



CHEMICAL 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.

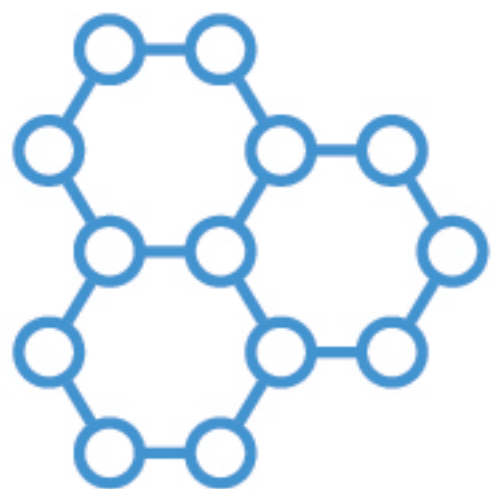




One of the significant changes, established by the USMCA, concerns the increase of the required level of automobiles and auto parts regional content to export duty-free automobiles to the United States. Canada also performed concessions by opening one part of its dairy market to the American imports. 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 chemicals may be found in Chapter 4: Rules of Origin and Product-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 regulations for chemicals were updated as it was requested by the Mexican industry.



New compliance solutions were included, which recognize different chemical procedures to confer origin, such as: chemical reaction, purification, mixtures, change in particle size, materials standardization, separation of isomers and biotechnological procedures.

It has to be emphasized that, from the beginning, the chemical industries of these three countries were collaboratively interested in modifying the Rules of Origin from the chemical sector and maintaining a tax-free trade for chemical products. In this context, an approach based on risk and chemical regulation science within the Toxic Substance Control Act of the United States (TSCA) and within the Canada's Chemical Management Plan (CMP).

According to the American Chemistry Council (ACC), the USMCA facilitates the partnership work, between these three countries, to establish a more efficient and effective regulatory environment that supports an approach based on risk to protect and support simultaneously human health, environment, innovation and economic growth.



This was the approach requested by the industry, and it was expected to facilitate classification of the chemical products according to the agreement. The industry performed a study in terms of the NAFTA and they realized that, approximately, half of the chemical products transactions received a tax-free treatment in accordance with the NAFTA, since the documentation discouraged the treatment claim.

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
- 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 .
- Artículo 4.19: Operations that do not confer origin
- Article 4.18: Transit and Tranship .
- Artículo 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 4.19: Operations that do not confer origin

- Each Party shall determine that a good is not considered as a originating good due to the following causes:



- (a) a simple dilution in water or in any other substance that does not alter materially the characteristics of the good; or
- (b) any production or pricing practices that may prove, with sufficient evidence, that their objective concerns evading this Chapter.

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

Section VI Products of Chemical Industries or related industries (from Chapter 28 to 38)

Note 1: A good, of any chapter or heading in Section VI that complies one or more regulations from 1 to 8 of this section, shall be considered as a originating good, with the exception of a specific part within these regulations.

Note 2: Despite of Note 1, a good is originating if the good complies with the tariff classification change or accomplishes the applicable regional value content described in this Section.

Rule 1: Chemical Reaction Rule

A good from chapter 28 to 38, with the exception of goods from heading 33.01 to 38.23, or from subheading 2916.32 to 3502.11 to 3502.19, that results from a chemical reaction in the territory of one or more Parties, shall be considered as a 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 building new intramolecular bonds, or by altering the spatial positioning of atoms in a molecule.



The following points are not considered as a chemical reaction for the purposes of the resolution concerning the requirements for a good to be originating:

- (a) a dilution in water or any other solvents;
- (b) solvent removal, including water; or
- (c) addition or removal of water of crystallization.

