



FOOTWEAR SECTOR

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The “United States - Mexico - Canada Agreement (USMCA) represents in principle an agreement that concludes the NAFTA’s renegotiation, which started on August 2017. While it is true that the USMCA has been described as a new trade agreement replacing the North American Free Trade Agreement (NAFTA), several chapters contained by this “new agreement” allude to the same matters, since several provisions have not been changed at all.

Despite the attention has focused on the changes of the rules of origin concerning the automotive sector, since this sector produces a large proportion of the Mexican exports towards the United States, other fields of the manufacturing activity also present changes that have a propensity to increase the regional content in their production.

It establishes significant changes concerning the rules that regulate trading between the three countries, changes represent an adjustment in the supply chain of several industries, such as: automotive, agriculture, textile and clothing items, alcohol beverage, medical device and chemical industry, among other. As long as the regional content is complied with, the products may be traded, as duty and quota free, among the three members.



In addition, the new agreement does not eliminate the American tariffs concerning steel and aluminum, in accordance with Section 232 of the trade Expansion Act of the United States in 1962.

USMCA is an agreement that includes 34 chapter, 13 annexes and 13 parallel letters, which contain new regulations details.

It is relevant to remark that the USMCA shall not come into force instantaneously, since the legislative processes of each party still remain. It is expected to come into force in 2020, meanwhile, the NAFTA shall continue to be applied to trade of three countries.

One of the significant changes, established by the USMCA, concerns the increase of the required level of automobiles and auto parts regional content to export duty-free automobiles to the United States. Canada also performed concessions by opening one part of its dairy market to the American imports. Concerning oil and gas industry, Canada shall not be subjected any longer to the proportionality provisions within the energy chapter of the NAFTA.

Basically, 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 footwear may be found in Chapter 4: Rules of Origin and Specific Rules of Origin of the new United States – Mexico - Canada Agreement (USMCA). It is relevant to remark that not all Specific Rules of Origin were updated, however, according to the Economy Department, the Chapter intended to update the origin regulations to make them congruent with more contemporary disciplines negotiated by Mexico in other Agreements.

Particularly, some modifications are related with the following matters:

- De Minimis. Taking into consideration that global chains have become a fundamental characteristic of our economic reality, in order to provide the enterprises with the necessary balance to access to a global inputs supply and promote the use of regional components, De Minimis regulation was updated in order to increase the current percentage up to 10%, which corresponds to the established percentage of our trade partners.
- Sets. Additionally, taking into consideration that some goods tend to be submitted in sets, which represents a new market strategy increasingly extended, new regulations concerning sets were incorporated.



- Principle or Clause concerning “accumulation”, which permits to recognize as originating the materials of the signatory countries, as well as the procedures performed in any of their territories. In this context, the regional value chains are reinforced.

For the footwear industry, the new agreement is quite similar to the previous one, according to Footwear Distributors and Retailers of America (FDRA). This Association, in the past, has demanded more flexible rules of origin, which was not considered as a fundamental matter during the recent negotiations.

Nevertheless, it is relevant to review the Rules of Origin of each product, as well as the changes to the Regional Value Content (RVC) calculation methodology.

A. USMCA

Chapter 4: Rules of Origin and Specific Rules of Origin, it is composed of:

- Article 4.1: Definitions
- Article 4.2: Originating Goods
- Article 4.3: Goods totally obtained or produced
- Article 4.4: Handling of restored materials used in the Remanufactured Goods Production
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- Article 4.2: Originating Goods
- Article 4.3: Goods totally obtained or produced
- Article 4.4: Handling of restored materials used in the Remanufactured Goods Production
- Article 4.5: Regional Value Content
- Article 4.6: The Value of materials used in Production
- Article 4.7: Adjustments to the Materials Value
- Article 4.8: Intermediate Materials
- Article 4.9: Indirect Materials
- Article 4.10: Automotive Industry Goods
- Article 4.11: Accumulation
- Article 4.12: De Minimis

- Article 4.13: Fungible Goods and Materials
- Article 4.14: Accessories, Replacement Parts, Tools and other Materials
- Article 4.15: Containers and packaging materials for retail marketing
- Article 4.16: Containers and packaging materials for shipping
- Artículo 4.17: Set of goods, kits or assembled goods
- Article 4.18: Transit and Tranship .
- Article 4.19: Operations that do not confer origin
 - Annex 4-A: De Minimis Restrictions
 - Annex 4-B: Product-Specific Rules of Origin
 - Appendix of Annex 4-B: Provisions related to the Specific Rules of Origin for automobile goods.

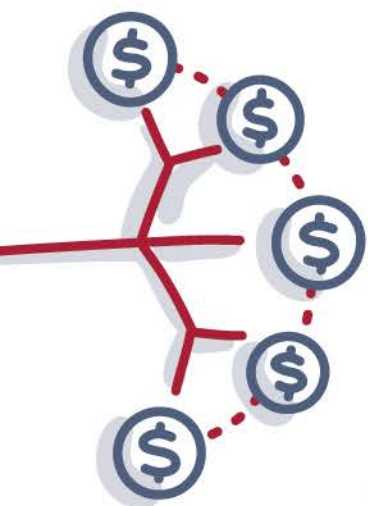
Article 4.5: Regional Value Content:

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 have an importer, exporter, or producer that 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
- 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 have an exporter or producer that 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 have an exporter or producer that may 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 4.11: Accumulation:

1. Each Party shall determine that a good is originating if the good is produced in the territory of one or more Parties by one or more producers, as long as the goods meet the requirements established in Chapter 4.2 (Originating Goods), as well as the rest of applicable requirements in this Chapter.
2. Each Party shall determine that a good or originating material, of one or more Parties, shall be considered as originating in other Party's territory when it is used as a material during a goods production in other Party's territory.
3. Each Party shall determine that the production, performed on a non-originating material in the territory of one or more Parties, may contribute to the originating content of a good, regardless of whether this production was enough to consider the material as "originating".



