

LEARN ABOUT THE IMPACT AND
THE RECOMMENDATIONS
— FOR THE —
ELECTRONIC SECTOR

UPDATE JUNE 2020

Electronic Sector

The United States – Mexico – Canada Agreement (USMCA) represents an agreement that concludes the NAFTA's renegotiation, which started on August 2017. Although it is true that the USMCA has been described as a new trade agreement replacing the North American Free Trade Agreement (NAFTA), several chapters found in it cover the same topics, many of the provisions have not been changed.

Although the attention has been focused on the changes made to the rules of origin for the automotive sector since it produces a large amount of the Mexican exports to the United States, some other branches of the manufacturing activity have also undergone changes with the possibility of increasing the local content in their production.

It establishes significant changes to the rules regulating trade between the three countries. The changes represent an adjustment in the supply chain of several industries, such as automotive, agriculture, textile and clothing, alcoholic drinks, medical devices, and the chemical industry. As long as the regional content is complied with, the products can be traded duty and quota free among the members.

The USMCA includes 34 chapters, 13 annexes and 13 parallel letters, which contain the new regulation details. This agreement will come into force on July 1st of 2020, and in the meantime, NAFTA will continue to be applied.

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

In general, the USMCA seems to comply the objectives established by the American government. The most relevant aspect concerns the fact that it eliminates the uncertainty caused by the current negotiations. In case the agreement is adjusted, it will maintain the relationship between three economies for at least the next 16 years.

The Specific Rules of Origin for televisions and electrical manufactures can be found in *Chapter 4: Rules of Origin and Specific Rules of Origin* of the new United States – Mexico – Canada Agreement (USMCA).

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 televisions and electrical manufacturing were modernized.

In response to the needs of the sector, the inoperative rules of origin were eliminated due to technological advances, and were simplified and made more flexible in order to allow the incorporation of global inputs through variations in the percentages in the Regional Value of Content (RVC). The rules of origin for the manufacture of electrical items such as lamps, signs, panels and consoles were changed to facilitate their technical language.

For certain steel, titanium and fiber optic intensive products it was established that the raw material must originate from the North American region. It is included as an option to comply with a RVC.

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 Treaty between Mexico, United States and Canada (T-MEC).

In response to the demands of the Democrats in the U.S. House of Representatives and the American unions, the Modifying Protocol was negotiated. These petitions revolved around 4 themes:

- 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 of the United States - Mexico - Canada Agreement (USMCA) took place in Mexico City. This protocol amends 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 would be 1 July next.

A. USMCA

Chapter 4: Rules of Origin and Specific Rules of Origin include:

- Article 4.1: Definitions
- Article 4.2: Original goods
- Article 4.3: Entirely Obtained or Produced Goods
- Article 4.4: Treatment of recovered materials used in the production of a remanufactured good
- Article 4.5: Regional Value of Content
- Article 4.6: Value of materials used in production
- Article 4.7: 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 and Fungible Materials
- Article 4.14: Accessories, Spare Parts, Tools or other Materials
- Article 4.15: Retail packaging and packaging materials
- Article 4.16: Containers and packaging materials for shipment
- Article 4.17: Set of goods, kits or composite goods
- Article 4.18: Transit and Transshipment
- Article 4.19: Non-qualifying transactions
 - Annex 4-A: De Minimis exception
 - Annex 4-B: Specific Rules of Origin
 - Appendix to Annex 4-B: Provisions Relating to the Rules of Origin for Automotive Goods.

Article 4.5: Regional Value Content:


- 1. Except as provided in paragraph 6, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the importer, exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.
- 2. Each Party shall provide that an importer, exporter, or producer may calculate the regional value content of a good on the basis of the following transaction value method:
 - $RVC = (TV - VNM) / TV \times 100$
 - where
 - RVC is the regional value content, expressed as a percentage;
 - TV is the transaction value of the good, adjusted to exclude any costs incurred in the international shipment of the good; and

TLC ASOCIADOS FIRM SPECIALIZING IN TAX DEFENSE, CONSULTING, FOREIGN TRADE AND CUSTOMS

- VNM is the value of non-originating materials including materials of undetermined origin used by the producer in the production of the good.
- 3. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following net cost method:
 - $RVC = (NC - VNM) / NC \times 100$
 - where
 - RVC is the regional value content, expressed as a percentage;
 - NC is the net cost of the good; and
 - VNM is the value of non-originating materials including materials of undetermined origin used by the producer in the production of the good.
- 4. Except as provided in Article 10.3 of Appendix 1 to Annex 4-B, for a motor vehicle identified in Article 10.4.2(a) of that Appendix, or a component identified in Table G of that Appendix, the value of non-originating materials used by the producer in the production of a good shall not, for the purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.
- 5. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:
 - (a) the value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and
 - (b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.
- 6. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 3 if the rule under the PSR Annex does not provide a rule based on the transaction value method.
- 7. If an importer, exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method set out in paragraph 2 and a Party subsequently notifies the exporter or producer, during the course of a verification pursuant to Chapter 5 (Origin Procedures) that the transaction value of the good, or the value of material used in the production of the good, is required to be adjusted or is unacceptable under Article 1 of the Customs Valuation Agreement, the exporter, producer, or importer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 3.

