

WHEN THE RUBBER HITS THE ROAD: PRACTICAL GUIDANCE FOR AUTOMOTIVE COMPANIES TO COMPLY WITH CUSMA

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Amidst the COVID-19 pandemic, automotive manufacturers and suppliers had to adjust to the new rules pertaining to the automotive industry when the Canada-United States-Mexico Agreement (“**CUSMA**”) entered into force on July 1, 2020. CUSMA has elevated rules of origin requirements for automotive vehicles and vehicle parts compared to its predecessor, the North American Free Trade Agreement (“**NAFTA**”). Among the most notable changes was the increase in regional value content (“**RVC**”) requirements from 62.5 percent to 75 percent for passenger vehicles and light trucks, and from 60 percent to 70 percent for heavy trucks. CUSMA also requires that 40 percent of an automotive good’s labour value content (“**LVC**”) come from workers earning at least US\$16 per hour. These LVC requirements are novel, and have not been included in a free trade agreement prior to CUSMA. Additional requirements stipulate that at least 70 percent of steel and aluminum purchased by vehicle producers must originate from CUSMA countries. (See our previous commentary on CUSMA [here](#).)

Canada, United States and Mexico (each, a “**Party**” and collectively, the “**Parties**”) released the Trilateral Uniform Regulations for Origin Procedures^[1] and the Trilateral Uniform Regulations for Rules of Origin^[2] (together, the “**Uniform Regulations**”) to ensure consistency in the interpretation and application of CUSMA’s rules of origin and origin procedures. The Uniform Regulations will be particularly important for automotive companies to ensure compliance with CUSMA, as the rules pertaining to vehicles and parts are highly complex. Although customs authorities are withholding punitive duties for the first year to give companies time to comply with the new rules,^[3] companies should consider amending their policies early on to avoid penalties in the future. Specifically, companies should develop policies relating to the following:

- reviewing prior certification of goods under NAFTA to determine re-certification under CUSMA;
- proper documentation of certified goods, including certification of origin, LVC certification, Steel certification and Aluminum certification;
- maintaining a database that includes certification, as well as the names and contact information of persons to whom the company provided any certification;
- document retention and management; and

- coordinating with customs brokers, if applicable.

1. Reviewing NAFTA Certification

Goods that qualified for preferential tariff treatment under NAFTA may not be eligible for equivalent treatment under CUSMA. In addition to the higher percentage of RVC requirements, another notable distinction between NAFTA and CUSMA is that the RVC of a good is calculated differently under CUSMA. In order to ensure compliance with the RVC requirements, companies should review their NAFTA certifications and determine whether goods need to be re-certified under CUSMA. Companies should also evaluate their supply chains and consider whether to implement auditing practices to ensure proper calculation of RVC for their products (see how the RVC differs between CUSMA and CPTPP in our previous article here).

2. Certification Requirements under CUSMA

At the time of the claim for preferential tariff treatment, importers must have prepared a certification of origin proving that the goods satisfy the rules of origin requirements and are therefore considered as originating. Although Canada Border Services Agency (“**CBSA**”) does not require the certification of origin to be presented during importation, it must be produced upon request.^[4]

The Uniform Regulations clarify that a single certification of origin can be used for either a single shipment of goods or multiple shipments of identical goods. The certification of origin can be completed by the importer, exporter or producer of the good and does not have a prescribed form.^[5] Where the exporter is not the producer of the good, the exporter of the good may complete the certification with reasonable reliance on the producer’s written representation that the good is originating.

Furthermore, CUSMA provides importers with more flexibility in allowing them to make a claim for preferential tariff treatment based on a certification of origin completed by the exporter, producer, or the importer itself. However, if the importer has reason to believe that the certification of origin is based on incorrect information, the importer has to promptly correct the importation document and pay any duties owing.

Unlike NAFTA, a CUSMA certification of origin may be submitted electronically, providing companies with more ease and flexibility regarding document management and retention.

The certification of origin must contain the following information:^[6]

- an indication of whether the certifier is the importer, exporter or producer;
- the certifier’s name and contact information;
- the names and contact information of each of the exporter, producer and importer;
- a description and Harmonized System tariff classification of the good;

- the origin criteria under which the good qualifies;
- if the certification is intended for multiple shipments of identical goods, include the period of coverage; and
- date, authorized signature and statement of certification.

Customs authorities cannot reject a certification of origin based solely on minor errors or discrepancies. In the event there are minor errors, the importer must be granted at least five working days to provide the customs administration with a corrected certification of origin.^[7] While this provides a bit of leeway for companies adjusting to the new rules as well as developing their certification and record-keeping policies, companies must be prepared to provide the correct information to promptly rectify the document.

