Modernized customs compliance under the USMCA

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What importers, exporters and producers need to know.

The United States-Mexico-Canada Agreement (USMCA) came into force on July 1, 2020. It features modernized customs procedures intended both to reduce administrative burdens on exporters and importers and to reflect the commitments made by Canada, the United States and Mexico as 2017 signatories of the World Trade Organization's Trade Facilitation Agreement. Our previous bulletin discusses the detailed changes to customs administration under the USMCA. This bulletin reviews the significant Canadian legislative and policy changes made to address the USMCA's modernization of Canadian trade and customs procedures.

Businesses importing or exporting goods must be aware of the following changes to customs procedures, in order to ensure unhindered duty-free treatment of goods imported into or exported from Canada to the United States or Mexico under the USMCA:

- New tariff codes must be used for goods originating in the United States (UST, code 10) and Mexico (MXT, code 11). NAFTA's "MUST", code 12 no longer applies.
- Importers, exporters or producers may certify origin of goods using an electronic "Certification of Origin" that contains minimum data elements (discussed below)
- NAFTA's record-keeping provisions are still in place. Keep records for six years from the date of importation.
- Duty refunds for preferential tariff treatment under the USMCA are extended from one year under the NAFTA to four years from the accounting date of the goods at issue.
- NAFTA origin advance rulings are only valid for NAFTA goods. There is no grandfathering of NAFTA advance rulings under the USMCA. For goods imported under USMCA, new origin advance ruling requests must be submitted.
- Canada has increased its *de minimis* thresholds and low value shipment threshold for commercial imports.

Origin procedures, refunds and self-assessments

The Canada Border Services Agency (CBSA) recently published Customs Notice 20-14 to summarize the important compliance points regarding origin, refunds and self-assessments for importers seeking preferential tariff treatment under the USMCA. Businesses must also comply with the new Uniform Regulations regarding interpreting, applying and administrating Chapter 5 (Origin Procedures), Chapter 6 (Textiles and Apparel Goods) and Chapter 7 (Customs Administration and Trade Facilitation).

The NAFTA's Mexico-United States Tariff (MUST, tariff treatment code 12) no longer applies to goods imported duty free under the USMCA. The applicable preferential tariff treatment depends on the country of last production. The new codes to input into fields 14 (tariff treatment) and 28 (tariff code) of a B3 Canada Customs Coding Forms are as follows:

- United States Tariff: UST and code 10
- Mexico Tariff: MXT and code 11

All claims for preferential tariff treatment must meet the rules of origin requirements under the USMCA. There have been no rules of origin changes from the NAFTA for most goods. There have been, however, extensive changes for some goods, like automobiles. Our previous post discusses the significant changes to USMCA automotive rules of origin.

The USMCA modernizes the origin certification process in a way consistent with newer free trade agreements like the *Comprehensive Economic and Trade Agreement* (CETA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). There is no longer a prescribed format for a "certification of origin." Importers and exporters are responsible for providing a document that contains the following minimum data elements (outlined in Annex 5-A of the USMCA):

- The identification and address of the certifier (the producer, exporter or importer)
- The names, addresses and contact information for the exporter, producer and importer;
- A description of the goods (including the HST Code to the six-digit level);
- The rule of origin relied upon from Article 4.2 of the USMCA (Originating Goods);
- The blanket period for the certificate (the maximum period permitted is 12 months); and
- An authorized signature of certifier, date and certifying statement.

The importer/exporter/producer may create their own form of certification of origin or may amend the format of their commercial invoices to include the minimum data elements required under Annex 5-A. The document certifying these data elements for the CBSA may be signed and submitted electronically.

The certification of origin must contain 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."* It must be in the

importer's possession at the time of importation to claim preferential tariff treatment. The CBSA has published a helpful example of the minimum data elements required for a certification of origin.

The *Verification of Origin Regulations* are not yet published, but these regulations will include the details and procedures required for the verification of origin of imported goods, including the verification of a material used in the production of the goods and origin verification requirements under the Uniform Regulations.

