

General Rules of Origin Principles

The general principles for determining origin under the USMCA are similar to those found in the NAFTA. Under the USMCA, a good will qualify as originating, and will therefore be eligible for preferential tariff treatment, if it satisfies one of the following criteria:

- ❖ The good is wholly obtained or produced entirely in the territory of one or more Parties. This rule remains largely unchanged from the NAFTA, though the USMCA makes minor updates to the definition of a "wholly obtained or produced" good.¹
- ❖ The good is produced entirely in the territory of one or more of the Parties using non-originating materials, provided the good satisfies the applicable product-specific rules of origin set forth in the Agreement. The USMCA's product-specific rules of origin, like those in the NAFTA, are based on changes in tariff classification, regional value content (RVC) requirements, and/or other product-specific processing requirements (e.g., the "chemical reaction rule"). RVC must be calculated using either the "net cost"² method or the "transaction value"³ method (the same two methods permitted under the NAFTA). Many of the product-specific rules of origin found in the NAFTA have been revised in the USMCA, as discussed in greater detail below.
- ❖ The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials. This rule remains unchanged from the NAFTA rule, which held that goods originate if they are produced entirely in Canada, Mexico and/or the United States exclusively from materials that are considered to be originating according to the terms of the Agreement.
- ❖ The good is produced entirely in the territory of one or more of the Parties, is classified with its materials or satisfies the "unassembled goods" requirement, and meets an RVC threshold. This rule, which is largely unchanged from the NAFTA, provides that a good is originating if:
 - One or more of the non-originating materials used to produce the good cannot satisfy the applicable product-specific rules of origin because both the good and its materials are classified in the same tariff heading (thus precluding a tariff shift); or
 - The good was imported into the territory of a Party in unassembled or disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System; and
 - The regional value content of the good is at least 60% when calculated using the transaction value method, or at least 50% when using the net cost method.

Updates to General Rules of Origin Provisions

The general principles for determining origin under the USMCA are similar to those found in the NAFTA, but the USMCA makes several important changes drawn from more recent trade agreements such as the TPP. Several of these changes would provide additional flexibility for traders seeking to qualify for preferential tariff treatment, compared to the existing NAFTA rules.

Increased *De Minimis* Thresholds for Non-Originating Content

The USMCA increases to 10% the level of non-originating content that is considered *de minimis* and therefore does not render a good non-originating, even if the good fails to satisfy an applicable tariff change or regional value content requirement. This increase also was included in the TPP, and will provide additional flexibility for traders seeking to qualify for USMCA tariff preferences. The new *de minimis* rules are as follows:

- A good will qualify as originating if the value of all non-originating materials used in its production that do not undergo an applicable change in tariff classification is not more than 10% of the transaction value⁴ or total cost of the good (provided the good satisfies all other applicable origin requirements).⁵ This *de minimis* threshold is currently 7% under the NAFTA.
- A good that is otherwise subject to an RVC requirement will not be required to satisfy that requirement if (1) the value of all non-originating materials used in its production is not more than 10% of the transaction value of the good⁶; or (2) the total cost of the good (provided the good satisfies all other applicable origin requirements). This *de minimis* threshold is currently 7% under the NAFTA.

Like the NAFTA, the USMCA contains a list of products that are ineligible for these *de minimis* exemptions (including many food and agricultural products).

New Provision on Treatment of "Recovered Materials"

A new rule in the USMCA provides that a "recovered material"⁷ derived in the territory of one or more of the parties will qualify as originating when it is used in the production of, and is incorporated into, a "remanufactured good."⁸ A similar provision was included in the TPP, and was touted as a means of facilitating trade and production of remanufactured goods within the region.

Calculation of Regional Value Content

As noted above, the USMCA provides that RVC may be calculated using the same methods (either net cost or transaction value) permitted under NAFTA. However, a new rule in the USMCA provides that, where a non-originating material is used in the production of a good, the following may be counted as originating content for purposes of calculating RVC under either method:

- The value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and
- 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.

This provision also was included in the TPP, and will provide additional flexibility for traders seeking to satisfy RVC requirements under the USMCA.

Updated Provisions on Accumulation

Like the NAFTA, the USMCA provides for "accumulation" (*i.e.*, products of one Party can be further processed or added to products in another Party as if they had originated in the latter Party). However, the USMCA replaces the NAFTA accumulation rules with updated language that is nearly identical to that found in the TPP. The USMCA accumulation rules are as follows:

- A good is originating if it is produced in the territory of one or more of the Parties by one or more producers, provided that it satisfies all applicable origin requirements;
- An originating good or material of one or more Parties is considered as originating in the territory of another Party when it is used as a material in the production of a good there; and
- Production undertaken on a non-originating material in one or more of the Parties contributes to the originating status of the good, regardless of whether that production was sufficient to confer originating status to the material itself.

New Provision on Sets, Kits, and Composite Goods

A new rule in the USMCA specifically addresses goods that are imported in sets and are classified as such as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System. The USMCA provides that such sets are originating only if each good in the set is originating and both the set and the goods meet all other applicable requirements of the USMCA rules of origin chapter. However, if the value of all the non-originating goods in the set does not exceed 7% of the set's total value, the set will qualify as originating.⁹ Recent trade agreements such as the KORUS and the TPP have included similar rules for goods imported in sets.

Updated Provision on Transit and Transshipment

Under the USMCA, an originating good that is transported outside the territories of the parties will retain its originating status if the good (1) remains under customs control in the territory of a non-Party; and (2) does not undergo an operation other than unloading; reloading; separation from a bulk shipment; storing; labeling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party. The NAFTA text did not expressly

require a good to remain under customs control while in the territory of a non-Party in order to retain its originating status, though this concept is included in US Customs and Border Protection's NAFTA regulations. This additional requirement was also included in the TPP.

Product-Specific Rules of Origin

The USMCA's Annex 4-B contains significant revisions to many of the product-specific rules of origin found in Annex 401 of the NAFTA. Some of the revised rules, such as those applicable to automotive goods, are more stringent than the NAFTA rules, potentially forcing companies to alter their current supply chains in order to satisfy the new requirements. Other product-specific rules in the USMCA, such as those applicable to chemicals, might be more flexible than the existing NAFTA rules.

We provide below an illustrative list of sectors and products that are subject to revised product-specific rules of origin under the USMCA. Companies engaged in trade in the NAFTA region should carefully review the USMCA's product-specific rules of origin and assess the impact of any relevant changes.