- **(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.

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.

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

Annex 4-B - Product-Specific Rules of Origin:

Chapter 64 Footwear, Leggings and Similar Articles; Parts of these Articles

64.01 - 64.05	A change of heading 64.01 to 64.05 of any heading out of the group, with the exception of subheading 6406.10, accomplishing a regional value content not less than 55 percent, under the net cost method.
6406.10	A change of subheading 6406.10 of any other subheading, with the exception of heading 64.01 a 64.05, accomplishing a regional value content not less than 55 percent, under the net cost method.
6406.20 - 6406.90	A change of subheading 6406.20 to 6406.90 of any other chapter.

Chapter 64 Footwear, Leggings and Similar Articles; Parts of these Articles

64.01 a 64.05	A change of heading 64.01 to 64.05 of any heading out of the group, with the exception of subheading 6406.10, accomplishing a regional value content not less than 55 percent, under the net cost method.
6406.10	A change of subheading 6406.10 of any other subheading, with the exception of heading 64.01 a 64.05, accomplishing a regional value content not less than 55 percent, under the net cost method.
6406.20 a 6406.99	A change of subheading 6406.20 to 6406.90 of any other chapter.

Additionally, the following chapters must be examined:

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 the customs coordination and it promotes initiatives to detect and prevent customs offenses.
 - Information exchange that prevents customs offenses.
 - Verifications by collaborating with customs authorities to obtain documents and conduct visits to enterprises.
 - Establishing a Customs Subcommittee, which shall handle matters concerning potential or real customs crimes, as well as propose joint initiatives concerning reciprocal issues.



Public Sector Purchases:

- The relationship between Mexico and Canada shall be ruled by the stipulated part in the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) once it comes into force.
- Some disciplines between Mexico and the United States are established, in particular:

- Defining the requirements of a purchase is imperative, based on objective and international criteria and with no purposes of creating unnecessary obstacles to trading among Parties.
- Not imposing compensatory conditions, concerning open purchases, is imperative, as local content requirements.
- The authority of entities to disqualify suppliers for issues as bankruptcy, false declarations or disqualifications caused by a poor performance in the compliance of a governmental agreement, is recognized.

Investment:

- It is divided in two sections:

- The first one contains the disciplines of protection to foreign investment.

- The second one contains investment arbitration mechanism (Investor – State)

- The investors of any sector may perform an arbitral procedure in case of infringements of the disciplines: National Treatment, Most-Favoured-Nation Treatment, Direct Expropriation.

- The Disputes Settlement Mechanism “Investor - State” is not applicable for Canada.



Labor sector:

- Certain specific provisions are included for Mexico, in terms of collective bargaining, intending to guarantee the current right.

- The cases of sustained or frequent action or inaction, while implementing the labor law by a government, shall be subjected to the disputes settlement mechanism

Environment:

- Certain prohibitions are established concerning some subsidies that affect fishing, especially ships and operators involved in illegal fish poaching.

- Preventing and reducing marine debris, promoting the sustainable forest management and preventing whaling with commercial purposes are commitments included in this context.

- Trafficking transnationally and intentionally wildlife protected species shall be considered as a felony.



- Large and contemporary public participation and environmental cooperation mechanisms.

- Disciplines that intend to improve the effectiveness of the customs inspections of shipments that contain wildlife at the inbound ports.

- Certain disciplines are established to protect the air quality index, and ensuring the proper procedures for the environmental impact assessment.

The cases of sustained or frequent action or inaction, while implementing the labor law by a government, shall be subjected to the disputes settlement mechanism.

Technical Obstacles for Trading:

- It integrates provisions related to transparency of the production, embrace and rules implementation process, technical regulations and assessment procedures in accordance with the Parties.

- Provisions for celebrating reciprocal recognition agreements.

Origin Procedures:

- The origin certificate may be issued by the exporter, manufacturer or importer.

- The certificate format is removed, and the invoice certification or any other commercial document is permitted as long as minimum data of the information is declared.

- In case of a non-compliance, by the importers, of the stipulated part concerning the origin of the goods, each country shall determine whether a civil, criminal or administrative penalty shall be applied.



Copyright:

- The geographical indications protection system is reinforced.
- Certain disciplines are prevented for well-known trademarks.
- The authorities may intercept the goods in case they suspect these inbound or outbound goods have been counterfeit.
- Implementing measures against counterfeit goods and piracy on a commercial scale.



Trade Remedies:

- Safeguards: an exclusion, subjected to certain restrictions, is maintained for members (not being listed within the first 5 exporters) of the worldwide safeguard measures.
- Anti-dumping and subsidies: the rights of the WTO (World Trade Organization) are recognized concerning these matters. Certain added regulations, that provides benefits for transparency, were established.
- Fight against avoidance: A cooperation mechanism is established to prevent compensatory duties avoidance, anti-dumping and safeguard.
- Binational Panels: The mechanism of Chapter XIX of NAFTA remains.



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. <https://footwearnews.com/2018/business/news/donald-trump-shoes-canadians-smuggle-fdra-1202576547/>
 4. IQOM