A good of any chapter or heading in Section VI which satisfies one or more of Rules 1 through 8 of this Section shall be considered an originating good, unless otherwise specified in these rules.

Note 2:

Notwithstanding Note 1, a good is an originating good if the good meets the change in tariff classification or satisfies the applicable regional value content specified in the rules of origin in this Section.

Rule 1: Chemical Reaction Rule

A good of chapters 28 through 38, other than a good of heading 33.01 or 38.23, or subheading 2916.32 or 3502.11 through 3502.19, that results from a chemical reaction in the territory of one or more of the Parties shall be considered an originating good.

For purposes of this Rule, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be a chemical reaction for the purposes of determining whether a good is an originating good

- (a) dissolution in water or other solvents
- (b) removal of solvents, including water of solution; or
- (c) the addition or removal of water of crystallization.

Rule 2: Purification Rule

A good of chapters 28 to 38, other than a good of heading 33.01 or subheadings 3502.11 through 3502.19, that is subject to purification is an originating good, provided that the purification occurs in the territory of one or more of the Parties and results in the following:

- (a) the removal of not less than 80 percent of the existing impurity content; or
- (b) the reduction or elimination of impurities resulting in a good that is suitable for one or more of the following:
 - (i) as a pharmaceutical, medicinal, cosmetic, veterinary or food grade substance.
 - (ii) as chemical goods and chemical reagents for analytical, diagnostic or laboratory applications;
 - (iii) as elements and components to be used in micro-elements;
 - (iv) for specialized optical applications;
 - (v) for non-toxic health and safety uses
 - (vi) for biotechnical applications (e.g. cell culture, in gene technology, or as a catalyst);
 - (vii) as a catalyst used in a separation process; or
 - (viii) for nuclear grade applications.

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Rule 3: Mixing & Matching Rule

A good of Chapters 28 through 38, other than a good of Chapter 28, 29 or 32, heading 33.01 or 38.08, or subheadings 3502.11 through 3502.19 is an originating good if the deliberate and proportionally controlled mixing or combination (including dispersion) of materials, other than the addition of diluents meeting prescribed specifications, occurs in the territory of one or more of the Parties, which results in the production of a good having physical or chemical characteristics that are relevant to the purposes or uses of the good and are different from the materials used.

Rule 4: Particle Size Change Rule

A good of chapters 28 to 38, other than a good of chapters 28, 29, 32 or 38, heading 33.01, or subheadings 3502.11 to 3502.19, is an originating good if the deliberate and controlled modification of the particle size of a good, including micronization through dissolution of a polymer and subsequent precipitation, other than by simple crushing or pressing, occurs in the territory of one or more of the Parties, resulting in a good having a defined particle size, defined particle size distribution, or defined surface area, which is relevant to the purposes of the resulting good and which has physical and chemical characteristics different from the materials used.

Rule 5: Valued Materials Rule

A material valued under Chapters 28 through 38, other than a good of heading 33.01, or subheadings 3502.11 through 3502.19 is an originating good if the good is produced in the territory of one or more of the Parties.

For purposes of this rule, a "recovered material" (including the recovered solution) is a preparation suitable for analysis, calibration or reference purposes, having precise degrees of purity or proportions that are certified by the manufacturer.

Rule 6: Isomer Separation Rule

A good of Chapters 28 through 38, other than a good of heading 33.01, or subheadings 3502.11 through 3502.19 is an originating good if the isolation or separation of isomers from mixtures of isomers occurs in the territory of one or more of the Parties.

Rule 7: Prohibition of Separation Rule

A good of Chapters 28 through 38, other than a good of heading 33.01, or subheadings 3502.11 through 3502.19, that undergoes a change from one classification to another in the territory of one or more of the Parties as a result of the separation of one or more materials from a man-made mixture shall not be treated as an originating good unless the isolated material resulted from a chemical reaction in the territory of one or more of the Parties.