Rule 2: Purification Rule

A good from chapter 28 to 38, with the exception of a good of heading 33.01 or subheading 02.19, which is subjected to purification, is considered as a originating good, as long as purification takes place in the territory of one or more Parties, and it results in the following points:

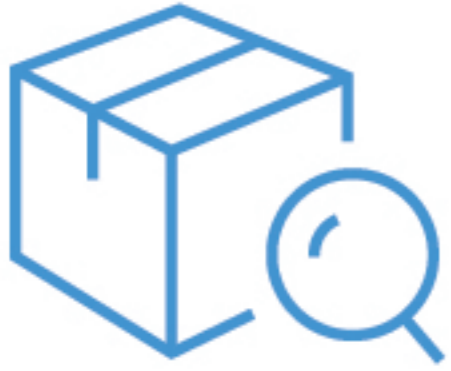


- (a) the removal of not less than 80 percent of existing contaminants; or
- (b) the reduction or removal of contaminants that result in a suitable good for one or more following points:

- (i) as a pharmaceutical, medicinal, cosmetic, veterinary or food substance.
- (ii) as chemical goods and chemical reagents for analytical, diagnostic or experimental application;
- (iii) as elements or components used in micro-elements;
- (iv) for specialized optics applications;
- (v) for nontoxic uses for health and security
- (vi) for biotechnical applications (for instance: cell cultivation, genetic technology, or as a catalyst);
- (vii) as a catalyst used in a separation procedure; or
- (viii) for cellular level applications.

Rule 3: Mixing and Combination Rule

A good from Chapter 28 to 38, with the exception of a good from chapters 28, 29 or 32, heading 33.01 or 38.08, or from subheading 3502.11 to 3502.19, is considered as a originating good if the mixture or combination (including dispersal) is deliberated and proportionally controlled of materials, with the exception of adding diluents that comply the predetermined requirements, and it takes place in the territory of one or more Parties, and it results in production



of a good with physical and chemical characteristics that are considered as relevant for the purposes or uses of the good, and these ones differ in the used materials.

Rule 4: The Change in Particle Size Rule

A good from chapter 28 to 38, with the exception of chapters 28, 29, 32 or 38, heading 33.01, or from subheading 3502.11 to 3502.19, is considered as a originating good if the deliberated and controlled modification of the particle size, including the micronization by diluting a polymer and precipitation occurs subsequently, which is different from the simple crushing or pressing, occurs in the territory of one or more Parties, resulting in a good with a defined particle size, a defined particle size distribution, or a defined surface area, which is relevant for the purposes of the final good, having different physical and chemical characteristics from the used materials.

Rule 5: Costed Materials Rule

A costed good from Chapter 28 to 38, with the exception of a good of heading 33.01, or from subheading 3502.11 to 3502.19 is considered as a originating good if the good is produced in the territory of one or more Parties.

For the purposes of this rule, a “costed material” (including the costed solution) is a training suitable for the analysis, calibration or related uses with accurate degrees of purity or proportions certified by the manufacturer.

Rule 6: Isomers Separation Rule

A good from Chapter 28 to 38, with the exception of a good from heading 33.01, or from subheading 3502.11 to 3502.19 is considered as a originating good if the isolation or separation of isomers, by using a mixture of isomers, takes place in the territory of one or more Parties.

Rule 7: Prohibition of Separation Rule

A good from Chapter 28 to 38, with the exception of heading 33.01, or from subheading 3502.11 to 3502.19, which presents a change from classification to another in the territory of one or more Parties, as a result of the separation of one or more materials of a man-made mixture, shall not be considered as a originating good unless the isolated material is the result of a chemical reaction in the territory of one or more Parties.



Rule 8: Biotechnological Process Rule

A good from Chapter 28 to 38, with the exception of a good from chapter 30, from heading 29.30 to 29.42, heading 33.01, or from subheading 3502.11 to 3502.19, is considered as a originating good if it is going through a biochemical process, or through one or more following processes:

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

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.



Energy:

- The right to regulate in terms of oil and the rest of hydrocarbons is preserved, in accordance with the commitments made by Mexico within other international agreements.
- Legal certainty is offered, and the commitments made by Mexico, with service providers, exporters, importers and investors within the sector, are complied.



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:

- Incorpora disposiciones referentes a la transparencia de los procesos de elaboración, adopción y aplicación de las normas, reglamentos técnicos y procedimientos de evaluación de la conformidad de las partes.
- 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.

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. <https://cen.acs.org/policy/trade/US-chemical-industry-reacts-positively/96/i40>

4. IQOM