Customs Notice 20-22 outlines the amendments to the *Proof of Origin of Imported Goods Regulations* to account for changes made under Chapter 5 of the USMCA. For example, a certificate of origin is acceptable of proof of origin for four years after the date of signature. A certificate of origin can apply to a single importation of a good or two or more importations of identical goods within a 12-month period.

Importers should take note that the record keeping provisions under the NAFTA are still in place and records must be kept for six years from the date of importation. Importers must ensure compliance with these requirements because they may still be subject to trade verifications by the CBSA.

The timeline for submitting duty refunds to claim preferential tariff treatment under the USMCA is extended from one year to four years from the accounting date for the goods at issue. Importers should therefore carefully review their records regularly to determine if a change to USMCA origin may entitle them to refunds of customs duties paid.

Advance rulings

NAFTA origin advance rulings are only valid for goods imported under NAFTA preferential tariff treatment. If importers, exporters and producers want to rely on an advance ruling, they may submit a new application for an advance ruling for future importations of goods under the USMCA with the CBSA. As required by CBSA policy, an applicant must submit the ruling request at least 120 days before importing the goods, and the ruling request must be restricted to an individual product or issue. The CBSA will consider a request for a maximum of five separate products at any one time.

Shipping requirements, *de minimis* and low value shipment thresholds

To minimize duty liability under the USMCA, importers must also consider the place of direct shipment of their goods, the availability of increased *de minimis* thresholds for customs duties and taxes, and the increase in low value shipment thresholds.

As required under all of Canada's free trade agreements, for duty-free treatment under the USMCA, an importer must ship goods directly to Canada from the United States or Mexico, subject to transhipment limitations. Imported goods will maintain their originating status as products of Mexico or the United States if:

- They remain under customs control while transiting through the territory of a non-party to the USMCA; and

- They do not undergo operations except unloading, reloading, separation from a bulk shipment, storing, labeling/marking, or another operation to keep the items in good condition or transport.

Importers should keep an accurate record of all transportation records, including bills of lading, to demonstrate that goods remained under customs control at all points during transit. Read the CBSA's policy on direct shipment and transhipment to learn more.

Importers can take advantage of the increases to Canada's *de minimis* thresholds, as described by the CBSA in Customs Notice 20-18. Under the USMCA, Canada agreed to increase its *de minimis* thresholds for imported goods transported by courier to at least C$150 for customs duties and C$40 for taxes. Customs duties and taxes for goods imported with a value for duty of C$40 or less are waived when imported from the United States or Mexico. Goods imported from the United States or Mexico with a value for duty of C$150 or less will have no customs duties, but taxes will remain applicable. Goods subject to these *di minimis* thresholds do not need to originate in the United States or Mexico (as provided under Chapter 4 of the USMCA); they must only be imported from the United States or Mexico.

Canada has increased its low value shipment threshold for commercial importations. The Courier Low Value Shipment program (the Program) will help facilitate e-commerce, where an individual consumer has ordered goods with terms of sale that identify the consumer as the importer. The Program allows couriers registered in the program to account for low value shipment goods instead of the consumer, making importing and delivery processes more efficient.

The current LVS threshold is C$2,500 for both casual and commercial importations. Goods with a value for duty not exceeding that threshold qualify for simplified and streamlined customs accounting procedures, including more time to account after release and the ability to utilize the Program.

The CBSA provides guidance regarding changes to Canada's Low Value Shipment threshold in Customs Notice 20-15. The USMCA will result in an increased low value shipment threshold for commercial importing only. When the USMCA comes into force, regulations made under the *Customs Act* will be amended retroactively to the coming into force date to increase the threshold for commercial goods to C$3300.

There are a number of important procedural changes to customs administration under the USMCA. Businesses should consider the best approach to adapt their customs compliance procedures to fit the new administrative regime.

BLG's trade and customs lawyers can guide importers and exporters to ensure their systems comply with and maximize the benefits under the USMCA. Please get in touch with the contacts listed below for answers to your customs questions.

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