Rule 8: Biotechnology Process Rule


A good of Chapters 28 through 38, except for a good of Chapter 30, headings 29.30 through 29.42, heading 33.01, or subheadings 3502.11 through 3502.19, is an originating good if it undergoes a biochemical process or through one or more of the following processes

- (a) Biological or biotechnological cultivation, hybridization or genetic modification of: i. Microorganisms (bacteria, viruses (including bacteriophages) etc., or ii. Human, animal or plant cells
- (b) Production, isolation or purification of cellular or intercellular structures (such as isolated genes, gene fragments and plasmids); or
- (c) Products obtained from fermentation

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Annex 12 - A: chemicals, is composed of:

- Article 12.A.1: Definitions
- Article 12.A.2: Scope
- Article 12.A.3: Competent authorities
- Article 12.A.4: Improvement of regulatory compatibility
- Article 12.A.5: Exchange of data and information

 Article 12.A.2: Scope:

- This Annex applies to the development, adoption and implementation of technical regulations; standards; conformity assessment procedures; measures relating to risk communication, labelling, and communication of information on the use and storage of chemicals and chemical mixtures, and on workplace response to risks and exposures; and permits for import and export of chemicals and chemical mixtures by the central level of government of a Party:
 - (a) applied for the purpose of protecting the environment or human health from chemicals and chemical mixtures;
 - (b) which may significantly affect trade between the Parties; and
 - (c) that are not:
 - (i) a sanitary or phytosanitary measure,
 - (ii) a measure relating to pesticides, pharmaceuticals, veterinary drugs, cosmetics, nuclear material, or foodstuffs, including food additives, or
 - (iii) a measure related to the control of chemical precursors in order to prevent the production of illegal narcotics and psychotropic substances.

In addition, the following chapters should be observed:

 Customs and Trade Facilitation:

- It incorporates provisions on customs cooperation and enforcement, including:
 - Regional and bilateral cooperation, to improve coordination between customs and promote initiatives to detect and prevent customs offences.
 - Exchange of information to prevent customs crimes.
 - Verifications through collaboration between customs authorities to obtain documents and carry out visits to companies.
 - Establishment of a Customs Sub-Committee, which will address issues of potential or actual customs crime, as well as discuss joint initiatives on issues of mutual concern.

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✚ Energy:

- The right to regulate in matters of petroleum and other hydrocarbons is preserved, consistent with the commitments Mexico has made in other international agreements.
- Legal certainty is provided and Mexico's commitments to service providers, exporters, importers and investors participating in the sector are respected.

✚ Investment:

- It is divided in two sections:
 - The first contains the disciplines on the protection of foreign investment.
 - The second contains the investment arbitration mechanism (Investor-State)
- Investors in any sector may have recourse to an arbitration procedure in case of violations in the disciplines: National Treatment, Most Favored Nation Treatment, Direct Expropriation.
- The Investor-State dispute settlement mechanism does not apply to Canada.

✚ Labor:

- Specific provisions are included for Mexico on collective bargaining, which seek to guarantee this right.
- Cases of sustained or recurrent action or inaction in the application of labor law by a government will be subject to the dispute resolution mechanism.
- The Protocol of Amendment establishes:
 - Language that made it difficult to prove that business partners were not committed to protecting workers from workplace violence was removed.
 - It creates a presumption that a labor violation affects trade and investment, so the other government must prove otherwise.
 - In order to ensure that the U.S. government will effectively monitor compliance with labor obligations in Mexico:
 - A committee is created to oversee the implementation of labor reform and compliance in Mexico.
 - There will be labor attachés in Mexico in order to have real information on labor practices.
 - Rapid response mechanism for the settlement of labor disputes entering into force immediately. This mechanism provides for the establishment of panels of experts on labor matters in the event that a Party believes that a Covered Plant (Plant) is denying workers' rights relating to union elections and collective bargaining.
 - It will apply to plants in the manufacturing, service and mining sectors. It will have a short time period established to issue a resolution.
 - Sanctions may include the suspension of preferential tariff treatment for goods manufactured in the defendant company or the imposition of sanctions on goods manufactured or services provided by the defendant company.
 - In cases where a company incurs at least two denials of duties, sanctions may include the suspension of preferential tariff treatment for such goods;

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the imposition of sanctions on such goods or services; or the denial of entry of such goods.

