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Derecho Fiscal, Administrativo, Comercio Exterior y Aduanas
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STEEL **SECTOR**

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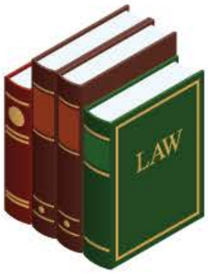


The Rules of Origin of the steel sector may be found in Chapter 4: Rules of Origin and Specific Rules of Origin of the new United States - Mexico - Canada Agreement (USMCA).

It is relevant to emphasize that not all Specific Rules of Origin were updated, therefore, the rates and the rules of the steel sector were not modified. No significant changes of the sector were presented.

There is no reference, within the Agreement, to the existing steel and aluminum tariffs. The Mexican and Canadian trade representatives have declared that they intend to convince the American member to eliminate rates before the presidential seal of the USMCA.

Nevertheless, the Agreement includes three lateral letters between the United States and Mexico, the first one concerns Vehicle Safety Standards. The second and the third one concern trade restrictions of "National Security" in Section 232. Canada signed the same letters signed by the United States.

The lateral letters stipulate that if the United States impose tariffs or restrictions of importation of goods, or services provided by Canada or Mexico under Section 232, a term of 60 days must be established prior to the implementation when the parties "shall attempt to negotiate an appropriate result based on the industry dynamics and the historical trade patterns". These letters stipulate that if the taken measures are inconsistent with the NAFTA, the USMCA or the WTO's Agreement (World Trade Organization), Canada and Mexico may retaliate and retain the rights of the WTO to contest these measures.

Despite the lack of changes for this sector, it is relevant to review the Rules of Origin of the automotive sector, since they establish a percentage of steel and aluminum that must come from North America.

According to the United States Trade Representative (USTR), the new Agreement shall create a more balanced and reciprocal trade. It remarks that the update of the rules of origin for passenger vehicles, light trucks and auto parts encourages the incorporation of goods and materials from the United States and North America.

The regional value content growth encourages the regional economic and manufacturing growth in the United States by demanding that the 75% of the automobiles content is performed in North America.

The new trade rules shall produce higher salaries by demanding that the 40 - 45% of the automobiles content is performed by workers that gain at least $16 dollars per hour. Finally, these rules shall encourage a greater automotive industries investment in local research and development.

For the Economy Department, the rules of origin reinforce the regional value chains and increase the incentives for the local suppliers development.

- **Light vehicles and trucks:**

  75% of the value must come from procedures and consumables performed in the region and 40% of high wage level zones of North America.

- **Heavy vehicles:**

  70% of its value shall concern procedures and supplies performed in the region, and 40% of high wage level of North America

- **Auto parts:**

  The 65 - 75% of the value must come from procedures and consumables performed in the region.

The rule of origin growth shall be progressive, starting on January 1st, 2020, it shall increase by 66%, with a term until 2023 to accomplish the 75% of the Agreement.

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
- Article 4.17: Set of goods, kits or assembled goods
- Article 4.18: Transit and Tranship
- Article 4.19: Operations that do not grade the regional content; 70% of steel and aluminum used by manufacturers of vehicles from North America; and eliminating the tracking rule.
    - Annex 4-A: De Minimis Exceptions
    - Annex 4-B: Specific Rules of Origin
        - Appendix of Annex 4-B: Provisions related to the Rules of Origin for automobile goods.

It is relevant to review the appendix, since it establishes the terms of regional value content compliance, as well as the laboral value content (which must be complied by the assembly plants).

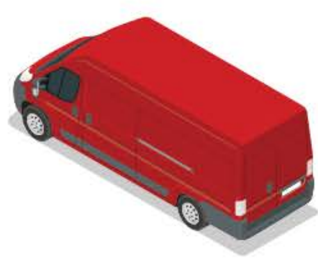
Rules of Origin for light vehicles:

- Regional Value Content (RVC) of 75%, under the net cost methodology for cars and trucks, applicable in 4 increases, in which the RVC shall be adjusted until it reaches the arranged percentage.

- Laboral Value Content (LVC) of 40% for cars and 45% for trucks, applicable in 4 increases. The LVC is composed of two elements:
    - Materials and Manufacturing Costs (25 % for cars and 30% for trucks).
    - Research and Development (R&D), Information Technology Services, and motors, transmissions or advanced batteries assembly operations that represent the 15% of the LVC.
- At least 70% of steel and aluminum must come from North America. (it must be complied only by the assembly plants).
- 7 auto parts described as fundamental were identified, which must come from North America for the vehicle to be considered as originating.
- Three auto parts categories were categorized: essential, central and the complementary ones, whose RVC was ranked between 75%, 70% or 65%, depending on the type of auto part. The RVC growth shall be also performed in 4 increases.

