



## **Study Material | 2021 CCS/CES\* Case Study #004**

*(CCS content counts towards MCS requirements, and CES content counts towards MES requirements)*

### **US-Mexico-Canada-Agreement (USMCA)**

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#### **Introduction**

The US-Mexico-Canada Agreement (USMCA) went into effect last year (2020). The agreement took the place of the North America Free Trade Agreement (NAFTA) and changed many of the import and export provisions, including the rules of origin applicable to many tariff classifications. It also changed the certification requirements to claim duty free benefits under the agreement. Another major change is that USMCA initiated new content rules for the automotive trade.

#### **Background**

The NAFTA treaty went into effect in 1994. Over the years it became apparent that NAFTA needed updating and correcting. The US pushed for automotive trade provisions that would promote automotive manufacturing in North America and assist the workers involved in it. The three countries carried on negotiations over at least three years. As a treaty it had to be ratified by the legislatures of Canada, Mexico, and the US. Finally, in 2020 the treaty went into effect and it took the place of NAFTA.

#### **Authorities and Sources of Information for the USMCA**

The primary sources of information for the USMCA are:

- The General Notes to the Harmonized Tariff Schedule, specifically General Note 11. General Note 11 explains key tariff provisions of USMCA. Most importantly, it contains the rules of origin applicable to Headings and Subheadings in the HTS.
- Part 182 of the Customs Regulations. Most of the subparts of Part 182 need to be fleshed out; however, the appendices to Part 182 contain the official USMCA rules of origin, including definitions, unique rules for certain products, and examples of how the rules of origin work.
- US Customs & Border Protection (CBP) USMCA Implementation Instructions (CBP Publication #1082-0420), available at [www.cbp.gov](http://www.cbp.gov). This publication is intended for both CBP field personnel and the import community. It is a practical guide to the rules of origin, certifications, entry, recordkeeping, and special commodity-based rules in the USMCA.

#### **Wholly Obtained or Produced**

To potentially qualify for USMCA, the article must originate in Canada, Mexico, or the U.S. Products of other countries will not qualify. To be considered wholly obtained or produced or produced entirely, the article must be:



Wholly obtained or produced entirely in the territory of one or more of the USMCA countries. This normally refers to natural products mined or harvested in Canada, Mexico, or US.

Example: Wheat is grown in the Canadian province of Saskatchewan. It is sent to a mill in Winnipeg where it is ground into flour. The flour is imported into the US.

Produced entirely in one or more USMCA countries from originating materials.

Example: Silver is mined, refined, and cast into bars entirely in Mexico. It is then formed into a ring by a Mexican silversmith. The ring is sent to Canada, where a gemstone mined, formed, and polished in Canada is mounted to it. The ring with gemstone is then imported into the US. It would be produced entirely in the territory of one or more of the Parties exclusively from originating materials.

### Tariff Based Rules of Origin

If an article is not wholly obtained or produced or made from originating materials in Canada, Mexico, or the U.S., it will be subject to the tariff-based rules of origin. These are probably the most commonly used rules of origin because only a narrow group of articles can be considered wholly obtained or produced or produced entirely from originating materials.

Such articles will be subject to the tariff shift or Regional Value Content rules – or a combination of these. The applicable rule is determined by the Heading or Subheading under which the article is classified. Following is a basic description of the process for finding the rule of origin for an article that is not wholly obtained or produced or produced entirely:

Step 1 – Classify the article in the HTS.

Step 2 – Go to General Note 11 for USMCA and find the Heading or Subheading for the article.

Step 3 – Read the rule of origin associated with that classification. This will be either the Tariff Shift or Regional Value Content rule – or a combination of these rules.

### Tariff Shift

Under the “tariff shift” rule any non-originating materials or components used in producing the article must undergo a change in tariff classification – meaning that the HTS classification of the non-originating material or component is different than that of the end product. The extent of change depends on the HTS classification of the end product.

Included in the term “non-originating materials or components” are any of unknown or unverified origin.

An example of a tariff shift is as follows:



“A change to subheadings 9027.10 through 9027.50 from any other subheading, including another subheading within that group.”

This means that if the HTS classification of the end product is between 9027.10 to 9027.50 the subheading of any non-originating materials or components must be different than that of the end product.

### Regional Value Content

A majority of the rules of origin associated with Headings and Subheadings involve the tariff-shift rule. Some, however, utilize the Regional Value Content (RVC) rule. RVC requires a percentage of the total value of the end product to consist of originating materials or components. The value of the end product may be the Transaction Value or the Net Cost. The Transaction Value is the total sales price less any excluded costs. The Net Cost method is built up from various costs of production.

The RVC requirement is commonly expressed together with a Tariff Shift requirement, as in the following example:

“(B) A change to headings 9301 through 9304 from heading 9305, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

- (1) 60 percent where the transaction value method is used; or
- (2) 50 percent where the net cost method is used”

This means that the article must undergo a Tariff Shift and meet the RVC requirement. The formulas for the two RVC methods are described in the General Notes as follows:

“Transaction value method --- An importer, exporter or producer of a good may calculate the regional value content of the good on the basis of the following transaction value method:

$$RVC = ((TV-VNM)/TV) \times 100$$

where RVC means the regional value content of the good, expressed as a percentage; TV means the transaction value of the good adjusted to exclude any costs incurred in the international shipment of the good; and VNM means the value of non-originating materials, including materials of undetermined origin, used by the producer in the production of the good.”