 Environment:

- Some harmful fisheries subsidies, mainly to vessels and operators involved in poaching and illegal fishing, are prohibited.
- Includes a commitment to prevent and reduce marine debris, promote sustainable forest management, and prevent commercial whaling.
- Intentional transnational trafficking in protected wildlife species is criminalized as a serious offence.
- Robust and modern mechanisms for public participation and environmental cooperation
- Disciplines that seek to improve the effectiveness of customs inspections of shipments containing wildlife at ports of entry.
- Disciplines are established to protect air quality, and ensure appropriate procedures for environmental impact assessments
- Cases of sustained or recurrent action or inaction in the enforcement of labor laws by a government will be subject to the dispute resolution mechanism.

- The Protocol of Amendment establishes:
 - It creates a presumption that an environmental violation affects trade and investment, so the other government must prove otherwise.
 - The Montreal Protocol is covered.
 - A commitment is added that all Parties will adopt, implement, and maintain 7 multilateral environmental agreements, other agreements may be added to the list. Non-compliance with any of these agreements will be subject to the State-State dispute settlement mechanism, which could lead to the eventual adoption of retaliation.
 - A committee is created to monitor the implementation of the obligations acquired in the agreements, as well as the recommendations. It will be the platform through which the American government will coordinate its support and financing of projects to implement the best practices in environmental matters.
 - There will be environmental attachés in Mexico in order to have real information about regulations and practices.
 - It adds a new customs verification mechanism to guarantee that only legally harvested and taken flora and fauna are traded through Mexico.
 - A new North American Development Bank authorization and funding for EPA, loans under the Border Water Infrastructure Program to address pollution on the U.S.-Mexico border; and additional funds to the Trade Control Trust Fund to be used for focused environmental efforts.

 Technical Barriers to Trade:

- It incorporates provisions relating to the transparency of the processes of elaboration, adoption and application of the standards, technical regulations, and conformity assessment procedures of the Parties.
- Provisions for the conclusion of mutual recognition agreements.

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✚ Origin Procedures:

- The certificate of origin may be issued by the exporter, producer, or importer.
- The format of the certificate is eliminated, and certification is permitted on the invoice or any commercial document, provided that minimum information is declared.
- If importers fail to comply with the stipulations regarding the origin of the goods, each country will determine whether to apply a civil, criminal, or administrative sanction.

✚ Intellectual Property:

- Strengthen the system of protection of geographical indications.
- Disciplines are foreseen for well-known trademarks.
- The authorities may detain goods suspected of being counterfeited at any entry or exit to the country.
- Implementation of measures against counterfeit goods and piracy on a commercial scale.
- For biotechnology companies, the Protocol of Amendment establishes:
 - The provision requiring Parties to provide at least 10 years of exclusivity for biologicals was deleted.
 - The provision requiring parties to confirm that patents would be available for new uses of known products was deleted.
 - The provision requiring three additional years of exclusivity for clinical information was deleted.

✚ Commercial Remedies:

- Safeguards: an exclusion for partners subject to certain conditions (not being in the first 5 exporters) from the overall safeguard measures is maintained.
- Anti-dumping and subsidies: WTO rights are recognized in these areas. Additional rules were agreed to promote transparency.
- Combating circumvention: a cooperation mechanism is established to prevent the evasion of countervailing, anti-dumping and safeguard duties.
- Binational Panels: the mechanism of Chapter XIX of NAFTA is maintained.

Sources:

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