Rules of Origin for heavy vehicles:

- A RVC of 70%, under the Net Cost method and applicable in 7 increases, in which the RVC must be adjusted until it reaches the arranged percentage.
- A LVC of 45% is composed of two elements:
    - Materials and Manufacturing Costs 30%.
    - R&D, Information Technology Services, and motors, transmissions or advanced batteries assembly operations that represent the 15% of the LVC.



• At least 70% of steel and aluminum must come from North America. (it must be complied only by the assembly plants).

• For the auto parts, three categories were also defined: essential ones (which must come from North America), central and complementary ones, whose RVC is ranked between 70%, 60% or 65%, depending on the type of auto part, and the increase shall be applicable in 7 stages.

Vehicles that do not comply with the Rule of Origin:

• Up to 1,600,000 units shall pay for the tariff of the Most Benefited Country (MBC), which is 2.5% (in case the United States decides to increase the tariff of the MBC), meeting the rule of origin described in the NAFTA.

• Auto parts: up to 108 billion dollars of exportation shall face the MBC applied by the United States on August 1st, 2018, meeting the rule of origin of the NAFTA.

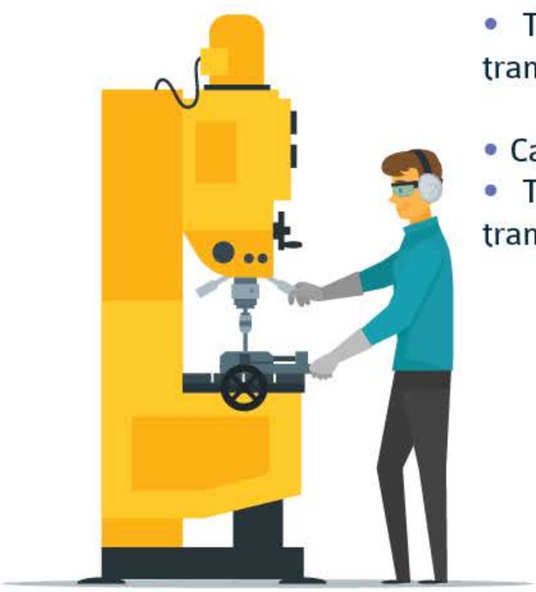
Auto parts for light vehicles:

• 3 categories are created

- Category 1: Essential Parts.
- They must reach a maximum of 75% of RVC or under the transaction value of 85%, in 4 increases.
- They must be performed in the region.

- Category 2: Central Parts.
- They must reach a maximum of 70% of RVC, or under the transaction value of 80%, in 4 increases.

- Category 3: Complementary Parts.
- They must reach a maximum of 65% of RVC, or under the transaction value of 75%, in 4 increases.



Auto Parts for Heavy Vehicles:

- 3 Categories are created.
    - Category 1: Essential Parts.
    - The RVC shall be of 70% or under the transaction value of 80%, in two increases.

    - Category 2: Complementary Parts.
    - The RVC shall be of 60% or under the transaction value of 70%.

Article 4-B.6: Steel and Aluminum:

1. In addition to the Product-Specific Rules of Origin in Annex 4-B or other requirements in this Appendix, each Party shall provide that a passenger vehicle, light truck, or heavy truck is originating only if, during the previous year, at least 70 percent of:

(a) the vehicle producer's purchases of steel in North America[100]; and
(b) the vehicle producer's purchases of aluminum in North America, are originating[101].

2. Each Party shall provide that when a vehicle producer certifies that its purchases of steel and aluminum meet the requirement under paragraph 1 of this Article on an annual basis and that relevant records are kept as part of the Record Keeping Requirements under Article 5.9, a certification during one year applies to vehicles produced or exported in the following year; that is, the requirement in paragraph 1 will be considered to be met for all vehicles produced by that producer in the territory of a Party or exported by that producer from the territory of a Party in the following year.

3. The Parties shall endeavor to develop any additional description or other modification of steel and aluminum subject to paragraph 1, if needed, to facilitate implementation of this requirement. Upon request of one of the Parties, the Parties shall discuss and agree on any appropriate modifications to the description of steel and aluminum.

4. The Parties shall include any certification or verification provisions for this requirement in Uniform Regulations provided for in Article 5.17.

The following chapters shall be reviewed additionally:

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.

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.

Laboral 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.

- 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://www.whitecase.com/publications/alert/united-states-canada-and-mexico-announce-new-trilateral-trade-agreement-replace
4. https://www.cisc-icca.ca/new-trade-deal-usmca-does-not-include-revisions-to-steel-tariffs/
5. IQOM

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, implementation and enforcement procedure concerning regulations, technical rules and assessments 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.