“Net cost method -- An importer, exporter or producer of a good 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 NC means the net cost of the good; RVC means the regional value content, expressed as a percentage; and VNM is the value of non-originating materials, including materials of undetermined origin, used by the producer in the production of the good.”

The details on calculation of Transaction Value or Net Cost are found in:

- The USMCA General Notes in the HTS
- Rules of Origin appendix to Part 182 of the Customs Regulations
- The CBP USMCA Implementation Instructions

### Special Automotive Rules of Origin

The USMCA revised the requirements associated with automotive trade. It created three categories of automotive items with different content requirements for each.

- Complete passenger vehicles and light trucks must have at least 75% North American (Canada, Mexico, and US) RVC content.
- Core components (major components of automobiles such as engines, transmissions, bodies, chassis, axles, suspension, steering, etc.) must meet a 70% North American RVC content rule.
- Principal components (other parts of automobiles and light trucks lesser than Core components – classified under Heading 8409 or Chapter 87) must meet a 65% North American content RVC rule.

There are also special aluminum and steel and labor content rules in addition to the RVC requirements for passenger vehicles and light trucks.

### Determining Origin of Parts and Materials

To qualify as originating for the purpose of the USMCA, materials or components must be made or substantially transformed in Canada, Mexico or US or a combination thereof. Producers, exporters, or importers certifying articles for USMCA must have documentation to show that any materials or components claimed as originating meet the requirements for that claim.

The best way to prove that materials or components are originating is a certification signed by the producer. Copies of the certification are retained by the producer and should be provided to the producer, exporter, or importer of the end product in which the materials or components are used.



Other proof may be acceptable for this purpose, such as a manufacturer's affidavit or a detailed process description. Whether other proof will be acceptable to Customs authorities may depend on the strength of the documentation and the judgement of the authorities.

### Certifications of Origin

A claim for benefits under the USMCA must be supported by a certification of origin. The Certificate of Origin form previously used for NAFTA is no longer acceptable. The certification can be prepared and executed by the producer, exporter, or importer. It should be signed by an officer of the company or a person having knowledge of the facts. It can be a single certification valid for one shipment or a blanket certification valid for all shipments of the article(s) within a period up to one year.

There is no specific form or format for the certification; however, it must contain certain information, including:

- Whether the party is the producer, exporter, or importer.
- The name, title, address, phone number and email address of the person certifying.
- The producer's name, address (including country), e-mail address, and telephone number.
- The exporter's name, address (including country), e-mail address, and telephone number. This information is not required if the certification is signed by the producer.
- If known, the importer's name, address, phone number and email address.
- A description of the good(s) and the HS tariff classification of the good(s) to the 6-digit level. The description of the good(s) on the certification must be detailed enough to link it to the goods in the shipment.
- If the certification of origin covers a single shipment of a good, it should indicate, if known, the invoice number related to the exportation.
- If the certification is for a blanket period indicate the period covered.
- The origin criteria per Article 4.2 of the agreement under which the good qualifies. See summary of Article 4.2 below.
- Authorized signature and date and the following statement:

"I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification."

Article 4.2 of the USMCA details the origin criteria to be provided on the certification, as follows.



- Wholly obtained or produced entirely in the territory of one or more of the Parties.
- Produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all applicable requirements of Annex 4-B (Product-Specific Rules of Origin).
- Produced entirely in the territory of one or more of the Parties exclusively from originating materials.
- The regional value content of the good, determined in accordance with Article 4.5 (Regional Value Content), is not less than 60 percent if the transaction value method is used, or not less than 50 percent if the net cost method is used.

The certification can be in hard copy or electronic. If the latter, it can be signed with a digital signature.

### **Making a USMCA Claim**

It is not required to submit a certification with the Customs entry documents or data. The importer or its customs broker will place the designator **S** before the HTS classification of the eligible articles on the entry. The importer must retain a copy of the certification and any supporting documents and present them to CBP on request.

A certification of origin is not required for: (1) a non-commercial importation of a good, or (2) a commercial importation for which the value of the originating goods does not exceed US \$2,500.

If there are errors on the certification, the importer will be granted a period of at least 5 days to obtain a corrected copy.

### **What if You Don't Have a Certification?**

If the importer does not have a valid certification at the time of entry it cannot make a USMCA claim. Post entry USMCA claims cannot be made with a Post Summary Correction. The proper mechanism for a post entry USMCA is a claim under 19 USC 1520(d). A claim must be supported by a valid certification.

It is possible to utilize Reconciliation for the purpose of related post entry USMCA claims for a group of associated entries.

### **Recordkeeping**

The certification and any associated or supporting documents must be retained by the importer for at least 5 years. The records are maintained in hard copy or electronically, according to importer's recordkeeping plan. CBP can request a copy of the certification on request.



## Post-entry Verification and Penalties

An importer making a claim for USMCA benefits without a valid certification of origin is - at a minimum - subject to duty and Merchandise Processing Fee.

The USMCA permits CBP to verify whether a good entered with a claim for preferential tariff treatment qualifies as originating by: (1) Written request or questionnaire to the importer, exporter, or producer of the good seeking information or documents, such as via CBP Form 28; (2) Visit to the premises of the exporter or producer of the good in order to request information or documents and to observe the production process and the related facilities; and (3) Any other procedure that may be decided by the Parties.

A USMCA claim supported by a false or erroneous certification will be subject to penalties. According to the CBP Fact Sheet on USMCA, “each Party shall maintain criminal, civil, or administrative penalties for violations of its laws and regulations.”