In the event that a customs authority determines a good to be non-originating, the exporter or producer that provided the certification of origin must notify all persons to whom it gave the certification.^[8] In this regard, exporters and producers should retain a database that includes the names and contact information of persons to whom they provided a certification of origin. Companies should develop procedures to promptly notify those persons to ensure that the certification in question will not be used subsequently.

Additional Certifications

Producers of passenger vehicles, light trucks, and heavy trucks are also required to prepare three other certifications to receive preferential tariff treatment under CUSMA, namely a LVC certification, a Steel certification, and an Aluminum certification.^[9]

In the U.S., producers must provide a LVC certification proving that the imported vehicles comply with the high-wage components of the CUSMA LVC requirements.^[10] As LVC requirements are a new provision in free trade agreements, there may be some uncertainty in calculating the LVC of a good. Accordingly, automotive manufacturers must develop policies to ensure that they comply with this rule. While U.S. Customs and Border Protection (“**CBP**”) requires producers – and not suppliers – to certify compliance, automotive companies should approach their suppliers to ensure that a sufficient portion of the supply chain meets the LVC requirements.

LVC, Steel and Aluminum certifications can be filed online through the CBP [website](#). In Canada, no such database has been made available by CBSA yet.

3. Document Retention and Record-Keeping

CUSMA also imposes obligations on importers, exporters and producers to keep a well-maintained record of any documentation relating to imported or exported goods. This also applies to goods for which the

certification of origin has been waived.^[1] For a period of at least five years (six years under Canadian law) from the date of the importation of the good, importers claiming preferential tariff treatment must retain records and documentation relating to:

- the importation;
- the originating status of the good, if the claim was based on a certification of origin completed by the importer; and
- the importer's obligations under Article 5.4.1 of CUSMA.^[2]

Companies who hired customs brokers should remember that the company – and not the broker – is responsible for any required documentation. Although it is common practice for the customs broker to manage documentation relating to imported or exported goods, customs authorities will hold the company responsible for failure to produce required documents. Thus, companies should develop policies to ensure that they have immediate access to all the documentation in the possession of their customs broker.

CUSMA allows an importing Party to conduct a verification through a written request or by visiting the premises of the company.^[3] In anticipation of a verification carried out by a customs authority, the importer, exporter or producer should develop policies and procedures and be prepared to provide documentation relating to the goods in question.

4. Conclusion

Vehicle and parts producers will have to pay close attention to the novel and more stringent compliance requirements imposed under CUSMA. Certifications should be reviewed and proper record-keeping systems should be in place before the 1-year grace period expires in order to avoid penalties. McMillan's International Trade and Customs & Taxes teams can provide guidance and assist companies in safely navigating these new compliance requirements under CUSMA.

[1] Canada, "[Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapters 5 \(Origin Procedures\), 6 \(Textile and Apparel Goods\), and 7 \(Customs Administration and Trade Facilitation\) of the Agreement between the United States of America, the United Mexican States, and Canada](#)" [Uniform Regulations for Origin Procedures], online: Government of Canada.

[2] Canada, "[Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 \(Rules of Origin\) and Related Provisions in Chapter 6 \(Textile and Apparel Goods\) of the Agreement between the United States of America, the United Mexican States, and Canada](#)" [Uniform Regulations for Rules of Origin], online: Government of Canada.

[3] David Lawder, "[Automakers may avoid compliance penalties under new North American trade pact for a](#)

year” (June 30, 2020), online: Reuters.

[4] [Canadian Statement on Implementation](#), Canada-United States-Mexico Agreement (22 August 2020) C Gaz I, vol 154, no 34 at Chapter 5, Article 5.4, online: Canada Gazette [Canadian Statement].

[5] [Canada-United States-Mexico Agreement](#) between Canada, the United States and Mexico [CUSMA], July 1, 2020, Chapter 5 Article 5.2(1) and 5.2(3).

[6] *Ibid*, Annex 5-A (Minimum Data Elements).

[7] CUSMA, Article 5.7.

[8] Uniform Regulations for Origin Procedures, *supra* note 1 at 2.

[9] US Customs and Border Protection, [United States-Mexico-Canada Agreement \(USMCA\) Implementing Instructions](#) (CBP Publication No 1118-0620) (Washington, DC) at p 10 [CBP USMCA Implementing Instructions].

[10] [The Canada-United States-Mexico Agreement: What importers need to know Certifying the origin of goods](#), CBSA, July 1, 2020.

[11] Canadian Statement, *supra* note 4 at Chapter 5, Article 5.8.

[12] CUSMA, *supra* note 4, Chapter 5, Article 5.8.

[13] CUSMA, *supra* note 4, Chapter 5, Article 5.9(1).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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