Trade Resources & Associates

WHITE PAPER

USMCA Implementation & Mitigation of Risk

USMCA Background

The United States-Mexico-Canada Agreement (USMCA) became effective on July 1, 2020. Until the USMCA entered into force, the North American Free Trade Agreement (NAFTA) requirements were in effect. USMCA made several key regulatory changes as compared to the North American Free Trade Agreement (NAFTA) that affect compliance and liability. Learning to navigate and master these new provisions are the key to complying with the regulations, minimizing liability for non-compliance, and succeeding in global trade.

Customs and Border Protection (CBP) implemented the new rules in phases to allow the trade community time to adjust business practices in order to comply with the new requirements under the USMCA. During the first six months of its implementation, July 1, 2020 to December 31, 2020, CBP will focus on supporting the trade community's efforts to fully comply with USMCA requirements, including instructional webinars and trade outreach. CBP will allow time for the trade community to achieve full compliance if companies can show good faith effort to comply with the rules.

Fundamental Compliance Changes/Risks

- **Elimination of the North American Free Trade Agreement (NAFTA) Certificate of Origin.** Once USMCA is effective, the existing NAFTA Certificate of Origin cannot be used. CBP will no longer accept the NAFTA Certificate of Origin to claim preferential treatment. Companies should be prepared to create their own document with the required elements or provide the necessary data elements on their commercial invoice. See CBP link for the list of required elements .

- **More Enforcement of Product Sourced from Slave Labor.** The USMCA contains provisions relating to the prohibition of the importation of goods sourced from forced labor. To avoid buying products sourced from slave labor, CBP expects the trade community to review all of their suppliers to determine they are not using slave labor for goods imported into the United States. One example of a company that is committed to ensuring that modern slavery and human trafficking is non-existent within its business or supply chain is Intel Corporation. It holds employees and suppliers to high standards for ethical conduct. Intel's audit and verification process is fully described in the 2019 Intel Corporation Statement on Combating Modern Slavery.

- **New Protections for U.S. intellectual Property.** CBP officials are now required to stop suspected counterfeit goods. CBP targets counterfeit goods for several reasons. Sometimes foreign customs or other trade partners warn CBP of the arriving counterfeit imports. Furthermore, there are specific indicators that CBP can distinguish among counterfeit goods. For example, CBP will compare a suspected counterfeit item to the genuine product's advertisement on the manufacturer's website. CBP also looks for discrepancies in the suspected counterfeit product which signals it is fake. CBP will consider the price. If the imported product is a very low cost and the quality is inferior, CBP will suspect this is a counterfeit product. If the product is found to be counterfeit, CBP will seize and destroy the product. In the past, companies had to request help from CBP to identify the counterfeit products that were being imported into various ports. Now CBP officers are more aware and take action to stop counterfeit goods from entering the U.S. which undermines a manufacturer's reputation and hurts companies financially. It is in the best interest of companies to educate CBP by providing product samples and product identification guides to help CBP identify genuine merchandise, thereby preventing counterfeit goods from being sold to uninformed consumers.

- **Treatment of Sets.** There is a new USMCA provision for sets. According General Rules of Interpretation (GRI) 3 of the US Harmonized Tariff Schedule, goods put up in sets for retail sale are considered originating only if each good in the set is originating and both the set and the goods meet all other applicable requirements. Another change is that sets can also qualify if the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set, and the goods meet all other applicable requirements. For further information about the classification of sets, see link.

- **Correction of False/Unsupported USMCA Claims.** If the importer doesn't provide the required elements to satisfy USMCA preferential treatment per the link above, the importer will not be subject to penalties immediately under 19 USC 1592 for making an incorrect claim that a good qualifies as a USMCA originating good as long as the importer makes a corrected claim within 30 days of discovery and pays any duties and MPF (Merchandise Processing Fee) owed with respect to that imported good. For further information about penalty guidelines, see link.

Compliance and Risk Mitigation

As stated above, the importer is required to have a valid certification of origin in its possession at the time the USMCA preference claim is made. The importer is responsible for the accuracy of the certificate of origin and all documentation submitted to CBP. In fact, CBP may conduct a verification or audit to determine whether a good entered with a claim for preferential tariff treatment qualifies.

If the importer does not adequately substantiate the claim, for example, have a valid certificate of origin, CBP will notify the party subject to the verification, i.e. importer, exporter or producer, that it does not qualify for preferential duty treatment under USMCA. There are additional rules of origin that apply for specific industries. For example, the producers of automotive goods must certify and demonstrate that its production meets the applicable labor value content requirement. The importer is given an opportunity to supply additional information to substantiate the claim. If the importer, exporter, or producer does not supply the information to CBP, CBP will deny the preference claim and the importer will pay the duties, taxes, and fees, thereby losing USMCA preference for unconditionally free tariff items. However, CBP will show restraint in enforcement during the first six-month period after USMCA's effective date.

Trade Resources & Associates advises clients on NAFTA and will provide guidance on the new and complex USMCA rules of origin as well as other USMCA provisions.

Contact Us

We can provide consultation on how USMCA and other trade issues impact your company.