- 8. For purposes of calculating the net cost of a good under paragraph 3, the producer of the good may:
 - (a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all those goods, and then reasonably allocate the resulting net cost of those goods to the good,
 - (b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good, or
 - (c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,


provided that the allocation of all those costs is consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations.

 Article 4.12: De Minimis:

- 1. Except as provided in Annex 4-A (Exceptions to Article 4.12 (De Minimis)), each Party shall provide that a good is an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 4-B (Product Specific Rules of Origin) is not more than 10 percent:
 - (a) of the transaction value of the good adjusted to exclude any costs incurred in the international shipment of the good; or
 - (b) of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.
- 2. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.
- 3. A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy the requirement if the value of all non-originating materials used in the production of the good is not more than 10 percent of the transaction value of the good, adjusted to exclude any costs incurred in the international shipment of the good, or the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

TLC ASOCIADOS FIRM SPECIALIZING IN TAX DEFENSE, CONSULTING, FOREIGN TRADE AND CUSTOMS

- 4. With respect to a textile or apparel good, Article 6.1.2 through 6.1.3 apply in place of paragraph 1.

 Section B – Product-Specific Rules of Origin:

Chapter 85 Electrical Machinery and Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles

Note 1: For purposes of this Chapter, the term “printed circuit assembly” means a good consisting of one or more printed circuits of heading 85.34 with one or more active elements assembled thereon, with or without passive elements. For purposes of this Note, “active elements” means diodes, transistors and similar semiconductor devices, whether or not photosensitive, of heading 85.41 and integrated circuits of heading 85.42 and microassemblies of heading 85.43 or 85.48.

Note 2: For purposes of this Chapter:

- (a) references to "high definition" as it applies to television receivers and cathode-ray tubes refers to goods having
 - (i) an aspect ratio of the screen equal to or greater than 16:9, and
 - (ii) a viewing screen capable of displaying more than 700 scanning lines; and
- (b) the video display diagonal is determined by measuring the maximum straight line dimension across the visible portion of the face plate used for displaying video.

Note 3: Tariff item 8529.90.cc covers the following parts of television receivers, video monitors and video projectors:

- (a) Video intermediate (IF) amplifying and detecting systems;
- (b) Video processing and amplification systems;
- (c) Synchronizing and deflection circuitry;
- (d) Tuners and tuner control systems;
- (e) Audio detection and amplification systems.

Note 4: For purposes of tariff item 8540.91.aa, the term "front panel assembly" refers to:

- (a) with respect to a monochrome cathode-ray television picture tube, video monitor tube or video projector tube, an assembly which consists of either a glass panel or a glass envelope, which is suitable for incorporation into a monochrome cathode-ray television picture tube, video monitor tube or video projector tube and which has undergone the necessary chemical and physical processes for imprinting phosphors on the glass panel or glass envelope with sufficient precision to render a video image when excited by a stream of electrons; or
- (b) with respect to a color cathode-ray television picture tube, video monitor tube or video projector tube, an assembly which consists of a glass panel and a shadow mask or aperture grille, attached for ultimate use, which is suitable for incorporation into a color cathode-ray television picture tube, video monitor tube or video projector tube and which has undergone the necessary chemical and physical processes for imprinting phosphors on the glass panel with sufficient precision to render a video image when excited by a stream of electrons.

TLC ASOCIADOS FIRM SPECIALIZING IN TAX DEFENSE, CONSULTING, FOREIGN TRADE AND CUSTOMS

Note 5: The origin of a television combination unit shall be determined in accordance with the rule that would be applicable to such unit if it were solely a television receiver.

Additionally, the following chapters should be observed:

- ✚ Customs Administration and Trade Facilitation:
 - It integrates provisions concerning customs cooperation and compliance, intending to accomplish the following points:
 - 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.

- ✚ 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 Favoured 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.
 - Fast 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; the imposition of sanctions on such goods or services; or the denial of entry of such goods.

 Environment:

- Some harmful fisheries subsidies are prohibited, mainly for vessels and operators involved in poaching and illegal fishing.
- It 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.
- 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.


TLC ASOCIADOS FIRM SPECIALIZING IN TAX DEFENSE, CONSULTING, FOREIGN TRADE AND CUSTOMS

 Technical Obstacles for 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.

 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 allowed on the invoice or on any commercial document, provided that minimum information is declared.
- In the event that 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.

 Trade 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.

Source:

1. <https://www.gob.mx/tlcan/acciones-y-programas/resultados-de-la-modernizacion-del-acuerdo-comercial-entre-mexico-estados-unidos-y-canada?state=published>
2. <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>
3. IQOM



MARCANDO EL PASO

— EN EL CUMPLIMIENTO DEL —

COMERCIO EXTERIOR

Y ADUANAS



TLC ASOCIADOS FIRMA ESPECIALIZADA EN DEFENSA FISCAL, CONSULTORÍA, COMERCIO EXTERIOR Y ADUANAS

 TLC Asociados SC
www.tlcasociados.com.mx
tlc@tlcasociados.com.mx

Región Norte
01(656) 980.0497

Región Noroeste
01(664) 634.0189 | 01(664) 682.3901
01(686) 980.0496

Región Centro
01(55) 5280.3267
01(55) 2623.1639

Región Bajío
01(477) 211.6009